

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

CRIMINAL WRIT PETITION No.463 OF 2018

Ayyub Babu Shaikh,
Age 33 yrs., Occ. Service,
R/o Osmanpura, Aurangabad,
Dist. Aurangabad.

... Petitioner.

... **Versus** ...

- 1 The State of Maharashtra.
- 2 'X'

... Respondents.

...

Mr. N.V. Gaware, Advocate for the petitioner

Mr. S.J. Salgare, APP for the respondent No.1/State

Mr. L.K. Pradhan and Mr. M.B. Ubale, Advocates respondent No.2

...

**CORAM : T.V. NALAWADE &
 SMT. VIBHA KANKANWADI, JJ.**

DATE : 3rd DECEMBER 2018

ORAL JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present petition has been filed by the original accused by
invoking the powers of this Court under Articles 226 and 227 of the
Constitution of India and inherent powers of this Court under Section 482

of the Code of Criminal Procedure, 1973 for quashing and setting aside the First Information Report bearing Crime No.84/2018 dated 12.03.2018 registered with Sangamner City Police Station, Dist. Ahmednagar for the offence punishable under Section 354(A), 345(d), 504, 506 of the Indian Penal Code and Section 8 of Prevention of Children from Sexual Offence Act, 2012.

2 Respondent No.2, the minor, aged 16 years had filed the First Information Report. She has contended that she resides with her parents, two sisters and a brother. One Sajid Rashid Baig resides with his grand parents in village Kuran. Eight months prior to 12.03.2018 Sajid was chasing her and her sister Muskan when they used to go to school. He was trying to take her mobile phone. He was doing such acts which would outrage her modesty. He was also giving threat to her and her family members. She had received threats from various phone numbers which she has supplied in the First Information Report itself. She has also stated that said Sajid used to give messages by pretending himself as one Police person Autade and Pawar stating that her family possess a stolen vehicle. Secondly, his maternal uncle is a Judge and he would bring police vehicle etc.. He had tried to talk with them pretending

himself to be Autade or Pawar. He has also affixed police siren horn to his motorcycle bearing No.MH 14 DE 455. In order to harass her he used to blow the siren whenever he used to pass from her house. She was alone around 5.00 p.m. on 04.03.2018, at that time Sajid entered her house and hugged her from behind. He also told, she should satisfy him and then he would save her parents from the clutches of police. She got frightened because of the behaviour of Sajid and therefore shouted. She gave jerk to his hand and ran out of the house. Her parents came and then Sajid ran away. She had told the said incident to her parents as well as her paternal uncles. When her uncles gave information about the incident to the grandfather of Sajid, Sajid's grand parents came to her house. After taking information about the incident they scolded Sajid. Some of the Sim cards were taken by grand parents and asked Sajid to burn them. Sajid burnt them in presence of all of them and prayed for pardon. He thereafter gave promise that he will not act in any such manner hereinafter. However, getting annoyed with the incident, Sajid, his maternal uncle i.e. present petitioner, grand parents and husband of paternal aunt came to the house of informant at about 7.00 p.m. on 07.03.2018. Informant, her parents and two sisters were in the house.

Grandfather of Sajid told informant's father that he should give informant in marriage to Sajid. Her father refused. Thereupon the present petitioner told Sajid that he should caught hold of the hand of informant and take her with him, he would see who would stop him, he would call the police vehicle. Paternal aunt gave threat that they would eliminate them, thereafter, abuses were given in filthy language. Sajid caught hold of the informant and dragged her, but she gave jerk and went towards her mother. Thereafter, present petitioner told that they should think, the marriage of Sajid would be performed with informant only and they would see who stops them, they would realize within 2-3 days. After giving such threat they all left. The incident was informed by informant's father to his brothers. Thereafter, there was discussion in the family. It was then decided that since they want to reside in the same village, they should not drag the matter. But thereafter her parents did not return till evening on 08.03.2018. It was informed by her uncle and aunt that offence has been registered against her parents and cousin brother in respect of theft and assault. There was no male member in the family and therefore by discussing amongst themselves the informant lodged the report.

3 The petitioner has contended that he had successfully passed the examination conducted by Maharashtra Public Service Commission for the post of Civil Judge Junior Division and Judicial Magistrate First Class in the year 2009, thereafter, he entered the service for the said post and has unblemished service record. There are no criminal antecedents against him. Presently he is posted as Civil Judge Junior Division and Judicial Magistrate First Class. He had opted for promotion to the post of Senior Civil Judge by accelerated promotion. At the relevant time he had been to Bombay to appear for his Viva-voce for the said promotion in the office of Registrar General, High Court of Judicature at Bombay. He returned to his place on posting at Aurangabad on 07.03.2018. He says that Sajid is his nephew who is studying in 12th standard and pursuing his studies at Dr. D.A. Ohra, Junior College, Sangamner. He was appearing for the HSC examination. However, on 04.03.2018 one Riyaj Shaikh, Fayaj Shaikh, Farukh Shaikh, Shabana Shaikh had assaulted him and had taken away his valuable articles and therefore, he had lodged First Information Report vide Crime No.81/2018 on 08.03.2018 for the offence punishable under Section 394, 341, 504, 506 r.w. 34 of IPC. However, threats were given by the accused persons to Sajid and

therefore Sajid had consumed poison called thimate and he was hospitalized at Tambe Hospital, Samgamner on 08.03.2018. He was discharged on 14.03.2018. The accused persons, therefore, given counter blast to the First Information Report lodged by the Sajid and lodged the First Information Report through the respondent No.2. He himself was not at all present at the time of alleged incident. He has been falsely implicated with some oblique motive. The First Information Report is belated and there is absolutely no explanation in the same. He, therefore, prayed for quashment of the First Information Report.

4 Affidavit in reply has been given by the father of the informant, which is nothing but reiteration of contents of the First Information Report and therefore, they are not reproduced again. However, in specific words he says that the petitioner had not returned to Aurangabad on 07.03.2018, but the record which he got from the District Court shows that he had proceeded on leave from 08.03.2018 to 17.03.2018. That means he was not discharging his duties during the said period.

5 Heard learned Advocate Mr. N.V. Gaware for the petitioner, learned APP Mr. S.J. Salgare for respondent No.1/State and learned

Advocate Mr. L.K. Pradhan for respondent No.2. Perused the documents.

All of them have argued in support of their respective contentions.

6 As the facts emerged, it is to be noted that the FIR bearing Crime No.84/2018 by respondent No.2 has been lodged on 12.03.2018 and according to the said FIR, the incident had taken place on 04.03.2018. It is tried to be contended that on 08.03.2018 the parents of the informant did not return and then informant and her sisters came to know about lodging of FIR against them. It has not been brought on record by respondent No.2 that informant's parents were arrested on 08.03.2018 or not, but if the said paragraph from FIR is taken into consideration, it tries to say that the FIR was tried to be lodged on 08.03.2018. In fact, the FIR is lodged on 12.03.2018. The contents and the language used in FIR does not appear to be stated by a girl of 16 years of age. Serious allegations have been made against a Judicial Officer with knowledge that he is a Judicial Officer. The first and foremost fact that could have been noted even by the petitioner that the girl in respect of whom the alleged incident stated to have been placed on record on 07.03.2018 was a minor. His own nephew was also minor i.e. Sajid. Therefore, there was no question of promoting marriage or

talks of settlement of marriage between two minors. Such action will not be done by any Judicial Officer when it is expected that he himself knows all the Laws. Therefore, involvement of the petitioner in the incident dated 07.03.2018 appears to be with oblique motive.

7 The petitioner has produced on record the programme of Viva-voce for promotion to the post of Senior Civil Judge by Accelerated Promotion in Selection Process – 2017. As per this programme, his interview was scheduled after 4.30 p.m. on 06.03.2018. He has also produced on record the certificate issued by Registrar (Legal & Research) of this Court stating that the petitioner attended the Viva-voce at Bombay on 06.03.2018. The office order issued by the District and Sessions Court, Aurangabad would show that petitioner was relieved on 04.03.2018 for attending the interview and the charge was handed over to other Judicial Officers till the arrival of the candidates. Further, it also appears from the communication by District and Sessions Court that present petitioner proceeded on leave from 08.03.2018 to 17.03.2018. It has been stated by the petitioner that Sajid had consumed poison on 08.03.2018. In order to support this contention the copy of Discharge Summary of Tambe Hospital has been made available. It says that Sajid

was admitted on 08.03.2018 and was discharged on 14.03.2018. The copy of the First Information Report filed by Sajid vide Crime No.81/2018 for the offence punishable under Section 394, 506 r.w. 34 of IPC has also been produced on record. The said FIR was lodged on 08.03.2018. He has stated about the incident dated 04.03.2018 at about 5.30 p.m.. It also appears that the said FIR is also belated. But the fact is taken into consideration only to assess the present FIR. Thus, it can be seen that prior to the present FIR, already on the basis of the report given by Sajid, offence was registered against the parents of the informant/respondent No.2. Therefore, possibility of present FIR being the counter blast to the said FIR is absolutely not ruled out.

8 Another fact that is also required to be considered that when it is stated in the FIR that Sajid had claimed pardon and assured that he will not misbehave and all of them had treated it to be the statement of entire dispute, where was the question of still getting the annoyance in the mind of grand parents of Sajid. What was the occasion to go to the house of informant again on 07.03.2018 is a question. Further, inspite of such action by Sajid, his grand parents, another relative and petitioner, the parents of informant did not consider the incident to be serious and

still wanted to settle the dispute is not understandable. The possibility is that when Sajid had consumed poison on 08.03.2018, it appears that, that has triggered fear for the parents of informant and therefore, the minor has been asked to lodge the report. The perusal of the FIR would definitely show that it has been lodged with oblique motive against petitioner, merely because the near relative of Sajid is the Judicial Officer. Under such circumstances, case is made out to exercise the inherent powers of this Court under Section 482 of Cr.P.C. as well as the powers under Articles 226 and 227 of the Constitution of India. It will not be out of place to mention that whatever observations have been made, they are restricted to this petition and based on prima facie facts. They should not be carried forward at the end of the trial. For the reasons following order is passed.

ORDER

- 1 The petition is allowed.
- 2 Relief is granted in terms of prayer clause (B) to the extent of present petitioner only.
- 3 Rule is made absolute in those terms.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE