

(2018) 01 BOM CK 0263
In the Bombay High Court
Case No : 5126 of 2017

Nitish Ashok Borude

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 34](#), [Section 379](#) - Acts done by several persons in furtherance of common intention - Punishment for theft

Citation : (2018) 01 BOM CK 0263

Hon'ble Judges : S.S.Shinde, Mangesh S. Patil

Bench : Division Bench

Advocate : Rashmi Kulkarni, S.S.Kulkarni, S.P.Deshmukh

Final Decision : Allowed

Judgement

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of parties.

2. This is an application under Section 482 of the Cr.P.C. for

quashing the FIR bearing Crime No.I-78 of 2017 registered with Kopargaon City Police Station, Kopargaon, District Ahmednagar for the offence punishable under Section 379 read with 34 of the IPC on 3/7/2017.

3. During the pendency of the present Criminal Application the charge sheet has been filed. Therefore by the order dated 14/11/2017, this Court granted leave to the applicant to carry out necessary amendment impugning even the charge sheet.

4. Police Constable Rashid Badshah Shaikh posted at Kopargaon City Police Station lodged the report on 3/7/2017 inter alia mentioning that as per the directions of the superiors when he visited the place on 2/7/2017, the Dumper

No.MH-41-G-9333 which was seized for allegedly carrying sand without requisite permission on 1/7/2017 where the dumper was parked after its seizure was found missing. He suspected about it having been stolen and accordingly lodged the report on the basis of which offence was registered. While registering the report, he specifically suspected that the driver of the dumper viz. Shivaji Subhash Sonawane and the present applicant being its owner and one Siddharth Prakash Shelke were the culprits.

5. According to the learned advocate for the applicant, there is absolutely no iota of evidence sufficient to implicate the applicant. He is neither the owner of the dumper nor has he any concern with the alleged offence of selling the sand or stealing the dumper. Shivaji Sonawane has allegedly disclosed involvement of the present applicant in commission of the crime. However, even in the so-called statement of the co-accused he has referred to the owner of the dumper as "Chotu Borude", whereas the name of the applicant is not

Chotu Borude. There is no link forthcoming to connect the applicant to the crime. He has been unnecessarily involved and will have to face prosecution without any rhyme or reason. It will be an exercise in sheer futility if he is made to stand the trial.

6. The learned APP strongly opposed the application. He submitted that name of the applicant has been specifically referred to by Tahsildar Kishor Ambadas Kadam in his statement dated 4/7/2017. Conspicuously he has referred the applicant as Chotu @ Nitish Ashok Borude which is his correct name. Therefore, at this juncture there cannot be any dispute about identity of the applicant. Since the co-accused that is the driver has mentioned involvement of the applicant and when the Investigating Officer has found out material to implicate him, the right of the prosecution to lay evidence cannot be deprived of.

7. At the outset, it is necessary to bear in mind that there are two episodes of alleged theft. First theft of sand allegedly being committed by using the dumper. This had taken place on 1/7/2017 and the dumper was parked in front of the Police Station in an open ground. The second episode is about the theft of the dumper on 2/7/2017 about which the impugned FIR has been lodged. We are referring to this fact since the alleged statement of the co-accused Shivaji Sonawane implicating the present applicant has been only in respect of the first episode of theft of sand. No such similar statement of him in respect of the alleged theft of the dumper can be found in the charge sheet and the papers annexed thereto. The statement of Shivaji Sonawane recorded on 1/7/2017 only refers to the first episode of theft of sand. Therefore, even this weak link of a reference to the applicant in the statement of the co-accused is not concerning the alleged theft of the dumper. Consequently, the

submission of the learned APP that the name of the applicant can be found in the statement of the co-accused is factually incorrect. At the most that statement of Shivaji Sonawane can be a basis for applicant's implication in respect of the first

episode of commission of theft of sand.

8. A bare perusal of the charge sheet and its accompaniments would reveal that barring the above circumstance which too according to us is not relevant, there is absolutely no iota of material to even remotely suggest involvement of the applicant in theft of the dumper. The witnesses have simply named him in their respective statements, none of whom is an eye witness. For that matter, there is no eye witness at all who had seen the applicant taking away the dumper from the place where it was parked after its seizure.

9. The registration certificate of the dumper annexed with the police papers also shows that one Devendra Hirkansing Pawar was the original owner who had given No Objection Certificate for its transfer in the name of one Siddharth Prakash Shelke. Incidentally Siddharth Shelke has also been arraigned as accused No.3 in the charge sheet. The fact remains that the applicant is not the registered owner of the dumper. He has been apparently implicated only on the premise that he being the owner must have been involved in the commission of theft of the dumper. Be that as it may, the very premise of suspecting him of his involvement stands on a very weak footing.

10. In these circumstances, it will be a exercise in futility to make the applicant stand to the trial. There is no basis much less enough material even to remotely suggest his involvement in commission of the crime. The material collected by the Investigating Officer and

submitted alongwith the charge sheet, even if it is accepted at its face value does not contain any material much less admissible in evidence, which can be relied upon to implicate the applicant. Therefore, bearing in mind the principles laid down by the Supreme Court in the case of State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604, the Application deserves to be allowed.

11. The Application is allowed. The impugned FIR and the consequential charge sheet in the form of R.C.C.No.166/2017 pending on the file of the learned JMFC, Kopargaon, Dist.Ahmednagar are quashed and set aside. Rule is made absolute.