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CRI. M. A. NO. 106/2020.
Manish v/s. The State of Maharashtra & ors.
CNR No.MHST16-000888-2020.
Exh.01.

MHST160008882020



ORDER BELOW EXH. 01 IN CRI. M. A. NO. 106/2020.

(In continuation of Order dated 22.12.2020 passed at Exh. 01, this order is passed)

1. This is an application for holding preliminary inquiry under Section 340 read with Section 195 (1)(b)(i) of The Code of Criminal Procedure, 1973 in order to launch the complaint against respondent no. 2 to 6 under Section 199, 200, 203, 205, 209 and 211 of Indian Penal Code.
2. For the purpose of making preliminary inquiry about allegations made in this application, this Court passed an order below Exh. 1 on 22.12.2020 and thereby called the original record and proceedings of B summary report, decided by this Court on 15.12.2020.
3. Before further discussion, it is necessary to make mention here that in the case of Union of India and others v/s. Haresh Milani 2017(4) Mh.L.J.441, Hon'ble Bombay High Court has held that, it is not necessary to hear the other side

while making preliminary inquiry under Section 340 of the Code of Criminal Procedure. Hence, in view of this authority, I have not issued notice to any of the respondents.

4. For the purpose of preliminary inquiry, I have read entire original record of the B summary report filed by the investigating officer in Crime No. 08/2020 under Section 376(d), 323, 504 and 506 read with Section 34 of Indian Penal Code registered at Wai police station. I have also read original record of protest petition which was filed by informant against B summary report. It would be apt to mention here that this Court by its common order dated 15.12.2020 has accepted B summary report and rejected the protest petition.

5. Informant had lodged First Information report bearing No. 08/2020 (in short FIR) on dated 18.01.2020 at Wai police station and stated that present applicant and one Bhisham Parwani committed rape on her person under promise to give her job as receptionist in Hotel at Panchgani. It is alleged in FIR that, on 24.07.2019, these accused had committed rape on her person at isolated place on Wai to Panchgani road in a vehicle bearing No MH-12-JU-9778. It is further alleged that, while committing rape by present applicant and his friend Bhisham Parwani, accused No. 3

Ravindra Waghmare had taken photo of alleged incident from his cell phone. On the basis of FIR lodged by informant, the Crime No. 08/2020 came to be registered at Wai police station under Section 376(d), 323, 504, 506 read with Section 34 of Indian Penal Code.

6. Assistant Police Inspector, A. D. Kamble has carried out the investigation of the said crime. During investigation, he prepared spot panchnama, recorded statement of witnesses, got recorded statement of informant under Section 164 of Criminal Procedure Code before the Judicial Magistrate First Class, Wai. During investigation, he collected Call Details Report (in Short CDRs) of the mobile phone of informant, present applicant and Bhasham Parwani. During investigation, it was revealed that the present applicant was in foreign country on the date of alleged incident. Therefore, he collected the report from Foreign Regional Registration Officer, Mumbai and Report of Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi. As per the said reports, investigating officer came to a conclusion, that on the date of alleged incident, present applicant was not in India. During investigation, it was revealed to I.O., that on the date of alleged incident, Bhasham Parwani was also not present at a place of alleged

incident. Rather, he was present at Pune. It further revealed to I.O., that the vehicle bearing No. MH-12-JU-9778 was sold out by the present applicant to one Sandip Thorave on 08.09.2018. Therefore, I.O. had collected the R.C. book of the said vehicle and also recorded statement of Chamandeepsingh Bombaywale under Section 161 of Code of Criminal Procedure and thereafter come to the conclusion that on the date of alleged incident, said vehicle was not in possession of present applicant as well as Bhisham Parwani. On the basis of material collected in investigation, I.O. come to a conclusion that FIR lodged by informant is false and maliciously false and therefore, he has filed B summary report in Court.

7. After filing of B summary report, say of informant came to be called. After service of notice, informant appeared in the proceeding and resisted B summary report by filing protest petition. In her protest petition, she reiterated her contentions made in FIR. She also raised some other grounds in protest petition such as police have not mentioned date of alleged incident in FIR which was stated by her at the time of lodging of FIR. She alleged that during investigation, I.O., has not conducted DNA test of present applicant and Bhisham Parwani. She alleged that I. O. has not made any investigation about mobile phone of accused No. 3 Ravindra Waghmare by

which he had taken photograph of alleged incident. She alleged that I.O. has not made any investigation about Whats App calls and messages of the mobile phone of present applicant. She further alleged that, in collusion with present applicant and Bhisham Parwani, the I.O. has submitted false B summary report by conducting one sided investigation.

8. This Court has accepted the B summary report on the following main grounds:-

a - On the basis of report of Intelligence Bureau, Ministry of Home Affairs, Govt. of India New Delhi and on the basis of report of the office of Foreign Regional Registration Officer, Mumbai, it reveals that on the date of alleged incident, present applicant was in abroad.

b - On the basis of CDR of the mobile phone of present applicant as well as Bhisham Parwani, it reveals that they were not present at the alleged spot of incident on the date and time of alleged incident.

c - On the basis of R.C. book of vehicle bearing No. MH-12-JU-9778 and in view of statement of witness Chamandeepsingh Bombaywale, it reveals

that on the date of alleged incident present applicant was not owner and possessor of the said vehicle and the said vehicle was present in front of Gurudwara, Nanded.

9. On the basis of above mentioned grounds and on perusal of entire record of B summary report, I came to the conclusion that during investigation of above said crime, I.O. has touched all material aspects of investigation of this Crime and therefore, I have accepted the B summary report.

10. I have accepted B summary report filed by I.O., in Crime No., 08/2020 registered at Wai police station. On that basis, in present inquiry, I come to the conclusion that informant of said crime has given false FIR at Wai police station as well false statement on oath under Section 164 of the Criminal Procedure Code in Court of Justice. Therefore, it appears to me that the informant being legally bound by an oath or by an express provision of law to state the truth, but she has given false FIR as well as false statement under Section 164 of Code of Criminal Procedure in the Court. The informant has given statement on oath under Section 164 of Code of Criminal Procedure in the Court of Judicial Magistrate First Class, Wai, inspite of knowledge that the FIR lodged by her is false. Informant has lodged false FIR with

intent to cause injury to the present applicant and to Bhisham Parwani, knowing that no just or lawful ground for further proceeding on the basis of that false FIR.

11. Therefore, I record my finding that Criminal Prosecution is required to be initiated against the respondent No. 2 of this application who is informant of Crime No. 08/2020 registered at Wai police station for the offences punishable under Section 193, 194, 199, 200 and 211 of the Indian Penal Code as per Section 195(1)(b)(i) of the Code of Criminal Procedure. She has prima facie committed aforesaid offences in relation to B summary proceeding before this Court. It is necessary to make mention here that there is no cogent and convincing material to proceed against respondents No. 3 to 6 for the offences mentioned above.

12. Considering all above grounds, a complaint is required to be filed against the present respondent No. 2 for the offences punishable under Section 193, 194, 199, 200 and 211 of the Indian Penal Code as per Section 195(1)(b)(i) of the Code of Criminal Procedure. As per Section 195(1)(b)(i) of Code of Criminal Procedure, it is required to authorise officer of this Court to file a written complaint on behalf of this Court against respondent No. 2 in this Court. Therefore, I proceed to pass following order :-

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:: ORDER ::

1. Application is partly allowed.
2. S. D. Dhekane, Assistant Superintendent of Civil and Criminal Court, Wai is authorised and directed to file a Written Complaint against the respondent No. 2
as per Section 195(1)(b)(i) of Code of Criminal Procedure for the offences punishable under Section 193, 194, 199, 200 and 211 of the Indian Penal Code.
3. The record of present application as well as original record of B summary report and protest petition shall be tagged with that complaint.
4. The proceeding is dropped against respondent No. 3 to 6.

Date :- 24.12.2020.
Place :- Wai.

(V. N. Girwalkar)
Judicial Magistrate First Class, Wai.

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CERTIFICATE

“ I certify that this Judgment / Order uploaded is a true and correct copy of original signed Judgment / Order.

Order directly dictated on : 24.12.2020.

Order checked and signed on : 24.12.2020.

Uploaded by : A. M. Agawane (Stenographer)

Uploaded on : 24.12.2020.

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