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

CRIMINAL WRIT PETITION NO.742 OF 2020

Narayan s/o. Tilokchand Kuche,
Age: 50 years, Occu: Agriculture,
R/o. : "Kuche Niwas", Laxmidevi,
Near Old Balaji Temple, Old Mukundwadi,
Tal. and District Aurangabad

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Superintendent of Police,
Jalna
2. The Investigating Officer,
Chandanjhira Police Station,
District Jalna
3. Deepak s/o. Laxman Dongre,
Age: 25 years, Occu: Business,
R/o.: Mandeolgaon, Tq. Badnapur,
District Jalna

..RESPONDENTS

Mr D. P. Palodkar, Advocate for petitioner;
Mr D. R. Kale, P.P. for respondents/State;
Mr R. V. Gore, Advocate for respondent No.3

**CORAM : T. V. NALAWADE
AND
M. G. SEWLIKAR, JJ.**

DATE : 9th September, 2020

JUDGMENT (PER : T. V. NALAWADE, J)

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

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2. The present proceeding is filed for the relief of quashing of first information report No. 238 of 2020, registered with Chandanjhira Police Station, District Jalna, for offences punishable under Sections 294, 504 read with Section 34 of the Indian Penal Code and under Section 67 of the Information and Technology Act, 2000. The relief is claimed to the extent of the petitioner as there are other two accused mentioned in the first information report.

3. The submissions made and the record show that Criminal Writ Petition No.583 of 2020 was filed by one Deepak Laxman Dongare against the State and others. In that petition, the direction was sought to register crime on the basis of the complaint, which was lodged by Deepak Dongare in the same police station on 2nd March, 2020. This writ petition was allowed and this Court had given directions to register the crime.

4. It appears that on 2nd March, 2020, Deepak Dongare i.e. present respondent No.3 had contended that he had received filthy messages, some photographs and mobile calls from a lady and due to that, he was feeling harassed. The lady, who was sending messages and photographs was not known to him. He then approached the police station and requested to make inquiry and take action against that lady. In view of that submission, notice was not given in the aforesaid writ petition by this Court to other three respondents, like Narayan

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Tilakchand Kuche, Devidas Tilakchand Kuche and Varsha Chetan Bankar. This Court had heard learned APP for the State and on the basis of the allegations, the direction was given to register a crime. In an ordinary course, if the said lady was detected and if there was record that she had send the messages and photographs, the police ought to have taken action against said lady.

5. After taking the order from this Court on 3rd July, 2020, Deepak Dongare gave a letter to the Police, dated 7th July, 2020 and contended that there was direction of this Court in Criminal Writ Petition No.583 of 2020 and so the direction may be complied with. When his complaint dated 2nd March, 2020 was with the police, he gave another complaint dated 7th July, 2020 and he made allegations specifically against present applicant who appears to be MLA, his brother Devidas Kuche and also a lady who had sent him the messages and photographs. He contended that due to instigation of present applicant and his brother Devidas, the said lady had done the said act. On the basis of his contentions, the crime is now registered against three persons including present petitioner. For the present purpose, this Court has considered other circumstance like statement of the said lady recorded on 5th March, 2020. In that statement, she had informed to the police that she sent such messages and photographs due to instigation of Devidas Kuche. Thus, the said lady had not taken the name of present applicant that he had given such instigation.

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6. It appears that Deepak Dongare is a close relative of present applicant and there was some talk of settlement of marriage between these two families. There was some dispute as the talks failed and further there was other dispute of financial nature.

7. From the submissions and allegations made in the present first information report, it can be said that attempt was made to give different first information report to implicate the present applicant in the matter. This Court has no hesitation in observing that Deepak Dongare has virtually misused the order made by this Court and directing the present petitioner to face the trial will be abuse of process of law. The provisions of Section 34 of the Indian Penal Code is used in first information report and that itself shows that it will not be possible for prosecution to prove the offence against the present petitioner if the case is filed against him. In the result, following order:

ORDER

- I. The petition is allowed.
- II. Relief is granted in terms of prayer Clause (B).
- III. Rule is made absolute in those terms.

(M. G. SEWLIKAR, J.)

(T. V. NALAWADE, J.)