



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

15 CRIMINAL APPLICATION NO. 2585 OF 2023

MAHARUDRA @ ABA NARAYAN MULEY
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicants : Mr. S.S.Solanke h/f Mr. Mahesh P.
Kale

APP for Respondents/State : Mr. G.A.Kulkarni

...

AND

CRIMINAL APPLICATION NO. 1640 OF 2024

ASEF S/O KADUMIYA SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for the applicant : Mr. Sharad S. Solanke and Mr. M.P.
Kale

APP for Respondents/State : Mr. G.A. Kulkarni

...

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 19.12.2024.

PER COURT :

1. Present applications have been filed initially for

quashing the First Information Report (for short “the FIR”), vide Crime No. 86 of 2023 dated 11.03.2023, registered with Majalgaon City Police Station, District Beed and by way of amendment for quashing the proceedings bearing RCC No. 246 of 2023, pending on the file of the learned Judicial Magistrate, First Class, Majalgaon, District Beed for the offence punishable under Sections 328, 188, 272, 273 r/w 34 of the Indian Penal Code.

2. Heard the learned Advocate Mr. Mr. S. S. Solanke holding for Mr. Mahesh P. Kale for the applicants. In order to cut short, it can be stated that both sides are taken us through the contents of the FIR and the entire charge-sheet and made submissions supporting their respective contentions.

3. Perusal of the FIR would show that police had recovered some contraband Ghutka worth Rs. 32,035/-, on 11.03.2023 from Rushikesh Misal and upon inquiring with him, he allegedly given the name of present applicants and some other persons as the persons from whom he had taken the said Ghutaka.

4. Perusal of the charge-sheet would show that the statements of witnesses are recorded, who are mainly the Police Officers, who were present at the time of raid and it appears that there was panchanama carried out in presence of two panchas. Those two persons only at the most can be said to be an independent witnesses, who had seen the contraband articles being seized. However, the Police Officer whose statement has been recorded as well as the informant have reiterated that the said accused Rushikesh had stated before them that he had purchased the Ghutaka from present applicants. Unfortunately, the investigating officer or other police officers capable of taking action have not utilized the information that was given by the original accused. There was no separate raid conducted at the place within the control of the present applicants and nothing has been seized from him.

5. Learned APP tries to submit that the evidence against the present applicants appears to be in the nature of CDR i.e. the call records, however, they are not the form part of the charge-sheet. On this point we can say that even if those CDR would have been produced that would not have been per say evidence regarding the involvement of the applicants in the

crime.

6. We have not gone into the aspect as to whether the offences have been made out under Sections under which the FIR and the charge-sheet is filed. We have gone through the FIR and the charge-sheet, which is not sufficient to hold that there is no such evidence which would show the involvement of the applicant in the crime. It would be unjust to ask the applicants to face the trial and therefore, the application stands allowed. The proceedings bearing RCC No. 246 of 2023, pending before the Judicial Magistrate First Class, Majalgaon, District Beed, arising out of Crime No. 86 of 2023, dated 11.03.2023, registered with Majalgaon City Police Station, District Beed, under Sections 188, 272, 273 and 328 read with Section 34 of the Indian Penal Code, stands quashed as regards the applicants.

(ROHIT W. JOSHI)
JUDGE

mahajansb/

(SMT. VIBHA KANKANWADI)
JUDGE