

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 496 OF 2015

RAVINDRA UTTAM PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Surendra V. Suryawanshi.
APP for Respondent : Mr. M. B. Bharaswadkar.
...

CORAM : **V. K. JADHAV, J.**
DATE : 22nd November, 2016.

ORDER:

. Heard finally with the consent of the learned counsel for the parties at admission stage.

2 Being aggrieved by the order passed below Exhibit – 10 and Exhibit – 11 dated 23rd July, 2014, by the learned Additional Sessions Judge, Jalgaon, in Sessions Case No.26 of 2013, original Accused Nos.6 and 7 preferred this criminal application.

3 Brief facts giving rise to the present criminal application are as follows:

On 17th August, 2012, original Complainant / Bhikaprasad filed a complaint against four accused persons at Police

Station Pachora for having committed the offence punishable under Sections 504, 506 and 427 of the Indian Penal Code, which came to be registered as Non-Cognizable Case No.473 of 2012. On 21st August, 2012, the same Complainant had lodged a complaint in Pachora Police Station and on the basis of this complaint, Crime No.144 of 2012 for the offence punishable under Sections 395, 427, 504 and 506 of the Indian Penal Code came to be registered. On the basis of said Crime No.144 of 2012, the P.S. Pachora carried out investigation and in due course submitted the charge-sheet before the Court. Further, the learned Magistrate has also committed the case to the Sessions Court, Jalgaon as the offence alleged exclusively triable by the Court of Sessions. The Applicants / original Accused Nos.6 and 7 filed applications Exhibit – 10 and Exhibit – 11 respectively before the Additional Sessions Judge, Jalgaon, for discharge solely on the ground that since N.C. complaint has already been registered with Pachora Police Station, the P.S. Pachora ought to have obtained a permission under Section 155 (2) of the Indian Penal Code from the concerned Magistrate to investigate the crime and further that for the same incident there cannot be second FIR. The learned Additional Sessions Judge vide its impugned order passed separately below Exhibit – 10 and Exhibit – 11 respectively dated 23rd July, 2014,

rejected both these applications. Hence the present criminal application.

4 The learned counsel for Applicants submits that on the basis of the complaint lodged on 17th August, 2012 by original Complainant / Bhikaprasad, the P.S. Pachora has taken the entry in N.C. register and as such, if any investigation is to be carried out, then the concerned police officer ought to have obtained permission from the Court as provided under Section 155(2) of the Code of Criminal Procedure for carrying out the investigation. However, the concerned police station has not followed the said procedure and registered the second FIR on the basis of the complaint lodged by the same Complainant in respect of the same incident. The learned counsel submits that in the complaint dated 17th August, 2012, allegations have been made only against four persons disclosing non-cognizable offence. However, in the complaint dated 21st August, 2012 in respect of the same incident by the same Complainant, allegations have been made in all fifteen persons out of which seven persons were identified and named in the FIR. Further, certain additions have been made in the second FIR. The learned counsel submits that second FIR is an outcome of political rivalry and the same was filed afterthought.

5 The learned APP submits that the first complaint filed in the Pachora Police Station was not disclosing any cognizable offence and therefore, entry was taken to that effect in the N.C. register. The learned APP submits that in view of the provisions of Section 154 of the Code of Criminal Procedure, the concerned officer is bound to register the crime if the complaint discloses cognizable offence and as such, after lodging of the complaint dated 21st August, 2012, the Police Station Pachora has rightly registered the crime since the complaint has disclosed cognizable offence. The learned APP submits that the Complainant / Bhikaprasad was running the a hotel under the contract with the original owner. He was frightened and after consultation with the original owner of the said hotel, the Complainant / Bhikaprasad on 21st August, 2012, lodged the complaint in the concerned Police Station disclosing all the facts, which attract the cognizable offence. The learned APP submits that the learned Additional Sessions Judge, has rightly rejected both the applications. There is no substance in the present criminal application and the application is liable to be dismissed.

6 In view of the provisions of Section 154 of the Code of Criminal Procedure, if the information relating to the commission of a

cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and accordingly the crime is registered on that basis. In the instant case on 17th August, 2012, the Complainant had lodged the complaint in the concerned police station, however, the said complaint was not disclosing any cognizable offence and therefore, entry to that effect was taken in the N.C. register and the Complainant was given understanding to approach the Court for seeking redressal of his grievance. On 21st August, 2012, the Complainant has persuaded the said P.S. Pachora by filing the complaint disclosing all the material facts relating to commission of cognizable offence. Thus, on the basis of the complaint dated 21st August, 2012, since it was disclosing commission of cognizable offence, the P.S. Pachora has rightly registered the crime by treating the said complaint as first information report. It is well settled that the FIR is not a substantive piece of evidence and the same can be used for the purpose of corroboration or contradiction. If the complaint lodged in the concerned police station by the said Complainant on 17th August, 2012 was not disclosing any cognizable offence and if it was filed only against four persons, the present Applicants / Accused Nos.6 and 7 may use the said complaint of which entry was taken in the N.C. register for

contradicting the Complainant during the course of trial. It is not the case that even though entry of the said complaint dated 17th August, 2012, was taken in N.C. register, the concerned police station has carried out investigation without obtaining the permission from the Court as provided under Section 155 (2) of the Code of Criminal Procedure.

7 The learned counsel for the Applicants placed his reliance in the case of **Shivanand Giridhar Naik Vs. The Senior Inspector of Police and another**, reported in, **2000 ALL MR (Cri) 1646**, wherein the prosecution was initiated without obtaining the permission from the Magistrate and therefore, it is held that such prosecution cannot be sustained. In the instant case, investigation was carried out on the basis of FIR dated 21st August, 2012 (Crime No.144 of 2012) and after due investigation, the concerned police officer / investigating officer has submitted the charge-sheet before the Court. The said complaint dated 21st August, 2012, on the basis of which Crime No.144 of 2012 was registered, was disclosing cognizable offence, and therefore, there is no question of obtaining permission from the Court to carry out investigation in the aforesaid crime.

8 The learned counsel for the Applicants submits that the

case is pending sine 2012 and the learned Sessions Judge may be directed to expedite the hearing of the case.

9 In view of the above, the learned Additional Sessions Judge, Jalgaon, has rightly rejected both the applications Exhibit – 10 and Exhibit – 11. No interference is required. There is no merit in the criminal application. Hence the following order:

ORDER

- I. The criminal application, is hereby dismissed.
- II. The learned Additional Sessions Judge, Jalgaon, shall dispose of Sessions Case No.26 of 2013, as expeditiously as possible preferably within a period of six months from the date of this order.

[V. K. JADHAV, J.]