



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1017 CRIMINAL APPLICATION NO. 2331 OF 2023

JAGDIP VASANTRAO DIPKE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for applicant : Mr. Prashant Prabhakar Giri

APP for the respondent – State : Mr. V.K. Kotecha

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 19 JANUARY 2024

ORAL ORDER :

Heard both the sides finally and perused the papers.

2. The applicant is seeking quashment of the crime no. 0220 of 2023 registered with Aundha Nagnath Police Station, District – Hingoli for the offences punishable under section 353, 332, 186 r/w. 34 of the Indian Penal Code by invoking the powers of this Court under section 482 of the Code of Criminal Procedure.

3. The allegations in the FIR are to the effect that the informant who is a Police Constable, was directed by his superior to fetch the main accused since he was involved in a crime under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. When the informant reached the mutton shop of the accused and disclosed his intention to take him away, the accused allegedly

made a phone call to the applicant and declared that the applicant would contact the Constable. Thereafter, under the pretext of changing the clothes, he went inside the house and then fled away. When the informant tried to catch hold him, he pushed the informant and that is why the crime has been registered.

4. The learned advocate for the applicant vehemently submits that accepting the allegations at its face value, no ingredients of any of the offence would be attracted. As far as the applicant is concerned, it would be a sheer abuse of the process of law, if based on such allegations, the applicant is made to face the prosecution.

5. The learned APP submits that apart from the fact that soon after the informant had reached the mutton shop of the main accused and disclosed his intention to take him away that the accused had made a phone call to the applicant, he would also submit that even after going inside the house under the pretext of changing the clothes, the main accused had again made a phone call to the applicant and it is a matter of sharing the common intention. He would submit that there is call data record to substantiate these facts.

6. We have carefully considered the rival submissions and perused the papers.

7. The main accused is being charged for the offences punishable under section 353, 332 and 186 of the Indian Penal Code.

In all probability, the applicant is being implicated by referring to section 34 of the Indian Penal Code even though the learned APP submits that it is a matter of abetment.

8. Considering the ingredients for constituting the aforementioned crimes, in our considered view, when the applicant was not present at the spot and the only piece of evidence with the Investigating Officer is about the main accused having made a phone call to the applicant before the incident and even thereafter, in our considered view, would not be sufficient to implicate the applicant by resorting to either section 34 or section 109 of the Indian Penal Code.

9. Considering the parameters laid down in the matter of ***State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors.; (1992) SCC (Cri) 426***, it would be a sheer abuse of process of law to allow the applicant to face the charge.

10. The application is allowed.

11. Crime no. 0220 of 2023 registered with Aundha Nagnath Police Station, District – Hingoli for the offences punishable under section 353, 332, 186 r/w. 34 of the Indian Penal Code is quashed and set aside.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/