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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 175 OF 2015**

Shri Mousin Asiam Patel ... Applicant

Versus

State of Maharashtra ... Respondent

Mr. Tousif Ansari i/by Mr. R.K. Singh for the applicant.

Mrs. S.V. Sonawane, APP for the State.

**CORAM: NARESH H. PATIL &
A.M. BADAR, JJ.**

DATED : MARCH 16, 2016.

P.C.

1. By this application filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner/accused is praying for quashing and setting side the FIR No. 11 of 2014 registered under section 506(2) read with 504 of Indian Penal Code against him at Vikhroli Police station at the instance of informant Shamim Shaikh so also the resultant chargesheet.

2. The facts in brief are thus :

Informant Shamim Shaikh lodged a report against the present applicant/accused on 11/1/2014 with Vikhroli Police Station, Mumbai

alleging that on 9.1.2014 when he checked cell phone of his wife Simran, he found several obscene as well as love messages. It is further alleged that the informant checked the cell number from which the messages were coming, it was found to be cell phone of the present applicant/accused. The informant further alleged in the FIR that on 10.1.2014 he questioned the applicant/accused on this aspect. Thereafter on 11.1.2014, according to informant, the applicant/accused came to his office and threatened to kill him by pointing weapon like knife at him in the presence of Ruksana Shaikh, Hemlata Mule and Shahin Shaikh. The informant further alleged that the applicant/accused uttered that he is going to marry with Simran and if the informant comes in between the applicant/accused and Simran, the applicant would kill him. This FIR has resulted in registration of crime in question. During the investigation, the prosecution has recorded statement of Ruksana Shaikh, Shahin Shaikh and Hemlata Mule. The statements of these witnesses recorded under section 161 of the Code of Criminal Procedure are in consonance with the version of the informant in the FIR.

3. Learned counsel for the applicant/accused argued that though the informant has alleged that the incident happened at 2.30 p.m. on 11.1.2014, at that point of time, the applicant/accused was taking treatment at Dr.

Batra's Multi Speciality Homeopathy Hospital. At 14.36 hrs on 11.1.2014, applicant/accused had purchased medicines from Noble Medicals situated at Ghatkopar. This purchase was after his medical treatment. The medicines were purchased by using credit card. Our attention was drawn to the documents of medical treatment of the applicant so also the bill of purchase of medicines and messages received from the bank regarding use of the credit card. On the strength of these documents, according to learned counsel for the applicant, there is false implication of the applicant in the crime in question. Learned counsel further argued that the question whether offence punishable under sections 506 and 504 are cognizable or not are pending before the Full Bench of this Court. Learned counsel for the applicant further argued that the prosecution should be directed to produce Call Detail Record (CDR) of the cell phone of the accused in order to verify the location of the accused at the alleged time of incident.

4. We have also heard the learned APP for the State. According to learned APP, after due investigation, chargesheet has been filed and the plea of alibi raised by the applicant/accused can be considered only at the stage of the trial.

5. We have considered the pleadings as well as documents placed on

record. We have also considered the arguments advanced by the learned counsel for the parties.

6. According to prosecution case, applicant/accused has intensionally insulted the informant with an intention to provoke breach of peace, so also the informant was criminally intimidated by the applicant/accused. The incident in question appears to have happened as the applicant/accused was questioned by the informant upon finding obscene love messages coming from the cell phone of the applicant/accused on the cell phone of his wife. The statement of witnesses recorded by the police during the investigation are showing complicity of applicant/accused in the crime in question. As such it cannot be said that the material collected during the investigation of the crime in question does not disclose commission of any offence by the applicant.

7. It is well settled that inherent powers of the Court are to be exercised for securing ends of justice and/or to prevent abuse of process of any Court. The plea of alibi is required to be established by the accused during the trial. The case in hand cannot be said to be a fit case to exercise extraordinary powers of this Court which are required to be resorted to sparingly and that too in rarest of rare case.

8. In the result, petition is devoid of merits and as such the same is dismissed.

(A.M. BADAR, J.)

(NARESH H. PATIL,J.)