

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 2756 OF 2017**

SYED ABDUL KABIR S/O. ABDUL KHADEER

VERSUS

THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicant: Mr. Nanasahab N. Shinde
APP for Respondent/State: Mrs. V.S. Chaudhari

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CORAM : S.S. SHINDE & A.M. DHAVALA, JJ.**Dated: December 13, 2017**

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PER COURT :-

This application is filed praying therein to quash and set aside the F.I.R. No.0096/2017 on 08.03.2017 registered with Nanalpeth Police Station, Parbhani for offence punishable under Section 354 of the Indian Penal Code.

2. Learned counsel appearing for the applicant submits that, even if the allegations in the first information report are taken at its face value and read in its entirety, the alleged offence has not been disclosed. He submits that, the alleged offence has taken place as per the

allegations in the first information report on 12th October, 2016 and the first information report has been belatedly registered on 8th March, 2017. He further submits that, when the alleged offence had taken place in between 7.30 to 8 p.m., it is improbable that nobody witnessed the incident or came to the place of occurrence of the incident. It is submitted that, when there is no evidence collected by the Investigating Officer during the course of investigation, in that case the first information report deserves to be quashed. He further invites our attention to the avernments in the application and prays that, the first information report may be quashed. In the alternate, he submits that, in case, this Court is not inclined to allow this application, the applicant may be given liberty to avail of an appropriate remedy if the occasion so arises in future.

3. On the other hand, learned A.P.P. appearing for the Respondent/State relying upon the allegations in the first information report and also investigation papers submits that, not only that the allegations in the first information report disclosed the

alleged offence but even from the statements of the witnesses, the said allegations gets support. Therefore, she submits that, the application may be rejected.

4. We have carefully perused the allegations in the first information report, and in particular, the allegations in respect of the alleged incident dated 12th October, 2016. There is no doubt that upon reading those allegations in relation to the said incident, prima facie, the ingredients of the alleged offence have been attracted and consequently the alleged offence is disclosed, hence needs further investigation. Therefore, no case is made out for quashing the first information report.

5. So far as the contention of learned counsel appearing for the applicant that there is delay in lodging the first information report is concerned, it is always mixed question of law and facts and we are not inclined to entertain it, when we are prima facie satisfied that, the alleged offence has been disclosed.

6. For the reasons aforesaid, we are

unable to persuade ourselves to grant any relief in favour of the applicant. Hence the application stands rejected.

7. The observations made hereinabove are prima facie in nature and confined to the adjudication of this application only.

Needless to observe that rejection of this application will not exclude the applicant from availing of an appropriate remedy if need so arises in future.

(A.M. DHAVALA, J.)

(S.S. SHINDE, J.)

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