

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5776 OF 2015

ALAM KHAN S/O SHAMEER KHAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. H.I. Pathan
APP for Respondents: Mr. A.M. Phule.
Advocate for respondent No.2 : Mr. M.B. Ubale.

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CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.

DATE : 25TH NOVEMBER, 2016.

PER COURT:

1] Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.

2] Learned counsel for the applicants argued the matter on merits. He submits that even if the allegations in the FIR are taken at its face value, and read in its entirety, no offence is disclosed against the applicant. There are no allegations that the applicant was involved in preparation of forged documents. At the most, his role is limited to motivating the informant for purchase of land. It is submitted that the allegations against other accused are about preparation of forged documents and cheating the informant and other persons. However, so far as the present applicant is concerned, there are no such allegations. The

ingredients of the alleged offences are not attracted upon reading the allegations in the FIR in its entirety and, therefore, prays for quashing the FIR to the extent of the applicant.

3] Per contra, learned APP, on the basis of the investigation papers submits that the applicant is also a witness to the agreement. There are other persons who have also made complaints against the main accused and, therefore, this is not a fit case wherein this court should invoke the extraordinary jurisdiction and quash the FIR.

4] Learned counsel for respondent No.2 also supports the allegations in the FIR and submits that the FIR needs to be investigated and after filing charge sheet trial is necessary since the accused have cheated not only the informant and respondent No.2 but also several persons.

5] Upon hearing the learned APP and learned counsel for the respondent No.2 and upon reading the allegations in the FIR in its entirety, it cannot be said that no role is ascribed to the applicant. On the contrary, the initiation of transaction is at the behest of the applicant, who was the middleman. There are also allegations in the FIR that other 40-50 persons have also been cheated by the accused. Considering the allegations in the FIR in its entirety, we are of the opinion that the allegations need further investigation and the allegations are not restricted qua the informant but also relates to other members of the public at large. Therefore, in such a case unless the case is tried, the truth will not surface on record.

6] For the aforesaid reasons we are not inclined to entertain this application. At this stage, learned counsel for the applicant seeks liberty to withdraw this application so as to avail remedy of filing application for discharge in the event of filing charge sheet by the Investigating Officer. We reject the said prayer.

7] The application stands dismissed as withdrawn. It is made clear that the observations made hereinabove are prima facie in nature and are made only for the purpose of adjudication of this application. Criminal application stands disposed of accordingly. No costs.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-