

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 5335 OF 2016

1. Sandeep S/o. Popat Thorat,
Age : 40 years, Occu. Private Service,
R/o. Wadgaonpan, Tq. Sangamner,
District : Ahmednagar.
 2. Jijabai W/o. Popat Thorat,
Age : 66 years, Occu. Household,
R/o. As above.
- ... Applicants

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32.
 2. Police Inspector,
Sangamner Taluka Police Station,
Tq. Sangamner, District Ahmednagar.
 3. Vandana W/o. Rajkumar Saroj,
Age : 36 years, Occu. Household,
R/o. Wadgaon-Pan, Tq. Sangamner,
Dist. Ahmednagar.
- ... Respondents

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Mr A. N. Nagargoje, Advocate for the applicants
Mrs P. V. Diggikar, APP for respondent/State
Mr P. P. Khandagale Patil, Advocate for respondent No. 3
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**CORAM : S. S. SHINDE &
A. M. DHAVAL, JJ.**

RESERVED ON : 22.08.2017.
PRONOUNCED ON : 04.09.2017.

JUDGMENT (Per A. M. Dhavale, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.
2. This as an application under Section 482 of the Code of Criminal Procedure for quashing of First Information Report bearing Crime No. I-43/2015 registered with Sangamner Taluka Police Station, Tq. Sangamner, Dist. Ahmednagar, on 09.03.2015, for the offences punishable under Sections 376(1), 354, 504 r/w 34 of the Indian Penal Code (in short "IPC") and Sections 3(a) & 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POSCO Act").
3. Heard Shri. A. N. Nagargoje, learned counsel for the applicant, Mrs P. V. Diggikar, learned APP for respondents No. 1 & 2 and Shri. P. P. Khandagale Patil, learned counsel for respondent No.3.
4. The applicant seeks quashing of FIR on the ground that the FIR is filed on account of enmity and previous litigations between the applicant & his family members with Shrinath Thorat, with whom the husband of informant is serving as a Waiter.

5. It is claimed that, the FIR is false, there is no medical evidence, the witnesses are not supporting the informant and the victim girl has given statement showing that they do not want to prosecute the said FIR.

6. The facts relevant may be stated as follows:

On 09.03.2005, Vandana, a labourer lodged FIR at Sangamner Police Station against the applicant. As per FIR, on 08.03.2015 (on the earlier day) at about 4:00 p.m., she and her 10 year old daughter had gone to forest for cutting fire wood. Her daughter was sitting at some distance beneath a tree while she was cutting fire wood. At about 4:30 p.m., she heard screaming of her daughter. Initially, she did not pay attention but when her daughter again raised shouts then she saw one person sleeping over her daughter and immediately rushed towards them. She saw, skirt of her daughter was lifted and her nicker was removed, her top was also lifted. She removed that person from the person of her daughter and identified him to be Sandeep, relative of the owner of the hotel. At that time, the applicant's mother Jijabai Thorat came from her back side and she pulled her by her hair and threatened her that, if she would continue to work in the hotel of Shrinath Kondaji Thorat, she would be treated in the same manner and she was warned not to work there. When she made inquiry with daughter S, she told her

that the applicant Sandeep had hugged her, fell her down, gagged her mouth, lifted her skirt and removed her nicker. Thereafter Sandeep took off his pant & underwear and was inserting his penis in her vagina and was pressing her chest and she was suffering pains in the urinary track. The informant noticed swelling on the private part of her daughter. She brought her home and narrated the incident to her husband, who came late on that day. Thereafter, they narrated the incident to the hotel owner Shri. Shrinath Kondaji Thorat. They were taken to one advocate and thereafter they came to Police Station and she lodged FIR.

7. The record shows that, the medical examination was conducted on 09.03.2015 at 2:15 p.m. There is absolutely no medical corroboration to the story of rape. The medical certificate discloses no injuries on private parts or on the entire body of the victim girl. Her hymen was intact.

8. The samples of blood, semen and clothes of the victim girl and the applicant were forwarded to the office of Chemical Analysis and the chemical analysis revealed no semen in the swab and smear of the victim girl. No blood was detected on skirt, top, knicker of the victim girl or on pant and shirt of the applicant. Blood was found only on the underwear of the applicant.

9. On 15.03.2016, the informant was forwarded to Judicial Magistrate First Class, for recording her statement u/s 164 of the Code of Criminal Procedure. She has stated that, she was not interested in prosecuting the FIR against the applicant and his mother and she had no complaint against them.

10. The statement of the victim girl was recorded late on 21.08.2017. The victim girl has given a statement that, her statement was recorded in the court but she was not remembering what was her earlier statement. She stated that, on 08.03.2015, the applicant had dashed her and she assumed that he deliberately gave a dash and hence, due to misunderstanding, her mother has given a report to that effect. No incident had taken place as disclosed in the FIR. On 11.03.2015, a statement of victim girl was recorded before learned Judicial Magistrate First Class. That time, she has stated that when her mother was cutting fire wood and she was sitting underneath the tree, one person came with an old lady. The old lady started beating her mother and Sandeep/the applicant herein outraged her modesty. He had raised her ghagra and removed her nicker. He had inserted his finger in her vagina. He had removed his pant & underwear and had inserted his private part in her vagina and she had suffered pains. Then her mother came to rescue her and then the said person ran away. Her mother had tried to chase him

but he had fled away.

11. The applicant has filed records of previous litigation between him and Shrinath Kondaji Thorat. Admittedly, the informant's husband was serving in a hotel run by Shrinath Kondaji Thorat. The applicant's mother Jijabai had lodged FIR on 04.12.2014 against Shrinath Kondaji Thorat, his brother Sahebrao Anandrao Thorat and two children of Sahebrao. It was alleged in the said FIR that, the said persons had forcibly entered into the field of Jijabai and removed pomegranate trees and a motor pump installed therein and caused loss to the tune of Rs. 20-25 lakhs.

12. The applicant's mother again lodged FIR on 07.12.2014 alleging therein that Shrinath and his 8-10 accomplice had forcibly entered in her house and assaulted her & her sons Vikas & Sandeep. There are also allegations in the said FIR that, Shrinath had outraged her modesty by pressing her breasts and had intimidated Jijabai and her sons. On the basis of the said information, the crime was registered bearing C.R. No. I-152/2014 with Sangamner Police Station.

13. The applicant's father had filed Regular Civil Suit No.150/2015 against Sahebrao and 9 others including Shrinath Kondaji Thorat for measurement, removal of encroachment and

perpetual injunction. The applicant's mother again lodged a report on 08.03.2015 against Shrinath Kondaji Thorat, the informant and some others about assault, abusing and intimidation to her.

14. The investigation shows that, two lady witnesses were present in the said field at the time of incident and both have not seen anything as described in the FIR.

15. The applicant had, on 09.03.2015, given a statement that, on the day of the incident at about 12:30 p.m., he and his mother had gone to Police Station and had given a complaint. They were there upto 4:00 pm and thereafter they had gone to his maternal aunt Sau. Kere where they were present upto 6:00 pm. The police recorded statement of Shakuntala Kere, who stated that at the relevant time, the accused and his mother were present in her house. Call Detail Records (CDR) collected discloses applicant's contact number being 7350405771. CDR collected is not of the relevant period. The incident took place on 08.03.2015 whereas; the CDR collected is of March-2016. The Police have also collected copy of one complaint given by Jijabai Thorat against five persons including the informant and Shrinath Kondaji Thorat on 08.03.2015 at 04:30 pm at Sangamner Police Station. The Police have submitted charge-sheet against Shrinath Thorat.

16. In short, the statement of the victim and the FIR of her mother are not supported by the witnesses who were present in the field. The medical examination did not disclose any injury on the person of the victim girl aged 11 years. No signs of rape or attempt to commit rape were found. The informant and her daughter have given supplementary statement denying their earlier statements/FIR.

17. No doubt, the alleged offences are quite serious, however, in the light of the facts referred herein above, we find that the FIR appears to be filed for false implication of the applicant. The subsequent statement of the informant and the victim girl discloses that the chances of conviction in this case are bleak. We rely upon the judgment of the Hon'ble Apex Court in the case of Tameezuddin @ Tammu Vs. State of (Nct), 2009 (15) SCC 566, wherein in para 9 it is observed thus:

“9. *It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable.*”

18. We find that, the continuation of this proceeding would be abuse of the process of the Court and, therefore, the FIR deserves to be quashed. Hence, we are inclined to allow the application and pass the following order.

ORDER

(I) The Criminal Application is allowed.

(II) First Information Report bearing Crime No. I-43/2015 registered against the applicants with Sangamner Taluka Police Station, Tq. Sangamner, Dist. Ahmednagar on 09.03.2015, for the offences punishable under Sections 376(1), 354, 504 r/w 34 of the IPC and Sections 3(a) & 4 of the POSCO Act, is hereby quashed.

. Rule made absolute in the above terms with no order as to costs.

[A. M. DHAVALE]
JUDGE

[S. S. SHINDE]
JUDGE

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