

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 CRIMINAL APPLICATION NO.3297 OF 2021

GANESH MURLIDHAR BHAVAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. V.B. Jogdand Patil, Advocate for the applicant

Mr. S.D. Ghayal, APP for the respondent

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

DATE : 28th JULY, 2022

ORDER :

1 By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 the applicant who is arrayed as an accused in Crime No.502/2021 registered with Pachora Police Station, Tq. Pachora, Dist. Jalgaon, for the offence punishable under Section 143, 147, 149, 337, 323, 504, 506, 427 of the Indian Penal Code, 1860, prays for the quashment of the said First Information Report.

2 Heard learned Advocate Mr. V.B. Jogdand Patil for the applicant

and learned APP Mr. S.D. Ghayal for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated by the informant. Applicant is the resident of village Pimpalgaon Hareshwar, which is, in fact, 30 kms. away from the place of incident and at the time of incident, which is stated to be 11 .00 p.m. on 27.11.2021, in fact, the applicant was in his village attending General Meeting of Maratha Samaj Multi-Purpose Organization. He has produced on record the proceeding book. In the said meeting he was selected as a Director of the Organization and, therefore, the applicant is seeking quashment of the First Information Report on the ground of plea of *alibi*. Applicant is a student and because of this false implication he would be required to face the unnecessary trial.

4 Learned APP has strongly opposed the application and submitted that for the ground stated in the application the inherent powers of this Court under Section 482 of the Code of Criminal Procedure cannot be used.

5 At the outset, it can be straightway said that the quashment of the First Information Report has been sought by the applicant only on the ground of plea of *alibi*. Section 103 of the Indian Evidence Act runs thus -

“103. Burden of proof as to particular fact. - The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

Therefore, it can be seen that this provision under Section 103 of the Indian Evidence Act puts a strict proof on the shoulders of the accused to prove the plea of *alibi*. Accused-applicant herein wants the Court to believe a particular thing, that is, that he was present at a different place than the place of incident. No doubt, he has produced proceeding book but unless he adduces proper evidence to prove the said proceeding book it cannot be considered at all and that task cannot be taken up by this Court in its power under Section 482 of the Code of Criminal Procedure. The applicant must break the strict proof of impossibility of his absence at the place of occurrence. When a strict proof is required, then, all the other possibilities should be ruled out by the accused himself. Such strict proof need not be the proof in a positive way but that can be proved by preponderance of probabilities also. But this cannot be taken to be the stage to consider the disputed facts, because as per the First Information Report the present applicant had gone to village Sarola in front of the house of the informant. The applicant intends to say that the meeting of Maratha Samaj Multi-purpose Organization had taken place at 9.00 p.m. on 27.11.2021 to 12.00

a.m. of 28.11.2021. This appears to be a strange thing. Why meeting of an institution should be taken at night time, is a question. However, that would be for the applicant to prove it at the time of trial. No case is made out for this Court to exercise its inherent powers to quash the First Information Report. Application stands rejected.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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