

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

CRIMINAL APPLICATION NO.5948 OF 2016

Baburao V. Nair,
Baburaj V.K. Nair (Correct name)
Age : 50 years, Occ. Service,
R/o. Channayakpuri, R.H.No.27-C,
Aurangabad.

APPLICANT

VERSUS

1. The State of Maharashtra

2. Aarati Manoharrao Medhewar,
Age: 38 Yrs. Occ: Social Service,
R/o. Mayur Park Marg.
Vasant Nagar, Aurangabad,
Tq & Dist. Aurangabad.

RESPONDENT

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Mr.V.D.Salunke, Advocate holding Mrs.
Chaitali R. Chaudhari Kutti, Advocate for
Applicant

Mr.S.J.Salgare, APP for Respondent/State
Mrs.Ranuka Ghule, Advocate for Respondent
no.2.

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 27.04.2017
Pronounced on : 04.05.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Application is filed with prayer to quash and set aside the First Information Report vide Crime No.118/2016 registered with Harsool Police Station, Aurangabad, for the offence punishable under section 376 of the Indian Penal Code.

4. The learned counsel appearing for the applicant submits that, the applicant is reputed and married person. He has housewife and two children, aged 13 and 18 years respectively. He is only bread earner in the family. It is submitted that, wife of the applicant filed complaint against respondent no.2 on 20th March, 2016, alleging that, respondent no.2 is threatening to file false complaint against applicant and his wife. The

said complaint was registered as N.C. Again on 23rd March, 2016, the wife of applicant was required to approach to the Deputy Commissioner of Police due to threat given by respondent no.2 that, she is going to file false complaint against the applicant as well as his wife. On 12th April, 2016, the applicant had given detailed application to the Commissioner of Police, stating that, respondent no.2 is demanding money by giving threats of filing false complaint. Accordingly, the Police Inspector was directed to make an enquiry about the said complaint.

It is submitted that, respondent no.2 filed Criminal Misc.Application No.1278/2016, alleging that, the applicant has committed offences punishable under Sections 376, 420 and 354 of the Indian Penal Code. It is stated in the said complaint that, the Police Station at Harsool refused

to register the FIR, and therefore, she has filed said complaint with prayer to issue directions to the Harsool Police Station to register the FIR, and for investigation of the allegations in the complaint filed by the respondent no.2. The court of Judicial Magistrate First Class rejected the prayer for sending the matter for investigation under Section 156 [3] of the Criminal Procedure Code and directed respondent no.2 to lead evidence under Section 200 of the Criminal Procedure Code. Thereafter, in said court proceedings respondent no.2 continuously remained absent. Learned counsel appearing for the applicant invites our attention to the fact that, though the complaint filed by respondent no.2 was listed on more than 11 occasion on various dates, respondent no.2 did not cause appearance before the Court. Learned counsel invites our attention to the copies of the documents

placed along with the application, and further invites our attention to the contents of the said documents and submits that, respondent no.2 threatened the applicant on different dates. Learned counsel invites our attention to the order passed by the learned Judicial Magistrate First Class, Court No.6, Aurangabad, below Exh.1 in Criminal Misc. Application No.1278/2016, filed by respondent no.2 and submits that, when the said Court declined to give direction to register the FIR so as to investigate the allegations in the complaint filed by respondent no.2, there was no question of approaching the Harsool Police Station by respondent no.2 and lodging the FIR. It is submitted that, the FIR should not have been registered by the concerned Police Station in view of the fact that in the Criminal Misc. Application No.1278/2016 i.e. complaint, filed by respondent no.2, the Judicial Magistrate First Class declined to

issue directions to register the FIR and cause the investigation.

5. It is submitted that, the applicant has not committed any offence as alleged in the complaint. The complainant has falsely implicated the present applicant in a serious crime. If the entire FIR is perused, it shows that, it is nothing but a concocted story made out by respondent no.2. An accused is a married person and having no any criminal history or antecedents. If the FIR is perused in its entirety, it can be seen that, no offence is made out against the applicant. Prior to filing of the present FIR, respondent no.2 has attempted to lodge false complaint against the applicant to the Police Station, and the Police Authority refused to entertain her complaint. Therefore, the complainant filed Criminal Misc. Application No.1278/2016, before the Judicial Magistrate First Class. The Court of Judicial Magistrate

First Class passed the order on 25th May, 2016, observing that the complainant has not made out *prima facie* case for issuing directions to the police to lodge the FIR under Section 156 [3] of the Criminal Procedure Code, hence, the prayer for sending the matter under Section 156 [3] of the Code of Criminal Procedure for investigation has been rejected. The complainant is directed to examine herself and lead the evidence of witnesses, if any, in support of her complaint under Section 200 of Criminal Procedure Code, but she has not given any evidence in above matter. However, by suppressing the order passed by the learned Judicial Magistrate First Class, respondent no.2, by joining hands with police, got registered FIR with frivolous and false allegations against the applicant with a view to extract money from him.

6. It is submitted that, the applicant

is well reputed person having sound economical position as such there is no question of demand of money from the complainant as alleged by her, when the complainant is having no any income source. There is gross delay in lodging the complaint, which itself shows that, no any offence is committed by the applicant; on the contrary it is nothing but an attempt to falsely implicate the applicant in alleged crime with an *ulterior motive*. The proceeding initiated by respondent no.2 is grave and serious abuse of process of law. The applicant is being harassed by the police unnecessarily, due to filing of FIR with false allegations. If the allegations in the FIR are considered in its entirety, an alleged offences are not disclosed, and therefore, the chances of conviction of applicant is bleak and no purpose will be served by continuation of further

investigation. However, if the investigation is allowed to be continued, the applicant will be required to suffer for the harassment, which is uncalled for, and also there will be irreparable loss of money and reputation of the applicant.

7. In support of his contention that, the complaint was already filed by respondent no.2 and the same complaint is not being attended / prosecuted by her, and when the concerned Court refused to issue directions for registration of the FIR and investigation, in that case, the FIR at the instance of respondent no.2 needs no further investigation, learned counsel placed reliance on the reported judgment of the Bombay High Court, Bench at Panaji [Goa], in the case of **Mr.T. Chandramouli Vs. Police Inspector, Vasco Police Station & Anr.**¹. Therefore, the learned counsel appearing for

¹ 2017 ALL MR [Cri.] 17

the applicant submits that, the application may be allowed.

8. On the other hand, the learned APP appearing for the respondent—State invites our attention to the allegations in the FIR, and also other material collected during the course of investigation, and the statement of the witnesses and submits that, the allegations in the FIR will have to be read as it is and the appreciation of the said allegations or the statement of the witnesses even in a summary manner is not permissible while exercising the jurisdiction under Section 482 of the Criminal Procedure Code. He submits that, there is specific allegations in the FIR that, the applicant committed sexual intercourse on more than one occasion with respondent no.2 against her will and without her consent, and therefore, it is only during trial the said allegations can be tested.

9. Learned counsel appearing for respondent no.2, relying upon the affidavit-in-reply on behalf of respondent no.2 submits that, respondent no.2 is a social worker and running NGO and also reputed person in the society. There were good relations between present respondent no.2 with applicant and his family members. Therefore, there were some financial transactions made between respondent no.2 and applicant. Respondent no. 2 had given Rs.20,000/- to the applicant on 22nd February, 2013, through IDBI Bank and also there are some cash transaction between respondent no.2 and applicant and also his wife. It is further submitted that, respondent no.2 is doing the business of repairing and selling the small plates / dishes. The applicant called respondent no.2 at Ahmedabad [Gujrat] on 18th December, 2013, giving impression that, he will help her in purchasing the raw material in a cheaper

rate. Therefore, she went to Ahmedabad on 18th December, 2013. On her arrival at Ahmedabad, the applicant received respondent no.2 and taken her to a flat in front of stadium. At past midnight of 18th December, 2013, during the morning hours in between 2.00 to 2.15 a.m., the applicant, in spite of refusal of respondent no.2 and without her consent, made sexual intercourse. Thereafter, the applicant promised respondent no.2 that, he will marry with her. It is submitted that, the complaint registered by the applicant and his wife are with a view to malign the image of respondent no.2. When respondent no.2 demanded the amount given to applicant by her, non cognizable offence with false allegations has been registered at Jawaharnagar Police Station against her. The applicant sexually abused respondent no.2 up to December 2015. Though respondent no.2 approached the Harsool Police Station, the concerned Police Station

Officer did not register the FIR, and therefore, she approached the Court of Judicial Magistrate First Class, Aurangabad and filed complaint. It is only after respondent no.2 approached the Court of Judicial Magistrate First Class by way of filing Criminal Misc. Application No. 1278/2016, seeking direction to the concerned Police Station to lodge the FIR, and cause further investigation; the Harsool Police Station registered the FIR. It is submitted that, there is no bar for registering the FIR, and the investigation of the said FIR on disclosure of the cognizable offence.

10. It is submitted that, even the applicant has continuously sent vulgar messages to respondent no.2 on her mobile number. The applicant has cheated respondent no.2. Therefore, the FIR is registered.

11. Learned counsel appearing for the respondent no.2 submits that, repeated sexual assault by the applicant was without consent of respondent no.2, and same caused physical as well as mental agony and harassment and also damage to the reputation of respondent no.2. The statement of respondent no.2 will have to be tested during the course of trial, when she would depose on oath. Therefore, entertaining the prayer for quashing of the FIR in such serious cases, while exercising jurisdiction under Section 482 of the Criminal Procedure code is not desirable. In support of the aforesaid submission, she placed reliance on an observations of para 11 in the case of **Bhaskar Lal Sharma and Anr. Vs. Monica and Ors.**² and submits that, the Supreme Court has taken a view that, the facts, as alleged, will have to be proved which only be done in the course of a regular

2 [2014] 3 SCC 383

trial. Appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. For same proposition, she also placed reliance in the case of ***Taramani Parakh Vs. State of Madhya Pradesh and others***³. Therefore, she submits that, the application may be rejected.

12. We have given careful consideration to the submissions of the learned counsel appearing for the applicant and learned APP appearing for respondent-State. With their able assistance, we have perused the averments and grounds taken in the application, annexures thereto, the reply filed by respondent no.2 and the investigation papers made available by the learned APP. It is the submission of the

3 [2015] 11 SCC 260

learned counsel appearing for the applicant that, already respondent no.2 has filed Criminal Misc. Application No.1278/2016, seeking direction to the concerned Police Station for registering the FIR and the investigation, has not been entertained by the Judicial Magistrate First Class, Court No.6, Aurangabad, and therefore, the request for registration of the FIR subsequent to filing of such Misc. Application / complaint should not have been entertained by the concerned Police Station. In our opinion, there is no bar of registering the FIR on disclosure of the cognizable offence on reading the allegations in the First Information Report. On the contrary on disclosure of the cognizable offence, the provisions of Section 154 [1] of the Code of Criminal Procedure mandate that, the FIR should be registered, and thereafter, the investigation should be caused. The Hon'ble

Supreme Court in the case of ***Lalita Kumari Vs. Government of Uttar Pradesh and others***⁴ held, the registration of FIR is mandatory under S. 154, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

13. So as to avoid any prejudice to the interest of accused, the provisions of Section 210 of the Criminal Procedure Code, 1973, takes care of such situation when there is complaint and the police investigation in respect of the same alleged offences. Section 210 of the Criminal Procedure Code reads thus:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.-

(1) When in a case instituted

4 [2014] 2 SCC 1

otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the

cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

In the present case, yet investigation is in progress, and therefore, it cannot be said that, the registration of the FIR and the investigation has caused prejudice to the applicant inasmuch as the stage of filing the charge-sheet or trying the case is yet to arrive. Article 20 (2) of the Constitution of India reads thus:

"No person shall be prosecuted and punished for the same offence more than once".

14. As already observed, yet the investigation is in progress and the stage of filing the charge-sheet / report as the case may be is yet to arrive. There is no further progress in the complaint pending before the Judicial Magistrate First Class. Therefore, an investigation can not cause any prejudice to the applicant. On the contrary, after investigation truth will surface on record. Upon careful perusal of the allegations in the FIR, so far as it relates to the offence punishable under Section 376 is concerned, it is stated that the prosecutrix was called at Ahmedabad by the applicant on 17th December, 2013. The applicant and respondent no.2 stayed at Lodge at Ahmedabad, thereafter, applicant committed forcible sexual intercourse with her for 5 days, with an assurance of marriage with her. It is alleged in the FIR that, the said sexual intercourse by the applicant with the prosecutrix was

without her consent. The said allegations can be tested during trial. It is only after statement of the prosecutrix is tested during trial, it will have to be determined, whether the offence falls in any of the categories mentioned in Section 375 of the Indian Penal Code. In the facts of the present case, when there are allegations of sexual intercourse without consent or against will of respondent no.2 i.e. prosecutrix, it is not appropriate to quash the FIR by exercising powers under Section 482 of the Criminal Procedure Code. The Hon'ble Supreme Court in catena of decisions has consistently held that, powers under Section 482 of the Criminal Procedure Code should be exercised with great care, sparingly and only in appropriate cases.

15. In the light of discussion herein above, the prayer for quashing the FIR stands rejected. The observations made herein before are *prima facie* in nature and confined to the

adjudication of the present application only. This order will not preclude the applicant from availing of an appropriate remedy of filing an application for discharge. Rule stands discharged.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

. After pronouncement of the judgment, learned counsel appearing for the applicant prays for continuation of ad-interim relief which was in force during the pendency of the Application for further four weeks. The prayer is vehemently opposed by the learned counsel appearing for the State and learned counsel appearing for respondent no.2.

. Since we have rejected the Application, there is no propriety in continuing the ad-interim relief any further, since it may cause interference in the

further investigation by the Investigating Officer. In that view of the matter, prayer stands rejected.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

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