



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3150 OF 2022

Sattar S/o. Saheblal Shaikh

Age : 55 Years, Occu. : Business,

R/o. Behind Kamdar Petrol Pump,

Osmanpura, Latur, Tq. & Dist Latur.

.... Applicant

VERSUS

The State of Maharashtra

Through MIDC Police Station,

Latur, Tq. & Dist. Latur.

.... Respondent

....

Advocate for Applicant : Mr. D.R. Kale Patil h/f Mr. Suhas P. Urgunde
APP for Respondent-State : Mr. S.A. Gaikwad

....

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

Dated : 17th March 2025

ORDER [PER SANJAY A. DESHMUKH, J.] :-

1. This is an application for quashing the First Information Report (for short “the F.I.R.”) and charge-sheet in R.C.C. No.1825 of 2022, pending before the learned Judicial Magistrate First Class, Latur, Dist. Latur, arising out of Crime bearing No.0036 of 2022, registered with M.I.D.C. Police Station, Latur, Dist. Latur on 21.01.2022, for the offences punishable under Sections 328, 380, 454, 457 read with Section 34 of the Indian Penal Code, 1860 (for short “the I.P.C.”).

2. Learned Advocate for the applicant pointed out the report, in which the informant Police Head Constable viz. Mr. Vijaykumar Limbraj Bawane, attached to M.I.D.C. Police Station, Latur averred that, on the basis of F.I.R. lodged by Food Safety Officer, Latur viz. Mr. Vitthal Satwaji Londhe on 10.10.2021, an offence was registered vide Crime bearing No.0635 of 2021, for the offences punishable under Sections 188, 272, 273, 328 read with Section 34 of I.P.C. and Section 59 of the Food Safety and Standards Act, 2006. The contraband articles seized in the said crime were worth Rs.84,29,480/-. The said articles were stored in Plot No.141 in M.I.D.C., Latur in a tin shed godown on 14.10.2021 and entry of the same was taken in the Muddemal register of the police station.

3. The informant further averred that the said articles were required to be kept there as there was no space available in the godown of the police station. In order to secure the seized articles for its safety, duty of the police persons was fixed at the said tin shed godown. Thereafter, the concerned Court had passed order on 05.01.2022, to destroy the seized contraband articles and therefore, the informant along with PSI and two police constables as well as two Panchas, went to the godown. When they opened the seal of the godown, they found that major part of the seized articles was missing.

4. The informant further averred that, on assessment of the same, it was revealed that the articles worth Rs.40,15,032/- were stolen by damaging the tin sheets of West-North side of the godown. Information was given to the senior official that some unknown persons had stolen the articles. Thereafter, Police Inspector of the Crime Branch visited the spot and made an inquiry with the adjoining persons of the godown. On inquiry, it revealed that the applicant and accused persons mentioned in the F.I.R., have committed theft of those contraband articles. Hence, the F.I.R. has been lodged.

5. Learned Advocate for the applicant submitted that the report is lodged with the ulterior motive and the applicant is falsely implicated in the crime. During the investigation of Crime No.0635 of 2021, the articles which were found in the custody of the accused persons were kept in a godown by the police. The applicant is the owner of that godown. It was a duty of the police officers to take care of those articles which were stored in the said godown. The applicant is no way concerned with the muddemal articles. On the contrary, the applicant is wrongly held liable for the negligence of the police staff. The applicant is a reputed government contractor and he has no criminal antecedents. It is lastly prayed to quash the report and charge-sheet.

6. Learned APP for the State strongly opposed the application and submitted that the applicant is undoubtedly booked for a serious crime. He had misused the custody of the seized articles which was stored in his godown and sold it. There is strong evidence against the applicant. The stolen articles i.e. Pan Masala, Jarda, Gutkha, Tobacco, etc. are worth Rs.40,15,032/-. Considering the anti social crime, it is lastly prayed to reject the application.

7. In case of **Kim Wansoo Vs. State of Uttar Pradesh & Ors., reported in 2025 SCC Online SC 17**, the Hon'ble Supreme Court, in paras 9 and 11 of the judgment, has held as under :

9. *In State of A.P. v. Golconda Linga Swamy, this Court again held that where an FIR did not disclose the commission of an offence without anything being added or subtracted from the recitals thereof, the said FIR could be quashed.*

11. *In the contextual situation, it is also relevant to refer to the decision of this Court in Mohammad Wajid and Another v. State of U.P. and Anr., whereunder this Court, in so far as it is relevant, held thus :-*

“34..... it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed

or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as materials collected in the course of investigation.....”

8. We have perused the report and charge-sheet. On perusal of all the documents, we found that the godown owned by the applicant was used to store the seized contraband articles i.e. Pan Masala, Gutkha, Jarda, etc. It was not a duty of the applicant to take care of the goods. It was a duty of the informant and investigating officer to deploy the security for the said contraband articles.

9. Section 328 of I.P.C. i.e. causing hurt by means of poison, etc. is invoked against this applicant. The essential ingredients of Section 328 of I.P.C. are that intentional hurt must be caused by means of poison or unwholesome drug, etc. The person who facilitate the commission of an offence or knowing it to be likely that he will

thereby cause hurt is liable and shall be punished with imprisonment of ten years and fine. The materials relied upon by the prosecution is not at all establishing the above ingredients.

10. Section 380 of I.P.C. i.e. commission of theft in a dwelling house is invoked against the applicant. The essential ingredients of it are that, theft must be committed in building, tent or vessel which is used as a human dwelling or used for custody of property. But, for that purpose, criminal dishonest intention to commit theft as defined in Section 378 of I.P.C. must be established. In this case, no such criminal intention is establishing. It is important to note that the applicant's godown was used for keeping those contraband articles seized by the police.

11. The essential ingredients of Section 454 and 457 of I.P.C. i.e. lurking house trespass or house breaking in order to commit an offence punishable with imprisonment are also not establishing from the entire charge-sheet.

12. From the report itself, it is crystal clear that the applicant is implicated in the crime only because he is the owner of the said godown. Considering all above reasons, the applicant cannot be held

liable for the offences punishable under Sections 328, 380, 454, 457 of I.P.C. The essential ingredients of these sections are not establishing against the applicant. In such a fact situation, if the applicant is compelled to face the trial, it would certainly be an abuse of process of Court. We are, therefore, inclined to allow the application by invoking our inherent powers under Section 482 of the Code of Criminal Procedure, 1973, in the interest of justice to prevent the abuse of process of Court. The application deserves to be allowed. Hence, the following order.

ORDER

- I) The Application stands allowed.
- II) The First Information Report and charge-sheet in R.C.C. No.1825 of 2022, pending before the learned Judicial Magistrate First Class, Latur, Dist. Latur, arising out of Crime bearing No.0036 of 2022, registered with M.I.D.C. Police Station, Latur, Dist. Latur on 21.01.2022, for the offences punishable under Sections 328, 380, 454, 457 read with 34 of the Indian Penal Code, 1860 stands quashed against the applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE