

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1031 OF 2020

Ravi s/o. Kisan Adhe,
Age: 18 years, Occu: Education,
R/o. Mathtanda Tq. Ambad,
Dist. Jalna.

...Applicant
(Ori. Accused No. 3)

Versus

1. The State of Maharashtra,
Through : The Office Incharge of
Police Station, Gond, Tq. Ambad,
Dist. Jalna.

2. Vilas S/o. Nivrutti Waghmare,
Age : 52 years, Occu: Service (NPC),
Through: Police Station, Gond,
Tq. Ambad, Dist. Jalna.

...Respondents
(Res. No. 2 is Ori. Informant)

Mr D.S. Pawar, Advocate for Applicant
Mr. K.D. Munde, A.P.P. for Respondent No. 1-State

**CORAM : T.V. NANAWADE
AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 26th JUNE, 2020

ORAL JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. Rule. Rule made returnable forthwith. By consent of both the sides heard finally.

2. The applicant, who is arraigned as accused in First Information Report bearing Registration No. 159 of 2020 registered at Gond Police Station, Tq. Ambad, Dist. Jalna on 28.04.2020 for

the offences punishable under sections 328, 188 read with section 34 of the Indian Penal Code and section 65 (f) of the Maharashtra Prohibition Act, 1949, approached this Court for quashing the above said First Information Report.

3. The First Information Report is registered on the basis of complaint lodged by Mr Vilas S/o Nivrutti Waghmare, a Naik Police Constable attached to Gondli Police Station. According to the allegations, set out in the F.I.R. demonstrate that on 27.04.2020 about 18.00 hours, the police officials received reliable information from their sources that certain persons are manufacturing and selling illicit liquor at village Math tanda, Tal. Ambad, Dist. Jalna. On the basis of reliable information, the Police officials along with two panchas under the supervision of Assistant Police Inspector Mr Khopde rushed to the spot and conducted the raid in presence of two panchas at about 18.40 hours. Ambadas Sopan Chavan, Prakash Dharu Rathod and Ravi Kisan Adhe/applicant were found on the spot while possessing 15 liters illicit liquor. According to the first informant, the accused were manufacturing illicit liquor, which is endanger to human life. The applicant and his associates were found possessing illicit liquor in order to sale it and as such, they were nabbed on the spot. However, their associate Sharad alias Babasaheb Sheshrao Rathod ran away.

4. On the basis of the complaint lodged by Naik Police Constable Mr Vilas Waghmare, the F.I.R. came to be registered with Gondi Police Station vide C.R. No. 159 of 2020 under sections 328, 188 read with 34 of the Indian Penal Code and under section 65 (f) of the Maharashtra Prohibition Act, 1949. The investigation of the said crime is in progress.

5. Heard Mr D.S. Pawar, learned Advocate for the applicant and Mr K.D. Munde, learned A.P.P. for the State.

6. Mr Pawar, learned Advocate for the applicant invited our attention to the photo copies of mark list of S.S.C., School Leaving Certificate and admission card of H.S.C. examination pertaining to the applicant.

7. Mr. Pawar, learned Advocate for the applicant vehemently argued that the applicant is a meritorious student and he was pursuing H.S.C. examination. He has no concern with the alleged incident. He has been falsely implicated in this case. There is no iota of evidence against him to connect in the alleged offence. Mr Pawar, learned Advocate urged to quash the F.I.R. registered against the applicant.

8. To support the argument, Mr Pawar, learned Advocate for the applicant has placed his reliance on the citation in case of ***Anand Ramdhani Chaurasia and Ors. Vs. The State of Maharashtra and Ors. reported in 2019 (4) Bombay Cases Reporter (Criminal) 520.***

9. On the other hand, Mr K.D. Munde, learned A.P.P. for the State strongly opposed to quash the F.I.R. in view of the seriousness of the offence registered against the applicant. Mr. Munde, learned A.P.P. pointed out that the applicant was allegedly nabbed on the spot while possessing 15 liters illicit liquor, which is dangerous to human life. The offence under section 328 of I.P.C. is serious in nature coupled with section 65 (f) of the Maharashtra Prohibition Act, 1949. Mr Munde, learned A.P.P. submitted that it is not a fit case to quash the F.I.R.

10. The exercise of power under section 482 is an exception and not the Rule. It is to be remembered that the inherent power should not be exercised to stifle a legitimate prosecution. The power should be exercised to prevent the abuse of the process of the Court. If the allegations made in the F.I.R. against the applicant, even if those are taken at their face value and accepted in their entirety *prima facie* constitute cognizable offence against the applicant. As such, the investigation by the Police Officer under

section 156 (1) of the Cr.P.C. is necessary. There is no material which may speak that criminal proceeding initiated against the applicant is *mala fidey* and or proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the applicant with a personal grudge. No such case is made out by applicant to invoke provisions of section 482 of the Cr.P.C.

11. We have gone through the citation in case of ***Anand Ramdhani Chaurasia and Ors. Vs. The State of Maharashtra and Ors. (supra)***. In the cited case, the moot question was placed for adjudication as to whether there was violation of orders issued by Food Safety Commissioner in exercise of powers conferred under section 30 (2) (a) of the Food Safety & Standards Act, 2006, which prohibits manufacture, storage, distribution, transport or sale of tobacco either flavoured, scented or mixed with any of the said additives and whether known by any name whatsoever, Gutka or Pan Masala sold as product for its consumption would attract the provisions of Section 328 and Section 188 of the Indian Penal Code. The facts of the case on hand are quite different and as such, the decision in ***Anand Ramdhani Chaurasia and Ors. Vs. The State of Maharashtra and Ors. (supra)***, relied upon by Mr. Pawar, learned Advocate for the applicant does not render any help to the petitioner.

12. It is not a fit case to quash the F.I.R. registered against the applicant at Gondi Police Station, Tq. Ambad, Dist. Jalna. The defence sought to be put forth by Mr Pawar, learned Advocate for the applicant, cannot be entertained at this stage. The investigation needs to be completed. As such, we are not inclined to quash the F.I.R.

13. Having regard to the above reasons and discussions, we pass the following order :-

ORDER

- (i) The Criminal Application stands dismissed.
- (ii) Rule is accordingly discharged.
- (iii) No order as to costs.

[SHRIKANT D. KULKARNI, J.] [T.V. NANAWADE, J.]

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