

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

CRIMINAL APPLICATION NO.3262 OF 2022

**SHAIKH ASLAM S/O ABDUL HAQ AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S. S. Choudhari, Advocate for the applicants
Mr. P. G. Borade, APP for the respondent/State

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 12th JANUARY, 2023

PER COURT :-

1. This is an application under Section 482 of the Code of Criminal Procedure for quashing the FIR No. 260 of 2022 registered with Jintur Police Station, Parbhani and consequent R.C.C. No. 267 of 2022 pending on the file of JMFC, Jintur for offence under Section 379 read with 34 of the Indian Penal Code.

2. With consent, heard learned for the applicants and learned APP for the respondent/State, finally at the stage of admission. We have perused the records and considered the submissions advanced by learned counsel for the respective parties.

3. The scope and ambit of power of the Court under Section 482 of Cr.P.C. are well settled in case of ***Gorige Pentaiah Versus State of Andhra Pradesh and Others*** reported in ***(2008) 12 SCC 531***, the Apex Court has reiterated that "the inherent powers under Section 482

of Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provision in the statute". The Apex Court referred to the previous decision in ***State of Haryana and others Vs. Ch. Bhajan Lal and others*** reported in **(1992) 3 SCR 735**, wherein, the Court made it clear that it is not possible to lay down any precise inflexible guidelines but by way illustrations gave following categories wherein such powers could be exercised,

1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the agrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

4. Having considered the scope and ambit of Section 482 of Cr.P.C. the only question for our consideration is whether the FIR and other material collected during investigation, disclose commission of any cognizable offence. As held by Hon'ble Apex Court in various judgments.

5. The crime No. 260 of 2022 was registered pursuant to the first information report lodged by the respondent No.2-Sayyed Mabud s/o Sayyed Maheboob. A perusal of the first information report reveals that the complainant had taken fishing rights in Yeldary dam/lake. He had engaged some security guards at the site. On 24th June, 2022 he was

informed by the security guards that the vehicle bearing No. MH 25 AJ 2526 was loaded with prawns from the said dam. On receipt of the said information the complainant went to the site and followed the vehicle. He intercepted the vehicle at Devgaon phata and confirmed that prawns worth Rs. 1,50,000/- were loaded in the vehicle. The driver of the vehicle informed him that the said prawns were loaded by the co-accused Prakash Bangaya and Hiranman Lahire. The complainant has alleged that the applicants, Prakash and Hiranman had committed theft of prawns from Yeldari lake in respect of which he had taken fishing rights in auction. The statements of the security guards also *prima facie* reveal that they had seen the vehicle No. MH 25 AJ 2526 loaded with prawns going towards Jintur. The statement of Pravin Varkat who is the owner of the said vehicle reveals that he has taken fishing rights in auction at Patur and Gangakhed. He has stated that on 23rd June, 2022 the applicant No. 2 Akash Yamgar informed him that his vehicle was intercepted at Jintur while they have taken the prawns from co-accused Prakash and Hiranman. He has further stated that when he had questioned them about going to Jintur when they were actually supposed to go to Patur and Isad lake, he was informed that the co-accused Prakash and Hirman had told him that he would give prawns. The driver also informed him that the co-accused had not taken any money from him. The statement of the owner of the said vehicle *prima facie* reveals that the applicant herein had used his vehicle to transport the stolen prawns and make money by illegal means.

The material on record *prima facie* discloses involvement of the applicants in commission of the said crime. Hence the decision in ***Syed Yaseer Ibrahim Versus State of Uttar Pradesh & Anr (Cri.Appeal 295 of 2022)***, relied upon by the learned counsel for the applicant is not applicable to the facts of the case. The material on record *prima facie* discloses commission of cognizable offence. Hence it is not a fit case to exercise jurisdiction under Section 482 of Cr.P.C. Consequently the application is dismissed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp