R.C.C. No.35/2014

Order Below Exh.39 :

Present application has been filed by accused No.2 and 3 for discharge.

02. In short it is their case that, on the basis of FIR lodged by Shrikant Krishnarao Tukdeo, offence was registered and charge-sheet is filed against three accused. As per prosecution' case the informant was fond of actress Sakashi Tanvar. Assurance was given by accused Anil Sadamate that through his friend Sanju, who is acquainted with Sakashi Tanvar, she will be provided to him. Hence he had paid certain amount to accused Anil Sadamate. Later on in April 2007 accused Anil Sadamate introduced the informant with Trupti D'souza on phone call and for providing her demanded money. Thereafter the informant received phone call from Trupti Patil. At that time he identified her voice that she is the same person who had talked with him as Trupti D'souza. Trupti Patil had demanded money from the informant for education of her brother, construction of house, Court matter and household expenses. From 2008 to 2013 the informant has transferred amount regularly in the account of Trupti Patil. The informant was transferring Rs.50,000/- per month in the account number which was given by Trupti Patil. Thereafter, accused Pooja Patil demanded money for performing certain rituals from the informant. Accordingly amount was deposited by the informant in the

account. However, the informant had not ever meet the accused Pooja Patil. As per case of prosecution, during 2007 to 2013 accused demanded money on one or other reason from the informant and approximately Rs.1,48,00,000/- were extorted by the accused. Hence, FIR was lodged.

03. Further from FIR it can be said that, the informant is highly qualified person and was working as advisor in Kirloskar Brothers Limited. However, due to his physical lust he has given money to various persons including accused Anil Sadamate. However, it is not at all case of the informant that, the accused No.2 and 3 had ever given any assurance or deceived him and amount was delivered. It is not at all his case that the accused No.2 and 3 have charged interest from him. Even, if FIR is considered as it is, then the informant had not met accused Pooja. Hence, there is no question of capturing his obscene photographs and giving threats. Even such photographs are not seized and produced on record. Even threats were not given by the present accused to cause injury to his reputation. As per FIR, accused Pooja Patil contacted the informant on 21-01-2008 and thereafter there were frequent contacts between them. If it is accepted that, the informant had never seen accused Pooja Patil, then there is no reason for him to deposit Rs.50,000/- per month in the account mentioned by her and only on the basis of telephonic conversation. On the other hand, there was physical relationship between accused Pooja Patil and the informant since 2008 and he was maintaining her as his wife and for that purpose he

was transferring amounts. Said amount paid for maintenance was raised by the informant by selling ornament of his wife, by taking amount from various persons, including his brother, daughter. However, when his brother and son-in-law came to know about his behavior, that time with intention to conceal his relationship with accused Pooja and to save himself and his reputation he has concocted false story and lodged FIR. There is delay in lodging FIR which is not explained.

04. Thus, if the reason for transferring amount is considered then it can not be said that, by deceiving the informant he was asked to transfer the amount. The accused has produced on record telephonic conversation between informant and accused Pooja Patil from which character of the informant becomes clear. Thus, there is no prima-facie material against the accused. Accused Dilip is implicated on the basis of suspicion. Hence, the accused may be discharged.

05. Learned APP has filed her say submitting that from time to time amount of Rs.1,48,00,000/- is transferred by the informant, as he was deceived by the accused. Even the accused No.1 has charged interest at excessive rate. The accused have purchased various vehicles and properties from said amount. Thus, there is sufficient evidence to show role played by accused No.2 and 3. Hence, the application which is filed with intention to protract the trial, may be rejected with cost.

06. Heard both the sides. Perused record.

07. As per FIR the informant was knowing accused No.1 Anil Sadamate, there were various transactions between him and the accused. Even for need of the informant amount was given by the accused Anil Sadamate and the same was recovered with excessive interest by him. From the record prima-facie it also appears that, accused Pooja Patil was introduced by the accused Anil Sadamate and then contacts were developed between the informant and accused Pooja. Thereafter during 2008 to 2013 on various accounts the informant had transferred money in the account number which was given by accused Pooja. Further as per case of the prosecution accused Anil sadamate had introduced one Babalal who was also contacting the informant on phone. In such situation, I am of the view that there was communication between accused and the informant on phone.

08. As per the application it is case of the accused that, amount was transferred by the informant in the account of accused Pooja Patil regularly. Even there was telephonic conversation between them. If defence of the accused is accepted that informant was having physical relations with accused Pooja, then it becomes clear that they were knowing each other. In such situation, taking into consideration the entire record, particularly bank statements, prima-facie it becomes clear that, as per demand of accused Pooja Patil amounts were transferred in the account of accused Pooja Patil

and Dilip Patil by the informant. Prima-facie there is material on record to show that, for rituals also amount was demanded from the informant. As well as threats about his reputation were given and hence money was transferred by him.

09. As per case of prosecution accused No.2 and 3 have grabbed amount from the informant by giving him false assurance of giving 25 to 30 crores from the property of Pooja Patil and to save the informant from police and some evils. Charge-sheet is filed under Sections 420, 384 and 507 of the Indian Penal Code, as well as Section 32, 33 and 34 of the Bombay Money Lenders Act. As discussed earlier it is clear that, on various grounds money was demanded from the informant and accordingly it was transferred in the account. Further prima-facie there is material to show that, threats were given to the informant to cause harm to his reputation by publishing his obscene photos.

10. As per Section 415 of the Indian Penal Code, whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'. Further as per Section 416 of the Indian Penal Code, if a person cheats by pretending to be

some other person, or representing that he or any other person is a person other than he or such other person really is. Then he cheats by personation. As per Section 420 of the Indian Penal Code, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security. Thus, in present case prima-facie there is material to frame charge.

11. From the record it prima-facie becomes clear that there was anonymous communication or precaution was taken to conceal the name or abode of the person from whom the threat comes. Thus, prima-facie ingredients of Section 507 of the Indian Penal Code are also made out. Record also prima-facie show that there is material to frame charge against the accused No.1 Anil Sadamate, under Sections of the Bombay Money lenders Act. There is no substance in the argument advanced on behalf of the accused that, from the script and material on record, it is clear that, intention of the accused was not to cheat, but amounts were transferred as the informant was maintaining accused No.3 Pooja Patil.

12. As per Section 239 of the Code of Criminal Procedure, if upon considering the police report and the documents sent with it and after examination of the accused, if Magistrate thinks necessary and after giving opportunity of being heard to the accused and prosecution, if Court considers that charge against the accused to be

groundless, then by recording reason the accused shall be discharged. However, from the said Section it becomes clear that, if there is prima-facie case made out by prosecution, then there is no need to see whether the charge will be proved or not, as that can be considered only after recording evidence. Case of prosecution cannot be considered on merit at the time of framing of charge. Thus, I am of the view that, as prima-facie there is material on record to frame charge against the accused, there is no question of discharging accused. Hence, I proceed to pass following order.

O R D E R

1. Application is rejected.

Palus. (**Smt. A. K. Mandavgade**)
Date:-09/10/2015. Judicial Magistrate, F.C., Palus.