

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 52/2018

(RAJKUMAR DAYARAMJI PATEL VERSUS STATE OF MAHARASHTRA, THR.PSO DHARNI, AMRAVATI)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri R.R. Vyas counsel for the applicant.
 Shri S.S. Doifode, A.P.P. for the non-applicant.

CORAM : SMT. VASANTI A NAIK AND
A.D. UPADHYE, JJ.

DATE : FEBRUARY 21, 2018.

By this criminal application, the applicant seeks the quashing and setting aside of the first information report against the applicant for the offences punishable under Sections 147, 148, 149, 307, 336, 332, 353, 109 and 427 of the Penal Code read with Section 3 of the Prevention of Damage to Public Property Act, 1984.

According to the applicant, a first information report was lodged against Dhannalal on the complaint filed by Wasudeo Yeole that his son aged eleven years was killed by Dhannalal and some others in the temple where they were playing. After the lodging of the first information report against Dhannalal in view of the incident dated 28.12.2017, a first information report was registered against the applicant and several others on the allegation that the applicant had instigated the mob that was present at the time of the incident that Dhannalal should not be handed over to the police authorities and that he should be killed. It is alleged in the complaint lodged against the applicant and some others against whom the first information report is registered that with a view to kill Dhannalal, the applicant and the other accused were pelting stones and boulders on the police authorities and Dhannalal while he was being taken in custody. The applicant has sought for the quashing and setting aside of the first information report registered against him.

It is stated on behalf of the applicant that the offence punishable under Section 307 of the Penal Code could not have been registered against the applicant even if it is assumed that the allegations in the complaint lodged against him are true and are liable to be accepted at their face value. It is submitted that it cannot be said that the applicant had an intention of causing the death of Dhannalal as is alleged in the complaint. It is stated that it cannot be said that the stones were pelted with an intention to cause the death of Dhannalal. It is stated that the offences under the provisions of Section 332 and 353 of the Penal Code could not have been registered simultaneously.

In the circumstances of the case, it would not be proper to quash and set aside the first information report registered against the applicant. The submissions made on behalf of the applicant in regard to his involvement in the alleged crime could be considered during the trial. It cannot be said that it would not be possible for the investigating agency to simultaneously register the offences against an accused under the provisions of Section 332 and Section 353 of the Penal Code. Section 332 of the Penal Code is brought into play when the accused voluntarily causes grievous hurt to any person who is a public servant to deter him from discharging his duties, whereas Section 353 of the Penal Code provides for the punishment to the person who assaults or uses criminal force against any person being a public servant in the execution of his duty as a public servant with a view to deter that person from discharging his duties. It is the case of the non-applicant no.1 that the applicant with a view to deter the police personnel from discharging their duty of arresting accused Dhannalal and taking him in custody, was allegedly pelting stones at Dhannalal with a view to kill Dhannalal and with a view to deter the police personnel from discharging their duties. In the circumstances of

the case, at this stage we are not inclined to accept the submission made on behalf of the applicant that offences under Section 332 and 353 of the Penal Code cannot be simultaneously registered against an accused. While dismissing the application, it would also be necessary to hold that it cannot be said at this stage, while considering an application for quashing of the first information report by invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, that the petitioner had not intentionally done any act with a view to cause the death of Dhannalal. The learned Additional Public Prosecutor has referred to a few photographs and certain other material to show that not only small stones but large stones like boulders were allegedly pelted by the applicant and the other accused on Dhannalal with a view to kill him because he had murdered the eleven year old son of Wasudeo Yeole.

The first information report registered against the applicant cannot be quashed and set aside in the circumstances of the case. Hence, we dismiss the criminal application.

Order accordingly.

JUDGE

JUDGE

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