

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

CRIMINAL APPLICATION NO. 2373 OF 2017

Uttam Shankarrao Warpade,
Age 52 years, Occu. Nil
R/o Sai Prasad Niwas, Vikas
Nagar, Kautha, Dist. Nanded

.. Applicant

Versus

1. The State of Maharashtra

2. The Investigating Officer
Vazirabad Police Station,
Nanded, District Nanded

3. Nitin Pandurang Pallewad,
Age 27 years, Occu. Business,
R/o Chikhalwadi, Kumbhar
Galli, Nanded, Dist. Nanded

.. Respondents

Mr S.V. Mundhe, Advocate for applicant
Mr M.M. Nerlikar, A.P.P. for respondents no.1 and 2
Mr P.P. Uttarwar, Advocate for respondent no.3

**CORAM : S.S. SHINDE AND
A.M. DHAVALA, JJ**

DATE : 20th September 2017

PER COURT

1. Heard learned Counsel for the applicant. He invites our attention to the fact that there is delay of about one year in lodging the F.I.R. He submits that no explanation has been offered by the informant, why there was delay of one year in lodging the F.I.R. He submits that on the relevant date, he was deputed on *Bandobast* duty and, therefore, it is highly impossible that he went to the spot of alleged incident. He further submits that the allegations in the F.I.R. are inherently improbable and, therefore, the F.I.R. may be quashed.

2. On the other hand learned A.P.P. appearing for State and learned Counsel appearing for respondent no.3 jointly submit that the informant has offered the probable explanation inasmuch as since the petitioner at the relevant time was working as Police Constable and out of fear, the informant could not dare to lodge the F.I.R. It is submitted that upon reading the allegations in the F.I.R. alleged offences have been disclosed, therefore, those need further investigation.

3. Upon hearing the learned Counsel for the parties and learned A.P.P. for the State and upon perusal of the allegations in the F.I.R., prima facie offences are disclosed, need further investigation. The submission made by learned Counsel for applicant that there is delay of one year in lodging the F.I.R. Is a mixed question of fact as well as law and cannot be accepted at the threshold and F.I.R. cannot be quashed.

4. On the relevant date of the incident, applicant was deputed on *Bandobast* duty in Nanded city is also his defence, which cannot be considered while entertaining in the prayer for quashing the F.I.R.

5. For the reasons aforesaid, we are not inclined to entertain the application.

6. Criminal Application stands rejected. However, the observations made herein are prima facie in nature and confined to the adjudication of present application only.

7. Needless to observe that rejection of this application shall not be construed as an impediment to the applicant in case he wish to avail of an appropriate remedy, in the event of filing charge-sheet by the Investigating Officer.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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