

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

CRIMINAL APPLICATION NO. 784 OF 2022

**PAWAN JAGDISH BORA (SHARMA)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Applicants : Mr. M. S. Choudhari
APP for Respondents-State : Mr. M. M. Nerlikar

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 21st MARCH, 2022.

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ORDER : (PER : SANDIPKUMAR C. MORE, J) :

1. Heard.
2. The applicant i.e. original accused no.1 is seeking quashing of FIR / Crime No. 397 of 2021, registered with Vazirabad Police Station, District Nanded along with charge sheet bearing Sessions Case No. 33 of 2022, pending before Sessions Court, Nanded for the offence punishable under Sections 307, 386, 452, 120(B), 114, 506 readwith 34 of IPC and under Section 3/25 and 30 of Arms Act.
3. Learned counsel for the applicant submits that allegations made against the applicant by respondent no.3, are absurd in nature

since the applicant only raised pistol at respondent no.3 but did not fire the same. He also submits that since it is found that the applicant possesses valid license to keep the said pistol, charge under Section 3/25 of the Arms Act, has been deleted against him while filing the charge sheet. As such, he submits that since the provisions of the Arms Act are not attracted, the attempt as alleged by prosecution of committing murder of the informant as per Section 307 of IPC also cannot be attracted. He placed reliance on the judgment of the Hon'ble Apex Court in the case of *Arun Singh and others vs. State of Uttar Pradesh through its Secretary and another, reported in (2020)3 Supreme Court Cases 736*, which deals in respect of the quashment of the proceedings.

4. On the contrary, the learned APP strongly opposed the application and submits that there are direct allegations against the applicant in the FIR itself. Moreover, even though the charge under Section 3/25 of the Arms Act has been deleted, but it cannot be inferred that the charge under Section 307 of IPC can be deleted on that count. He further submits that there is no need of firing the said pistol by respondent no.3 to attract provisions of Section 307 of IPC but only intention is to be seen.

5. We have carefully gone through the FIR and contents of the charge sheet. On going through the same, it is evident that there are allegations against the present applicant and other co-accused that they conspired with each other and demanded Rs.40,000/- from respondent no.3 by making allegations that respondent no.3 was found selling China made and duplicate crackers. It is also alleged in the FIR that on 29/10/2021 at about 1.00 to 3.30 p.m. the applicant and other co-accused abused respondent no.3. At the relevant time the applicant had also raised his pistol at respondent no.3 informant and told that he would kill respondent no.3 informant. As such, prima facie there appears direct allegations against the present applicant. Learned counsel for the applicant vehemently argued that the applicant only aimed pistol at respondent no.3 but he did not fire the same and therefore, no charge under Section 307 of IPC is attracted. He also claimed that since the relevant Section 3/25 of the Arms Act has now been deleted, there is no need to proceed further against the applicant under remaining sections. However, we are not in the agreement with the submission made on behalf of the applicant mainly because of the ingredients of Section 307 requires intention of committing crime. There is no need of firing the pistol and it would be sufficient for the prosecution to show that pistol was

raised at the informant coupled with threat of killing him. Moreover, even though it was found during the course of investigation that the applicant possesses valid license for keeping the said pistol but merely the deletion of charge under Section 3/25 of the Arms Act cannot result into deletion of charge under Section 307 of IPC automatically.

6. Further in case of ***State of Haryana and others vs. Bhajanlal and others, reported in AIR 1992 SC 604*** the Hon'ble Supreme Court has laid down certain guidelines in respect of exercise of powers under Section 482 of Cr.P.C. However, in the said judgment reference of earlier judgment of the Hon'ble Apex Court reported in ***AIR 1982, 949 in the case of State of West Bengal v. Swapan Kumar Guha*** is also given and the observation in that judgment mentioned herein as follows :

"..... the legal position is well-settled. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted Once an offence is disclosed,

an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a

case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed"

"Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."

7. On going through the aforesaid observation, it is, thus, made clear that if the offence is disclosed from the contents of the FIR then quashing of FIR is not permissible. Further learned counsel for the applicant also relied on the judgment in the case of **Arun Singh** (supra), however, the facts of that case appear to be in respect of provisions under Dowry Prohibition Act. Even in the said judgment it is observed in para 30 as under :

"30. A reading of the above provisions shows that essential ingredients of the offence under Section 3/4 of the Dowry Prohibition Act are that the persons accused should have made demand directly or indirectly from the parents or other relatives or guardians of a bride or a bridegroom as the case may be any dowry and/or abets the giving and taking of dowry. The allegations of the F.I.R. quoted hereinabove clearly go to show that a demand of dowry of Rs.5 Lakhs was made by the appellants from the complainants and thus it can not be said that no offence under the Dowry Prohibition Act are made out against the appellants. There being direct allegations of demand of Dowry in the First Information Report, the allegations prima-facie constitute a commission of an offence under the Dowry Prohibition Act and thus the charges leveled against the appellants under Section 3/4 of the said Act, are not liable to be quashed."

8. Thus, after going through the aforesaid observation it is made clear that if the direct allegations of the offence alleged are there in FIR, the same are not liable to be quashed. As such, the aforesaid

judgment is in fact favourable to the prosecution and not to the applicant. Under such circumstances and in the light of allegations made in the FIR against the present applicant, we are not inclined to quash the FIR along with charge sheet as claimed by the applicant, specially in view of the above observation of the Hon'ble Supreme Court in the above cited judgments. Therefore, we find no substance in the application and hence the application stands dismissed and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-