

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

CRIMINAL APPLICATION NO.2465 OF 2021

Mushtak Ibrahim Shaikh (Correct Name)
Haji Mushtak (Name as per FIR),
Age-59 years, Occu:Business,
R/o-House No.1839, Subhedar Galli,
Bepari Mohalla, Opposite R.R. Bekry,
Ahmednagar, Tq. & Dist-Ahmednagar.

**...APPLICANT
(Orig. Accused No.3)**

VERSUS

- 1) The State of Maharashtra,
Through Investigation Officer,
Shrirampur City Police Station,
Tq. & Dist-Ahmednagar,
- 2) Amol S/o Vasant Gaikwad,
Age-34 years, Occu:Service,
R/o-Shrirampur City Police Station,
Shrirampur, Tq. & Dist-Ahmednagar.

**...RESPONDENTS
(Resp. No.2 – Orig. Complainant)**

...
Mr. R.V. Gore Advocate for Applicant.
Mr. R.V. Dasalkar, A.P.P. for Respondents.
...

**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 3rd AUGUST, 2022

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, the applicant, who is original accused No.3, seeks quashment of the First Information Report (for short "FIR") as well as the entire proceedings, after the charge-sheet is filed by Shrirampur City Police Station, District-Ahmednagar in connection with Crime No.606 of 2021 dated 7th September 2021 for the offence punishable under Sections 9(A), 5, 5(C) of the Maharashtra Animal Preservation Act and Section 278 of the Indian Penal Code, filed before the learned Judicial Magistrate First Class, Shrirampur, District-Ahmednagar.

3. The First Information Report has been registered by Police Constable Amol Gaikwad attached to Shrirampur City Police Station on 6th September 2021 stating that he along with other police persons while on duty with Police Station, were called by Police Inspector and told that he has received secret information

disclosing that raw skin of animals from the species of cow (गोवंश) has been stored in a godown after slaughtering and therefore, all of them were required to go to that place. The panchas as well as veterinary doctor were taken along with them and the raid was conducted at about 2.00 p.m. Two persons were found loading skin in a Eicher Tempo but one of them managed to flee away. The another person was caught. He told his name as Chand Mehaboob Pathan and the person who fled away, was Bablu Kureshi. When the site was inspected, they found skin of slaughtered animals in the godown and it was asked to the said accused as to who is the owner of the said skin. It was disclosed that the said skin belongs to the present applicant. According to the informant, the skin of animals and vehicle worth Rs.16,05,000/- were seized from the said place and he lodged the report.

4. Learned Advocate appearing for the applicant submitted that the entire charge-sheet does not show any active participation or even presence of the present applicant at any point of time. Merely on the basis of the statement of the co-accused the applicant has been involved. He relied on the decision in ***Criminal Application (APL) No.664 of 2016 (Israrul***

Haq Nisar Ahmed and another vs. State of Maharashtra and another) by the Division Bench of this Court at Nagpur Bench, dated 1st July 2017. After considering various provisions under the Maharashtra Animal Preservation Act, it has been held by the Division Bench that the possession of skin of dead animals is not prohibited. The same view was upheld again by this Court in ***Criminal Application No.364 of 2018 (Shaikh Najir Shaikh Umar vs. the State of Maharashtra and another)*** decided on 21st June 2018. Learned Advocate therefore, submits that possessing the skin of dead animals was not prohibited and it does not amount to any offence against the applicant and it would be futile exercise to ask the applicant to face the trial.

5. Per contra, the learned APP strongly opposed the Application and submitted that the skin was of slaughtered animals and slaughtering is prohibited under the Maharashtra Animal Preservation Act. The samples have been sent for DNA testing and the report is not yet received. Therefore, it will not be a proper stage where the entire proceedings should be quashed.

6. At the outset it is to be noted that the FIR was lodged on

6th September 2021 and the samples were sent for DNA testing by letter dated 24th September 2021. Even after filing of the present Application, it appears that no attempts were made to get the report from the Forensic Laboratory. Under such circumstance, the evidence that has been collected in the charge-sheet is required to be considered. Statements of witnesses would show that almost all of them are the Police persons. The contents of the FIR are already narrated and therefore, the same are not required to be reproduced here. What was found at the place as per the FIR, statements of the witnesses and spot panchnama, is the skin 2010 in numbers. Though it is stated that it is of the animal slaughtered and the animal is from cow species, the spot panchnama is absolutely silent that there were instruments of slaughtering or any part of flesh was found. On what basis then the informant and others were saying that it is the skin of animal from the species of a cow, is a question.

7. Another fact to be noted is that in the FIR as well as the statements of witnesses, presence of the present applicant is not at all stated. Only on the basis of the statement of co-accused, which is basically inadmissible in nature, the applicant cannot be

asked to face the trial. It would be a futile exercise to ask him to face the trial and therefore, this is a fit case within the parameters laid down in ***State of Haryana and others V/s Ch. Bhajan Lal and others, AIR 1992 SC 604*** to exercise powers under Section 482 of the Code of Criminal Procedure. Hence, the following order:-

O R D E R

(I) The Application stands allowed.

(II) The First Information Report bearing Crime No.606 of 2021 dated 7th September 2021 registered with Police Station, Shrirampur City, District-Ahmednagar for the offence punishable under Sections 9(A), 5, 5(C) of the Maharashtra Animal Preservation Act and Section 278 of the Indian Penal Code, so also the consequent proceedings in S.C.C. No.812 of 2021 pending before the learned 2nd Judicial Magistrate First Class, Shrirampur, District-Ahmednagar, are quashed and set aside, to the extent of present applicant.

(III) Rule made absolute in above terms.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE