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

CRIMINAL APPLICATION NO.3111 OF 2018

Dilip s/o Asaram Zagade
Age 37 years, Occu. Journalist,
R/o Shelapuri, Majalgaon,
Tq. Majalgaon, District Beed ... **APPLICANT**

VERSUS

1. The State of Maharashtra
through Superintendent of Police,
District Beed.
(Copy to be served on Public
Prosecutor, High Court of Judicature of
Bombay, Bench at Aurangabad)
2. Vijay Sandipan Ghodke,
Age 32 years, Occu. Service,
C/o City Police Station, Majalgaon,
Tq. Majalgaon, District Beed.
3. Bhagyashri D/o Baburao Navtakke
Age 27 years, Occ. Service i.e.
S.D.P.O., Majalgaon, Dist. Beed
... **RESPONDENTS**

.....
Shri Sachin S. Deshmukh, Advocate for applicant
Shri A.A. Jagatkar, A.P.P. for respondents No.1 to 3
.....

WITH

CRIMINAL APPLICATION NO.3385 OF 2018

Sidharth s/o Natha Ghadse
Age 32 years, Occu. Agri.,,
R/o Shelapuri, Majalgaon,
Tq. Majalgaon, District Beed ... **APPLICANT**

VERSUS

1. The State of Maharashtra
through Superintendent of Police,
District Beed.
(Copy to be served on Public
Prosecutor, High Court of Judicature of
Bombay, Bench at Aurangabad)
2. Vijay Sandipan Ghodke,
Age 32 years, Occu. Service,
C/o City Police Station, Majalgaon,
Tq. Majalgaon, District Beed.

... **RESPONDENTS**

.....
Shri Sachin S. Deshmukh, Advocate for applicant
Shri A.A. Jagatkar, A.P.P. for respondents No.1 & 2
.....

**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 11th February, 2019

Date of pronouncing judgment : 18th February, 2019

JUDGMENT (PER R.G. AVACHAT, J.) :

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.
2. Both these Criminal Applications are being decided by this common judgment since common questions of facts and law arise therein.
3. The applicants in both the applications are the

accused in Crime No.183/2018, dated 29.6.2018, under Section 4/25 of the Indian Arms Act, 1969, registered with City Police Station, Majalgaon, District Beed. Both the applications have been filed for quashment of the First Information Report dated 29.6.2018.

4. Heard Mr. Sachin Deshmukh, learned counsel for the applicants and Mr. Jagatkar, learned A.P.P. for the respondents.

5. Learned counsel for the applicants would submit that, the applicant, Dilip Zagade, in Criminal Application No.3111/2018 is a Journalist by profession. Due to his professional activities, he had a brush with the police officials. The respondent No.3 is the Sub-Divisional Police Officer, Majalgaon. The Patrakar Sangh, Majalgaon had made a representation against the respondent No.3 to the Superintendent of Police, Beed. Taking grudge of the said fact, a false F.I.R. has been lodged against the applicant Dilip Zagade, at the instance of respondent No.3. The applicant, Sidharth, in Criminal Application No.3385/2018 claims to be a poor agriculturist and claims to have been falsely implicated in the crime in question. The learned counsel for the applicants would, therefore, urge for the quashment of the F.I.R., being Crime No.183/2018.

6. Mr. Jagatkar, learned A.P.P. for the respondents, would,

on the other hand, submit that, the averments in the F.I.R. undoubtedly make out an offence against both the applicants. According to learned A.P.P., it would, therefore, be not in the fitness of things to allow the application.

7. In case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 S.C. 604**, it has been observed thus :

“In following categories of cases, the High Court may in exercise of powers under Article 226 or under S. 482 of Cr.P.C. interfere in proceedings relating to cognizable offence to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the

purview of S. 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.

(5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. The F.I.R. has been lodged by Police Naik attached to Majalgaon City Police Station. The same has been lodged two days after the alleged offence in question. The allegations in the F.I.R. are to the effect that the informant had a tip off that on 27.6.2018, it was the birthday of the applicant - Dilip. Applicant-Dilip and his friends gathered at Samaj Mandir for celebrating the birthday. Dilip cut the cake with a sword. It is further alleged in the F.I.R. that, the sword was provided by Sidharth, applicant in Criminal Application No.3385/2018, for cutting of the cake.

9. True, the police officials are not bound to disclose the source of their information. The fact, however, remains that, the F.I.R. has been lodged two days after the alleged offence. If we minutely peruse the allegations in the F.I.R., the same would indicate that it was lodged on the basis of the statement made by the applicant Dilip to the first informant, the police officer. The statement is necessarily hit by Section 25 of the Evidence Act, being in the nature of confession to the police. It has been alleged in the F.I.R. that the informant went to Shelapuri village on 29.6.2018. He met the applicant Dilip at Zilla Parishad School

in the village. How can it be a coincidence that the first informant met the person present at the Zilla Parishad School and on enquiry with him he turned out to be the applicant Dilip. Be that as it may.

10. It is further averred in the F.I.R. that the informant made further enquiry with Dilip. Thereupon, he (Dilip) told him that, his friends had arranged the celebration of his birthday by 9.00 p.m. on 27.6.2018. He, therefore, went to Samaj Mandir. Sidharth (co-accused, applicant in Criminal Application No.3385/2018) gave him the sword. He cut the cake therewith and returned the sword to Sidharth. Having learnt this from Dilip, the first informant then went to residence of Sidharth Zagade. On enquiry with Sidharth, he brought a sword from house and delivered it to the first informant, who in turn seized it under the panchanama. Sword is stated to be 72.05 cms. In length.

11. The informant, therefore, lodged the F.I.R. alleging the applicants to have possessed the sword in contravention of Section 4 read with 25 of the Arms Act.

12. There are documents on record to indicate that, Patrakar Sangh, Majalgaon made a representation against S.D.P.O., Majalgaon to the Superintendent of Police, Beed. The offence is in the nature of having possessed a sword for a while.

The F.I.R. has been lodged on the basis of whatever information was received from both the applicants. The applicants are the accused in the very F.I.R. What has been disclosed by both the applicants to the first informant (police official) is, therefore, hit by Section 25 of the Evidence Act. Filing such a case would nothing but a witch hunt.

13. Section 4 of the Arms Act reads as under :

“4. Licence for acquisition and possession of arms of specified description in certain cases :-

If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this Section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.”

14. Whereas Section 25(1-B) (b) states that, whoever acquires, has in his possession or carries in any place specified by notification under Section 4 any arms of such class or description

as has been specified in that notification, in contravention of that Section, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to three years and shall also be liable to fine.

15. In our view, to attract the provisions of Section 4 read with Section 25(1-B) (b) of the Arms Act, it has to be averred in the F.I.R. that the Central Government, by notification in the official gazette, has regulated possession of swords in the particular area (in this case village Shelapuri), Taluka Majalgaon, District Beed and same is an offence punishable under Section 25(1-B) (b) of the Act. Notification, if any, issued by the Central Government under Section 4 has also not been placed on record for our perusal. It would, therefore, be difficult to hold that the allegations in the report dated 29.6.2018 lodged by Vijay Ghodke, prima facie constitute an offence under Section 4 read with 25 of the Arms Act. On the contrary, for want of averments to this effect in the report, it has to be observed that no offence is made out from the so called F.I.R.

16. In the aforesaid factual backdrop, we are of the view that, allowing the investigation to be made pursuant to such an F.I.R. would be an abuse of process of law. We, are, therefore, inclined to allow both the criminal applications by quashing the F.I.R. in Crime No.183/2018, dated 29.6.2018, under Section 4/25

of the Indian Arms Act, 1969, registered with City Police Station, Majalgaon, District Beed.

17. The learned counsel for the applicants submitted that the applicants wanted to donate Rs.25,000/- (Rupees Twenty Five thousand) to Cancer Hospital, Aurangabad. The applicants are at liberty to do so. Both the applicants have also furnished undertaking to the effect that they would not indulge in any such activity in future.

18. In the result, both the criminal applications are allowed. Rule made absolute in terms of prayer clause (A) in both the applications.

**R.G. AVACHAT
JUDGE**

**S.S. SHINDE
JUDGE**

fmp/-