



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO. 1730 OF 2023

SHYAMRAO VISHNU WANI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Ms. Renuka Ghule Palve
(appointed Through Legal Aid)

APP for Respondent No. 1 : Ms. R.P. Gour

Advocate for Respondent No. 2 : Mr. Gangakhedkar Shailendra S.

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

DATE : 13th DECEMBER, 2024

ORDER :

1. Present application has been filed under Section 482 of Cr.P.C., initially for quashing the FIR vide Crime No. 11/2023 dated 09.01.2023 registered with Gangakhed Police Station, Taluka Gangakhed, District Parbhani and later on, by way of amendment for quashing the chargesheet bearing RCC No. 49/2023 pending before learned JMFC Court No. 1, Sonpeth, District Parbhani, for the offences punishable under Sections 381, 506 of the Indian Penal Code.

2. Heard learned Advocate Ms. Ghule, learned APP Ms. Gour and learned Advocate Mr. Gangakhedkar.

3. Learned Advocate for the applicant has taken us through the contents of the FIR and the chargesheet.

4. The FIR came to be registered on the basis of order passed by the learned JMFC directing the police to investigate the matter under Section 156 (3) of Cr.P.C. That order came to be passed on 09.01.2023 in Criminal M.A.

No. 01/2023. The said order is also challenged in the present application. However, it is to be noted from the contents of the application that all the requirements as are necessary for filing an application under Section 156 (3) of Cr.P.C. and the guidelines by Hon'ble Supreme Court in **Priyanka Shrivastav Versus State of U.P., (2015) 6 SCC 287**, have been adhered to. A written complaint was filed by the informant with Police Station Gangakhed on 21.12.2022. Acknowledgment was also given by the police. However, no action was taken. Thereafter, the informant had given a written complaint on 30.12.2022 to Deputy Superintendent of Police, Parbhani. Even he had made enquiry with the Police Station on 01.01.2023 as to whether any action has been taken or not. Then, the Criminal Miscellaneous Application No. 1 of 2023 was filed. The documents attached to the application consisted of affidavit by the complaint which is then mandatory in view of **Babu Venkatesh and Others Versus State of Karnataka and another, [(2022) 5 SCC 639]**. Learned Magistrate has also taken note of the decision in **Priyanka Shrivastav** (supra) and after considering all the legal requirements has passed the said order on 09.01.2023. Therefore, we do not find any illegality or error committed by the learned JMFC, Sonpeth, in giving directions to the police station to make investigation under Section 156 (3) of Cr.P.C.

5. On the same date, the FIR came to be registered i.e. on 09.01.2023. Learned Advocate for the applicant has objection for the same. However, we do not find any point when the order was passed and a copy of the order was given to the concerned police station with the necessary documents then registration of the FIR on the same day cannot be doubted at the time of registration. The offence was registered under Sections 381, 427, 506 of the Indian Penal Code. However, it appears that when the chargesheet was filed, Section 427 of the IPC has been dropped.

6. It is alleged in the order as well as the criminal application that

unknown person has committed the said offence. The articles belonging to the school have been stolen. Here we say that the FIR came to be registered against the present applicant, definitely the Investigating Officer as well as the Station Officer is required to explain the same but at the same time, we find that learned JMFC ought not have ordered that the crime should be registered against unknown person. When it was transpiring that the some cognizable offence has taken place then suffice it to say for him that the investigation be made under Section 156 (3) of Cr.P.C. Then at the time of registration of FIR, the police are required to take the FIR as stated by the informant. The informant in the FIR says that those articles were stolen by the present applicant and he had given threat to the informant i.e. the Headmaster of the School regarding defamation of the school.

7. Now, the investigation is complete and chargesheet is filed. Learned Advocate for the applicant has tried to make submissions on the merits and submitted that there are variations, discrepancies in the statement of witnesses. However, we are considering our scope under Section 482 of Cr.P.C., wherein we cannot enter into arena of appreciation of evidence on any count. We only require to consider as to whether the statements are supporting the FIR. The statements are of the teachers and the store keeper. *Prima facie*, we can observe that they have stated that they had seen the present applicant taking away certain articles in a bag.

8. The applicant appears to be now taking the plea of alibi also. According to him, he joined another school in Telangana i.e. Sloka International School. A document has been submitted across the bar today by learned Advocate for the applicant who is in fact appointed through legal aid. We are of the opinion that all those documents which the client gives before those are tendered before the Court should have been checked. This document is in the form of appointment letter but it does not bear the date

and it is stated to be signed by the Chairman. There are so many blank spaces left in the said letter, we cannot take this letter as a proof to support plea of alibi.

9. Since, *prima facie*, evidence has been collected, we do not find this to be a fit case where we should exercise powers under Section 482 of Cr.P.C. and, therefore, the application stands rejected.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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