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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.749 OF 2025

1. Sayyad Ismail Israr Hussain,
Aged about 27,
Occupation : Business,
R/o Allapalli, Taluka Aheri,
Gadchiroli, Maharashtra.

.... APPLICANT

// VERSUS //

1. The State of Maharashtra,
Through its Police Station Officer,
Sub Police Station, Jimalgatta,
Taluka Aheri, District Gadchiroli.

2. Vijay Naktu Gurnule,
Aged about 42 Years,
Occupation Forest Guard
Jimalgatta Forest,
Taluka Aheri, District Gadchiroli.

..... [deleted as per Court's
order dated 08.09.2025.]

.... NON-APPLICANTS

Mr. A. R. Fule, Counsel for the applicant.
Ms. H. N. Prabhu, APP for non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
DATED : 25/09/2025

ORAL JUDGMENT : [Per : URMILA JOSHI-PHALKE, J.]

1. **Admit.**

2. Heard finally with the consent of the learned Counsel for the parties.

3. The present application is filed by the applicant for quashing of the First Information Report in connection with

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Crime No.4/2023 registered with Sub Police Station Jimalgatta, Taluka Aheri, District Gadchiroli for the offence punishable under Section 379 of the Indian Penal Code.

4. The crime is registered on the basis of report lodged by the informant non-applicant No.2 that while patrolling in the Lakhanguda forest area found some people digging out the forest area without permission for the construction of the check-dam with the help of poclain machine of TATA Hitachi Hydraulic Excavator. Therefore, the informant inquired that whether they have any permission for digging with the help of above mentioned machine and it was found that no permission was obtained by them, therefore, the forest offence No.08618/04 of 2023 registered under Section 33 (C) and 52 of the Indian Forest Act. After registering the offence, the poclain machine was seized from the spot. The seized machine kept near the house of Masa Lachha Talandi as there was no vehicle available to transport the said machine. On 29.04.2023, during the patrolling, when forest guard/non-applicant No.2 reached near the house of Masa Talandi, it was found that poclain machine was not on the spot, therefore, he gathered information and lodged report against the unknown person. During inquiry, it revealed that the owner of the said poclain machine himself has

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taken the same. On the basis of the said report, police have registered the crime.

5. Heard learned Counsel for the applicant, who invited our attention towards the recitals of the FIR as well as the communication made by the non-applicant No.2 which shows that out of a misunderstanding, the FIR can be lodged. A 'C' summary is also filed by the Investigating Officer, but the same was rejected by the Judicial Magistrate First Class, on the ground that it is necessary to have re-explanation to ascertain the truth.

6. Learned APP strongly opposed for the same and submitted that considering the order passed by the Judicial Magistrate First Class, the application deserves to be rejected.

7. On hearing both sides and on perusal of the recitals of the FIR as well as the investigating papers especially communication by the non-applicant No.2 to the concerned Police Station which shows that out of a misunderstanding, the First Information Report came to be lodged against the present applicant. A 'C' summary report is also on record, from which it reveals that no offence is made against the present applicant and therefore 'C' summary report was filed before the trial Court. Considering the same and in view of the observation of the Hon'ble Apex Court in the case of **State of Haryana and others**

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Vs Bhajan Lal and others reported in **1992 Supp. (1) SCC 335** wherein following principles / guidelines are laid down by the Hon'ble Apex Court for consideration of the application under Section 482 of Cr.P.C.

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just

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conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. In the light of the above observation of the Hon’ble Apex Court and considering that out of a misunderstanding, the First Information Report came to be lodged, it is a fit case to exercise the jurisdiction under Section 482 of the Code of Criminal Procedure (Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023). In view of that, we proceed to pass following order.

ORDER

(i) The application is **allowed**.

(ii) The First Information Report in connection with Crime No.4/2023 registered with Sub Police Station Jimalgatta, Taluka Aheri, District Gadchiroli for the

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offence punishable under Section 379 of the Indian Penal Code, is hereby quashed to the extent of the present applicant Sayyad Ismail Israr Hussain.

The application is disposed of in the above said terms.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J)

Sarkate.