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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1134 OF 2023

Sayed Almas Naveed Kadri

....Applicant

V/s

The State of Maharashtra & Anr.

.....Respondents

Ms. Misbaah Solkar i/b Mr Amin Solkar for the Applicant.

Mr. S.V. Gavand, APP for the Respondent/State.

**CORAM: NITIN W. SAMBRE &
N. R. BORKAR, JJ.**

DATE: NOVEMBER 08, 2023

P.C.:-

1] Applicant has sought quashing of the FIR being Crime No.0575 of 2023 registered with Mumbra Police Station on 26.05.2023 for the offence punishable under Sections 186, 353 and 504 of the Indian Penal Code.

2] Genesis of the offence alleged against the Applicant is,

complainant who is not added as party-respondent to the present Application, has alleged that he is a public servant working as Assistant Police Inspector, Mumbra Police Station. On 26.05.2023 in the matter of investigation of Crime No.I 275/2023 for the offence punishable under Section 354 of the Indian Penal Code in which the Applicant is a complainant, Applicant created disturbance in discharge of his official duty by use of force. Since the conduct of the Applicant as narrated in the FIR, discloses cognizable offence, the crime referred to above came to be registered.

3] While seeking quashing of the offence, Applicant would invite attention of this Court to the ingredients of Section 183 viz resistance to the taking of property by the lawful authority of a public servant, Section 353 viz. assault or criminal force to deter public servant from discharge of his duty, Section 504 viz. intentional insult with intent to provoke breach of the peace and submit that satisfaction of ingredients of the offence alleged, cannot be inferred from the contents of the FIR. So as to substantiate the said contentions, particularly as regards the offence punishable under Section 353, it is claimed that there is no criminal force used by the Applicant. Relying on the order of Division

Bench of this Court dated 22.02.2023 delivered in Criminal Application No.3312 of 2019 in the matter of *Amer Khan S/o Anwar Khan vs. The state of Maharashtra and Others*, particularly observations in paras 8 and 9 of the said order, it is claimed that offence under Sections 353, 504, 186 of the Indian Penal Code cannot be said to be made out and that being so, FIR is liable to be quashed.

4] While countering the aforesaid submissions, learned APP Mr. Gavand would oppose the prayer on the ground that investigation is at a nascent stage and the complainant is not impleaded as party-respondent.

5] We have considered the submissions.

6] Factual matrix as regards registration of crime No. I 275/2023 for the offence punishable under Section 354 of the Indian Penal Code at the behest of the Applicant is not a disputed question of fact. It is also not disputed that complainant, a public servant, is investigating the said offence. During such time, Applicant appears to have entered the Police Station and started creating commotion for not arresting

accused in the said offence by carrying out video recording. In the FIR it is further alleged that Applicant used to issue threats to the Investigating Officer for not arresting the accused persons. Applicant thereafter allegedly uttered words against the public servant that he accepts bribe for discharging his duty and thereafter created commotion which act allegedly caused disturbance in discharge of official duty of the public servant.

7] After looking into the contents of the FIR, prima facie we are of the view that use of force as defined under Section 353 of the Indian Penal Code at this stage can be inferred against the Applicant as act of the Applicant of creating commotion in the police station and disturbance in the discharge of official duty of the complainant attracts the provisions of Section 353. Prima facie, contents of the FIR, in our opinion, satisfy very ingredients of the offence punishable under Section 353 read with Section 349 of the Indian Penal Code. The investigation is at nascent stage as the FIR has been recently registered. In this view of the matter, it will be inappropriate for us to cause indulgence at this stage of the investigation as same is informed to be in progress. Even otherwise FIR cannot be said to be an encyclopedia

of the offence as other evidence needs to be also looked into.

8] Keeping the rights of the Applicant reserved to question the charge-sheet if so submitted, we deem it appropriate to dismiss the Application without causing any interference.

9] Application is accordingly dismissed.

(N. R. BORKAR, J.)

(NITIN W. SAMBRE, J.)