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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1871 OF 2022

Heena Afrin Huzaifa Shaikh ..Petitioner
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Vinay V. Nair a/w Riddhi Tendulkar, for the Petitioner.
Mr. K. V. Saste, APP for the Respondent/State.
Mr. S. A. Shaikh a/w Shafi Shaikh & Afsar Ansari, for the
Respondent No.2.

CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.

DATE : 17th AUGUST, 2023

PC.

1. The present petitioner is sister of deceased Ashfaque. The deceased Ashfaque expired on 23rd April, 2020 having suffered covid infection. Complainant Mrs. Rumana, wife of deceased Ashfaque on 2nd October, 2020, lodged a complaint alleging that the petitioner along with other co-accused with common intention committed an offence of criminal breach of trust and cheating. The nature of allegations are, while the complainant was following Iddat, she has instructed Afsar Shah to dispose of movables which were owned by her and her husband jointly. Sale proceeds of the same were not handed over to the complainant. As far as the petitioner is concerned, allegations are, taking illegal custody of the

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postpaid sim-card and use of the same and handing it over to the complainant after having blocked the same. Contentions of counsel for the petitioner are, even if the prosecution case is presumed to be true at its face value, as has been stated in the FIR, no offence could be inferred against the petitioner. According to him, only role attributed to the petitioner is that of taking custody (illegally) of the sim-card of deceased, using the same, which was subsequently found to be blocked.

2. It is further claimed that as far as non return of the sale proceeds after disposal of movables is concerned, there are no specific attributions against the petitioner to infer the alleged offence under Section 406 viz. Criminal breach of trust and Section 420 viz. Cheating. Counsel for the petitioner would urge that neither the property was entrusted to the petitioner by the complainant viz. movables, as reflected in the FIR nor the petitioner is said to be instrumental in disposal of the property i.e. movables. He would draw support from the contents of the FIR and submits that even the sim-card was returned to the complainant before the date of lodging of the complaint. In this background, it is claimed that necessary ingredients of offence punishable under Sections 406, 420 and 34 of IPC cannot be inferred.

3. Learned counsel for the complainant assisted by learned APP would urge that the offence is committed by the petitioner at two stages; (i) that she having common intention with the other co-

accused instrumental in disposing of the movables and not returning the amount of sale proceeds to the complainant; and (ii) illegal use of sim-card and returning the same which was found to be blocked. It is claimed that there is *prima-facie* evidence to infer involvement of the petitioner in the offence in question.

4. The offence alleged against the petitioner taking custody of sim-card of deceased, use of same as could be noticed from the contents of the FIR. As far as the sale of movables, like Air Conditioners, Oven, Refrigerator, Fibre Chimney, Fibre Gas, Heater and Sofa-cum-bed etc. is concerned, the petitioner is not shown to be personally involved in disposal of the said property. It is upon instructions of the complainant, Afsar Shah, brother of the deceased Ashfaque and brother-in-law of the complainant appears to have sold the said movables and the involvement of the present petitioner in the said transactions is not demonstrated or alleged.

5. In this background, as far as sale of movables is concerned, no role is attributed nor could be inferred as that of the petitioner in the commission of said offence.

6. As far as use of sim-card is concerned, the fact remains that after the death of Ashfaque, who was brother of the petitioner, the sim-card was allegedly used by the petitioner and subsequent thereof handed over to the complainant. The respondent/complainant in categorical terms admitted the receipt of the sim-

card, however, same is claimed to be blocked.

7. Merely because the sim-card of real brother was used by the sister i.e. the present petitioner, that by itself will not constitute or amount to commission of the offence. The fact remains that to infer misuse of sim-card by the petitioner, there is no iota of evidence to infer such act. It is an admitted fact that the sim-card is duly received by the complainant from the petitioner before the date of lodging of the complaint.

8. In this background, having regard to the fact that an offence punishable under Section 34 of the IPC cannot be termed as an independent offence and having regard to aforesaid observations, ingredients of the offence punishable under Sections 406 and 420 of the IPC cannot be inferred against the petitioner. That being so, we deem it appropriate to allow the present petition thereby quashing FIR and consequential charge-sheet registered against the petitioner.

9. In *State of Karnataka Vs. M. Devendrappa* reported in **(2002) 3 SCC 89**, the Apex Court has held that the authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It is also held that in aforesaid situation, the Court can be said to be justified to quash the proceedings, if it finds that initiation/continuance of it amounts to abuse of process of

court or quashing of these proceedings would otherwise serve the ends of justice. Paragraph 6 of the aforesaid judgment reads thus :-

“6.....All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

10. Apart from above, if we draw support from the judgment of Apex Court in the matter of ***State of Haryana Vs. Bhajan Lal***

reported in **1992 Suppl. (1) SCC 335**, what can be noticed is, the narration in the FIR, in our opinion, does not constitute any offence against the petitioner. Once the FIR does not disclose any offence against the petitioner, the continuance of the criminal proceedings against the petitioner who is a doctor would amount to abuse of process. *Prima-facie*, it appears that the criminal proceedings are initiated by the complainant against the petitioner solely out of family differences as could be inferred from the relationship between the complainant and the petitioner.

11. As such, the present petition stands allowed in terms of prayer clause (a).

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]