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

**CRIMINAL APPLICATION (APL) NO. 1346 OF 2019**

Jafar Ali Sher Ali Sayyad,  
Aged about 58 years, Occ. Service,  
R/o. Ashok Nagar, Ward No. 3,  
Kanhan, Kanhan-Pimpri,  
Tah. Parseoni, Dist. Nagpur.

**... APPLICANT**

**..VERSUS..**

1. State of Maharashtra through  
Police Station Officer,  
Police Station, Kanhan,  
Tah. Parseoni, Dist. Nagpur.

2. Manish Ranjeet Singh,  
Age Major, Occ.  
R/o. Tekadi Colony, Kanhan,  
Tah. Parseoni, Dist. Nagpur.

**.. NON-APPLICANTS**

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Shri Sandip D. Tatke, Advocate for applicant.  
Shri S. M. Ghodeswar, A.P.P. for non-applicants/State.  
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**CORAM :- V. M. DESHPANDE AND  
AMIT B. BORKAR, JJ.**

**DATED :- 06.09.2021**

**JUDGMENT (PER : AMIT B. BORKAR, J.) :-**

1. Heard.

2. Rule. Rule is made returnable forthwith. Heard finally by  
consent of the parties.

3. [WWW.LIVELAW.IN](http://WWW.LIVELAW.IN) By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the First Information Report (FIR) No. 624/2019, dated 09.10.2019 registered with the non-applicant no. 1- Police Station for the offence punishable under Sections 295A and 153A of the Indian Penal Code.

4. The FIR came to be registered against the applicant with accusations that the applicant is a Member of WhatsApp group consisting of the complainant and other colony members created for the purpose of Durga Pooja and other programmes of Durga Festival. The said Durga Festival was arranged by the local members of the area of the society. It is alleged that on night of 09.10.2019 at around 7.00 p.m., the applicant posted abusive and dis-respectful message about God Durga with intention to create disturbance in the locality and with intention to hurt public sentiments in the locality. Therefore, the non-applicant no. 2 lodged report with the investigation agency.

5. The applicant has therefore challenged registration of the FIR by filing the present application. This Court on 22.12.2019 issued notice to the non-applicants. The non-applicant no. 1 has filed reply stating that the Investigating Authority found during the investigation that the message posted by the applicant is seriously abusive message, which was sent to the members of the group by the applicant. It is also

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stated that after registration of the the FIR, initially the applicant was absconding and did not co-operate with the investigation but, after getting protection in the form of anticipatory bail, the applicant appeared before the Investigating Agency. It is further stated that during the investigation, it was found that the applicant deleted the offending message from his Cell Phone with intention to destroy evidence. It is stated that during the investigation, statements of various witnesses have been recorded, which show that the message posted by the applicant is highly objectionable.

6. We have carefully considered the allegations in the FIR and reply filed by the Investigating Agency. On careful scrutiny of the FIR, we are of the *prima facie* opinion that the message posted by the applicant, as stated in the FIR, is objectionable. Whether there was malicious intention on the part of the applicant is a matter to be considered by the Investigating Agency during the investigation. We are of the opinion that at this stage, the right of the Investigating Agency to investigate into the offence cannot be throttled. It is well settled that discretion conferred by Section 482 of the Code of Criminal Procedure is to be exercised judiciously and in consonance with well established principles set out by the Hon'ble Supreme Court.

7. [WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)  
The power to quash the FIR cannot be invoked to scuffle the legitimate prosecution. This being settled position in law and it could not have proper to express conclusive opinion as to the nature of the offence or nature of the investigation to be carried out by the Investigating Agency and it would be advisable to leave it for the Investigating Agency to consider as to whether there is sufficient material available against the applicant, in relation to the offence alleged against the applicant are fulfilled or not. Whether the contents of the message is malicious or intended to outrage religious sentiments of the community cannot be considered at this stage and it is in the interest of justice to be left to the Investigating Agency to be determined.

8. Taking into consideration the overall view of the matter, we are of the view that the applicant has not made out case for interference under Section 482 of the Code of Criminal Procedure.

9. The application is therefore **dismissed**. Rule discharged.

JUDGE

JUDGE