

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.793/2020

Ashish s/o Janardhan Gawai

..vs..

**State of Mah., thr. its PSO PS Kotwali, Amravati City, Amravati, District
Amravati and anr**

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

Court's or Judge's Order

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Shri R.J.Shinde, Counsel for the Applicant.
Shri S.M.Ghodeswar, Addl.P.P. for the State.

**CORAM : V.M.DESHPANDE &
ANIL S.KILOR, JJ.**

DATED : DECEMBER 10, 2020.

1. This is an application under Section 482 of the Code of Criminal Procedure by accused in Crime No.353/2020 dated 17.10.2020 registered on a complaint lodged by non-applicant No.2, who is the Tahsildar in tahsil office Amravati, against the applicant, for offence punishable under Section 409 of the Indian Penal Code, the said First Information Report is sought to be quashed and set aside.

2. Heard learned counsel Shri R.J.Shinde for the applicant and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the non-applicant/State.

3. It is the case of the prosecution that the complainant lodged a criminal complaint against the applicant alleging therein that the applicant misappropriated the government property by disposing of election material,

stationery including electoral list of 2019, non creamy layer certificates, income certificates, and domicile certificates with the help of third party. On receiving the said complaint, crime in question was registered against the applicant.

4. Learned counsel Shri R.J.Shinde for the applicant, submits that the applicant was falsely implicated in the alleged offence. He submits that the applicant is no way connected with the alleged offence and, therefore, he prays that this Court may in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, quash and set aside the First Information Report in question.

5. He submits that the applicant has already been released by learned Additional Sessions Judge, Amravati on anticipatory bail and while granting anticipatory bail, learned Judge considered the allegations made in the First Information Report in question. By arguing so, he prays for quashment of the First Information Report in question.

6. Learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State, strongly opposed the application and submits that *prima facie* case is made out against the applicant. It is submitted that from the contents in the First Information Report, the offence attracts and, therefore, this Court may not exercise jurisdiction under Section 482 of the Code of Criminal Procedure. He, thus, prays for dismissal of the present application.

7. We have perused the First Information Report in question and other relevant record. It reveals that there is

specific allegation against the applicant who is undisputedly working as a Nazar and who was the custodian of the record which has been misappropriated.

8. Contents of the First Information Report *prima facie* show involvement of applicant in the alleged offence and, thus, in view of the settled principles of law that if contents of the First Information Report *prima facie* establishes the offence, this Court should not exercise its jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the First Information Report.

9. Moreover, the contention of the applicant that the present proceeding deserves to be allowed as the applicant was granted bail in the crime in question, needs to be rejected for a simple reason that the criteria for grant of bail and quashment of the First Information Report are different and distinct.

10. In this view of the matter, we are of the considered view that this is not a fit case wherein this Court should exercise its jurisdiction under Section 482 of the Code of Criminal Procedure Code. Accordingly, we reject the criminal application.

11. The criminal application is rejected and disposed of. No order as to costs.

JUDGE

JUDGE

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