

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

910 CRIMINAL APPLICATION NO.1575 OF 2021

KHANDERAO S/O KISANRAO AGHAV  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicants : Mr. S. S. Thombre  
APP for Respondents : Mrs. P. V. Diggikar  
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**CORAM : SARANG V. KOTWAL AND  
BHARAT P. DESHPANDE, JJ.  
DATED : 22<sup>nd</sup> JUNE 2022**

**PER COURT:-**

1. Leave to amend. Amendment shall be carried out forthwith.
2. This is an application for quashing of the F.I.R. vide C.R. No. 63 of 2021 registered at Bamni police station, district Parbhani for the offence punishable under Sections 353, 186 and 506 of I.P.C. and the charge sheet bearing R.C.C. No. 206/2021 pending before the Judicial Magistrate, First Class, Jintur.
3. Heard.
4. The F.I.R. is lodged on 21.6.2021 by A.P.I. Shri Rajabhau Chavan attached to Bamni police station. He has stated that on 19.6.2021 he was on duty. At about 6.45 p.m., he saw one Sadashiv Ganpati Kangne and one another person travelling on

motor cycle. The informant stopped him and asked him to attend the police station in respect of an offence registered against him. At that time, the informant received a phone call from an advocate and he told him that he would produce those accused on Monday. After that, the informant was returning towards police station. At about 7.45 p.m., the applicant called him telephonically. It is mentioned in the F.I.R. that the applicant questioned the informant as to why he had called Sadashiv Kangne to police station. He further said that there were other illegal activities going on within the jurisdiction of informant's police station and why action was not taken against them. It is mentioned in the F.I.R. that the applicant told the informant that he would contact higher authorities and that he had caused suspension of 11 police officials from Jintur taluka. It is mentioned that the applicant told him that he would see to it that the informant loses his job. According to the informant, after threatening in this manner, the complainant ended the call. Based on this conversation the informant registered this F.I.R.

5. Learned counsel for the applicant submitted that the applicant was not even present at the scene and therefore, ingredients of Section 353 of I.P.C. are not attracted. The other sections of I.P.C. which are applied in this case are not cognizable and therefore, the F.I.R. should not have been registered. He relied on the judgment of the Hon'ble Supreme

court in the case of ***Manik Taneja vs. State of Karnataka***, reported in **2015 (7) SCC 423** to contend that in similar cases, the Hon'ble Supreme court has observed that the ingredients of the offence under Section 353 of I.P.C. were not attracted.

6. Learned A.P.P. submitted that the offence is made out and therefore, the F.I.R. should not be quashed.

7. We have considered the submissions of both sides. From the F.I.R. it is clear that the applicant was not present at the spot and it was only a telephonic conversation. The Hon'ble Supreme Court in the case of ***Manik Taneja*** (supra) has observed that the essential ingredients of the offence under section 353 of I.P.C. are that the person accused of the offence should have assaulted the public servant or used criminal force with intention to prevent or deter the public servant from discharging his duty as such public servant.

8. In the case before us, there are no allegations that the applicant had assaulted or used criminal force. The applicant herein was not even present on the spot. The offence under section 353 is not made out. As far as the other two offences are concerned, they are not cognizable and therefore, they cannot be investigated without following due procedure under Section 155 of the Cr.P.C. i.e. without permission from the

Magistrate.

9. In this view of the matter, since no cognizable case is made out, we are satisfied that in this case the F.I.R. and the charge-sheet deserve to be quashed and set aside. Hence, the following order:-

**O R D E R**

- I. Criminal application is allowed in terms of prayer clause "B" and "C-1".
- II. The F.I.R. vide C.R. No. 63/2021 registered at Bamni police station and the charge-sheet vide R.C.C. No. 206/2021 pending before the Judicial Magistrate, First Class, Jintur are quashed and set aside.
- III. The application is disposed of.

**(BHARAT P. DESHPANDE, J.)**

**(SARANG V. KOTWAL, J.)**

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