

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1912 OF 2020

ANUSAYA SANTOSH BHARTI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicants : Mr. Gadegaonkar Bharat N.
APP for Respondents - State : Mr. A. M. Phule
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : DECEMBER 19, 2022.

ORDER :-

. Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure to quash and set aside the FIR as well as by way of amendment, the further proceedings in R.C.C. No.65 of 2020 pending before the learned Judicial Magistrate First Class, Degloor, as against the present applicants.

2. Heard learned Advocate Mr. B. N. Gadegaonkar for the applicants and learned APP Mr. A. M. Phule for respondents - State.

3. Learned Advocate for the applicants submits that applicant No.1 was taking treatment since 17.03.2020 and it continued till

28.03.2020 and to demonstrate the same, the certificate issued by Patil Hospital, Degloor and the reports by Matoshri Diagnostic Center, Degloor have been attached. She was suffering from illness and, therefore, had gone to consult the doctor, who had called her daily during day care treatment. A false case has been filed that too belatedly by respondent No.2, who herself is a police officer. When the applicants had gone to police station to lodge complaint against the informant since the senior persons were not available, she could not lodge the same. When it was pointed out to the learned Advocate for the applicants that the accused will have to prove the *plea of alibi*, he submits that the applicants are not taking the *plea of alibi*, however, they are saying that the incident has not taken place, as it has been painted in the FIR as well as statements of witnesses under Section 161 of the Code of Criminal Procedure.

4. Learned APP has strongly opposes the application and submits that every aspect would be considered by the trial Court and this cannot be then taken as a fit case where the inherent powers of this Court should be exercised.

5. At the cost of repetition, we would like to say that if the applicants - accused want to take the *plea of alibi*, then it will have to be proved by them by leading evidence or even on the basis of the evidence that would be adduced by the prosecution (including the cross-examination of the prosecution witnesses). Even

otherwise also if the applicants want to take the defence and place on record the certificate issued by the treating doctor as well as the Diagnostic Center, then also evidence will have to be led by the applicants before the trial Court. At this stage, when the prayer is in respect of quashing of FIR as well as the charge-sheet, what is required to be seen by this Court is whether the *prima facie* offence has been made out or not. This Court even cannot consider the fact, which has been tried to be canvassed, that the applicants had gone to lodge report against the informant. It presupposes that an incident had taken place and it would be the version of the informant or the applicants.

6. As regards the FIR and the statements of witnesses under Section 161 of the Code of Criminal Procedure are concerned they are consistent. The first and the foremost fact of which even a judicial note can be taken that the lock-down was declared on and around 25.03.2020 and it went on for subsequent dates. Nobody was allowed to come on road. Of-course the patients or the emergency services were exempted. Here also if the applicants intend to say that their presence outside the house was protected, as it was under the category of emergency services, then also they will have to prove, which should be in consonance with the certificate issued by the treating doctor. On the face of the FIR as well as the statements of the witnesses, when ingredients of major

offences are made out, this cannot be considered as a fit case where we should exercise our inherent powers. Hence, the application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm