

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CRIMINAL APPLICATION NO.1719 OF 2020

DILIP S/O DHURAJI RAJGURU
VERSUS
THE STATE OF MAHARASHTRA and ANR.

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Advocate for Applicant : Mr. Yogesh K. Bobade
APP for Respondent No.1: Mr. R.V. Dasalkar
Advocate for Respondent No.2 : Mrs. Sangita R. Bagul (appointed)
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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 20th JUNE, 2023.**

PER COURT :-

1. Heard the learned advocates for the respective parties.
2. This application has been moved for quashment of F.I.R. No. 355 of 2020, registered with Gondli Police Station, Tq. Ambad, District Jalna for the offences punishable under Section 385, 189, 504, 506 r.w. 34 of I.P.C. and the consequential charge sheet No. 153 of 2021 vide S.C.C. No. 142 of 2021 filed in the Court of J.M.F.C. Ambad.
3. The learned advocate for the applicant would submit that there is delay of over 2 days in lodging of F.I.R. The informant is the Gram Sevak of the village. The applicant No.1 Dilip had made a complaint against him for misappropriation of funds some days before the crime was registered against the present applicants. When

the alleged incident dated 19.8.2020 took place by 3.00 p.m. at the Gram Panchayat office, both the applicants were at Maharashtra Gramin Bank, at Tirthpuri. The investigating officer has collected the CCTV footage which is a part of police papers. According to the learned advocate, only with a view to take vengeance, on the count that one of the applicants, had made a complaint against the informant, the false F.I.R. was filed. According to him, allowing the prosecution to proceed against the applicants would be against the interest of justice. In the facts of the case, he would urge for grant of the application.

4. The learned A.P.P. and learned advocate for respondent No.2/informant would, on the other hand, submit that there are specific allegations in the F.I.R. During investigation, the statements of the eye witnesses have been recorded. On due investigation, charge sheet has been filed. The distance between the bank and the scene of offence was not more than 7 kilometers. For taking a defence of alibi, the applicants are required to make out a case beyond preponderance of probabilities. According to them, the said exercise has to be done by the trial court. Since there is material to proceed against the applicants, the application is liable to be rejected.

5. Considered the submissions advanced. Perused the F.I.R. and the papers of investigation. Record indicate that one of the applicants viz. Dilip Dhuraji Rajguru had lodged a complaint to the

Chief Executive Officer of the concerned Zilla Parishad, alleging that the informant/respondent No.2 to have misappropriated the Government funds. Thereafter, the F.I.R. in question was registered. It is true that, reading of the F.I.R. indicates that there are allegations against the applicants making out certain offences under I.P.C. The averments are to be tested in the background of unfriendly relations between the applicants on one hand and the informant on the other.

6. It has been averred in the F.I.R. that on 19.8.2020 at 3.00 p.m. both the applicants came to the Gram Panchayat office and asked the informant to pay them Rs.2,00,000/- else he would be assaulted. There are statements of the eye witnesses in support of the allegations in the F.I.R. The informant tried to offer an explanation of delay of two days in lodging of the F.I.R. contending that he was not keeping well.

7. The CCTV footage, which is a part of investigation papers indicates that both the applicants were present in Maharashtra Gramin Bank, at Tirthpuri by the time the alleged incident took place. The informant is Gram Sevak and not a layman. Even if we take his case that he was not keeping well and therefore, he could not visit the police to lodge the report, he could have very well reported the incident to the concerned police station on telephone. He could go his home at Jalna, which is about 60 kilometers away from the place where the incident took place. However, did not approach the

concerned police station while he was on his way to home at Jalna. The same speaks in volume and indicates that the F.I.R. might have been lodged afterthought and out of vengeance, since one of the applicant has made complaint against the informant to the Chief Executive Officer of the Zilla Parishad. It is reiterated that at the material time both the applicants were away from the scene of offence. Allowing the prosecution to proceed against the applicants in this factual background, would be against the interest of justice. We are, therefore, inclined to allow the application and the same therefore is allowed in terms of prayer clauses "B" and "B-1".

8. We quantify an amount of Rs.7000/- (Rupees Seven Thousand only) towards the fees and expenses of the learned advocate appointed to prosecute the cause of respondent No.2, to be paid to her by the High Court Legal Services Sub Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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