

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 3951 OF 2019

Sadashiv s/o Sarjerao Lokhande
age 45 years, occ. Agril
r/o Pokhari
Tq. & Dist. Aurangabad

Applicant

Versus

1. The State of Maharashtra
Through Police Station Officer
Phulambri Police Station
Tq. Phulambri, Dist. Aurangabad.
2. Tarabai s/o Narayan Mate
age 35 years, occ. Agril, & household
r/o Pokhari
Tq. & Dist. Aurangabad.

Respondents

Mr. N. S. Ingle, Advocate for the applicant.
Mr. P. G. Borade, APP for the State.

Ms. Vaishali Deshpande, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.**
DATE : 4th JANUARY, 2023.

JUDGMENT : (PER R. M. JOSHI, J.)

1. Heard finally, with consent of learned counsel for the respective parties.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing First Information Report bearing

Crime No. 249/2019 registered with Fulambri Police Station for the offences punishable under Sections 354, 323, 504 of the Indian Penal Code.

3. The facts in brief leading to this application are as under :-

The Respondent No. 2-informant lodged a report, on 4th November, 2019, at about 8.45 pm, stating that at about 12.00 noon, while she was working in the agricultural field, her cow went into the adjoining field belonging to the applicant. When she went to the said field to fetch the animal, the applicant, who was present at the spot, put his hand around her waist and pulled her towards him and made obscene utterances. She shouted for help and when her son came to her rescue, the applicant abused and assaulted him.

4. Learned advocate for applicant submits that admittedly there are disputes between the rival parties and that the applicant had lodged complaints prior to the report in question placing on record threats given by informant and her husband to implicate the applicant in case. He also drew attention of the Court to the discrepancies appearing in the First Information Report and the

statement of informant under Section 164 of the Code of Criminal Procedure. He contends that the First Information Report is false and malicious. Thus, according to him, it is not a fit case wherein applicant can be called upon to face trial.

5. Learned APP and learned counsel for respondent No. 2 resisted the application on the ground that the allegations in the First Information Report disclose commission of cognizable offence. It is submitted that merely because there are disputes between the parties, it cannot be presumed that no such incident as narrated in the First Information Report has occurred. It is also submitted that only because there are certain discrepancies in the medical certificate, the entire story of the informant cannot be disbelieved at this stage.

6. Before advertng to the submissions of the learned counsel for the respective parties, it would be relevant to consider the scope of Section 482 of the Code of Criminal Procedure. Section 482 of the Code of Criminal Procedure confers inherent powers on the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any

Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court in State of Haryana and others vs. Bhajan Lal and others reported in **AIR 1992 Supreme Court Cases 335** has laid down the guidelines that must be adhered to while exercising its inherent powers under Section 482 of the Code of Criminal Procedure to quash the First Information Report. The relevant paragraph reads thus :-

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 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 of 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.

7. Similarly in Jeffrey J. Diermeier vs. State of West Bengal reported in **(2010) 6 Supreme Court Cases 243**, the Apex Court while explaining the scope and ambit of the inherent powers of the High

Court under Section 482 of the Code of Criminal Procedure, has observed thus :-

“20. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

8. It is thus well settled that while exercising power under Section 482 of the Code of Criminal Procedure, the Court needs to consider whether the First Information Report prima facie establishes the offence as alleged or whether the uncontroverted allegations made in the First Information Report are so absurd and inherently improbable on the basis of which no prudent person can ever reach conclusion that there is a justified ground to proceed against accused or whether the proceedings against the applicant is manifestly attended with malafide or is maliciously instituted.

9. Reverting to the facts of the present case, there is no dispute that the relationship between the parties is strained over boundary dispute. The applicant has placed on record NC complaints dated 7th June, 2019, 29th July, 2019 and 30th September, 2019, against informant and her husband, wherein he has specifically stated that the respondent had threatened to falsely implicate him in a criminal case. The fact that immediately thereafter a complaint of molestation came to be lodged against the applicant is a clear indication that respondent No. 2 had not given mere empty threats and does not rule out possibility of malicious prosecution. In such circumstances, the contention of the applicant needs to be considered carefully, though not by roving and full fledged inquiry but it needs to be ascertained whether the proceedings are manifestly attended with malafides and instituted with ulterior motive against the accused. It is to be noted that the incident in question had occurred at 12.00 noon whereas the report was lodged at 8.46 pm, without offering any explanation for the delay. No doubt, the delay in lodging the report may not be relevant in each and every case, but it gains relevance when the parties are otherwise

at loggerheads due to the previous property dispute and issuance of threats of false implication.

10. In this regard it is relevant to note that there are material discrepancies and improvements in the First Information Report vis-a-vis the statement of the complainant recorded under Section 164 of the Code of Criminal Procedure. Apart from this, the supporting material on record i.e. medical certificate of the informant indicates that she was examined by the Medical Officer on 4th November, 2019 at 9 am which was undisputedly prior to the alleged incident. This shows that there is no nexus between the incident and the injury in the nature of 'blunt Trauma' mentioned in the medical certificate.

11. The fifteen year son of the complainant, who had allegedly reached the place of the incident on hearing the cries of his mother, states that the applicant had caught hair of the complainant, and put his hand around her waist. He states that the applicant assaulted him when he tried to intervene. Complainant, however, in her statement under Section 164 of the Code of Criminal Procedure has claimed that her son was slapped. The record indicates that the son of the informant was medically examined on 5th November, 2019

at 5.00 pm. It is opined that the injuries suffered by this witness were in the nature of 'blunt trauma' on chest, abdomen, upper back and the age of the injuries is stated to be less than 24 hours of the examination. This shows that there is material inconsistency in the statement and medical evidence on record which goes to the root of the case casting serious doubt about the occurrence of the incident as claimed by the informant at 12.00 noon on 4th November, 2019.

12. We are cognizant of the fact that the First Information Report cannot be quashed on a mere allegation that the accusations are false. Nevertheless the Court cannot be a silent and helpless spectator when it is satisfied that the criminal prosecution is malafide and an abuse of the process of the Court. In fact, it is the paramount duty of the Court to intervene when a person is persecuted and humiliated by malicious criminal proceedings instituted with an ulterior motive for wrecking vengeance on the accused, with a view to spite him due to private and personal grudge.

13. In the instant case, the allegations of outraging modesty are malicious and are in tune with previous threats. The accusations of assault and abuse even if considered to be true, would relate to

non-cognizable offence. In such circumstances, continuance of criminal proceedings would be sheer abuse of the process of Court.

14. Hence the application is allowed in terms of prayer clause (B). Consequently, the First Information Report bearing Crime No. 249/2019 registered with Phulambri Police Station for offences under Sections 354, 323, 504 of the Indian Penal Code stands quashed and set aside.

(R. M. JOSHI)
Judge

(SMT. ANUJA PRABHUDESSAI)
Judge

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