

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2026 OF 2018

- 1) Tarkeshwari @ Balika w/o Mahadeo
Padule, Age 43 years, Occupation
Household, R/o Ramaai Chowk,
Ambajogai Tq. Ambajogai Dist. Beed.
- 2) Kesharbai w/o Sambhaji Lokhande,
Age 65 years, Occupation Nil,
R/o as above.
- 3) Sheetal w/o Sunil Lokhande,
Age 30 years, Occupation Household,
R/o as above.
- 4) Shivkanya w/o Ashok Lokhande,
Age 32 years, Occupation Household,
R/o as above.
- 5) Jaishri w/o Milind Kambale,
Age 40 years, Occupation Household,
R/o as above.

...Applicants

Versus

- 1) The State of Maharashtra,
Through Police Station,
Ambajogai City Tq. Ambajogai
Dist. Beed.
- 2) Supriya w/o Amol Deshmukh,
Age 27 years, Occupation Household,
R/o Tilak Nagar, Ambajogai
Tq. Ambajogai Dist. Beed.

...Respondents

Mr. I. D. Maniyar, Advocate for applicants.

Ms. V. S. Choudhary, Addl. Public Prosecutor, for respondent
No.1/ State.

Mr. A. G. Jadhav, Advocate (Appointed) for respondent No.2.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.
DATE : 09-10-2018.**

ORAL JUDGMENT : (Per Smt. VIBHA KANKANWADI, J.)

1. At the outset learned counsel for the applicants seeks permission to amend the prayer clause and to add the prayer of quashment of charge-sheet itself as the charge-sheet is filed.
2. Permission granted.
3. Amendment be carried out immediately.
4. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
5. Present application has been filed by the original accused persons by invoking inherent powers of this Court under Section 482 of Code of Criminal Procedure to quash and set aside the First Information Report No. 0293 of 2018 dated 22-06-2018, registered with Ambajogai City Police Station, Ambajogai Dist. Beed for the offences punishable under Section 354, 452, 143, 147, 149, 504, 506 of Indian Penal Code.
6. Respondent No.2 had filed the FIR contending that, she was considering one Akash Mahadeo Pandule R/o Ramabai Chowk, Ambajogai as her brother. Akash went to her house to stay along with her from Police Station, Ambajogai on 30-05-2018 onwards.

Akash told her on 11-06-2018 at about 05.00 p.m. that, he would visit his house and come back. However, he did not return and therefore she lodged a missing report in respect of Akash on 14-06-2018 with Police Station, Ambajogai. While she was also taking search of Akash, she went to his house and made enquiry with his mother and brother as to whether Akash has come. They told her that, Akash was with her and now she has caused him to disappear. Informant raised suspicion that the mother and brother of Akash had made him to disappear. Thereafter on 18-06-2018 at about 11.00 to 11.30 p.m. when she was at home, two brothers of Akash and his maternal uncles, grandfather and grandmother, three maternal aunts, cousin brothers of Akash as well as mother of Akash came in a rickshaw to her house and started asking her as to where Akash is. At that time accused Nikhil had pulled her hand, torn her clothes and accused Vishal had kicked her, maternal aunts of Akash had pulled her hair and assaulted her. Both the maternal uncles of Akash had caught hold of her breast and dragged her out of house. Accused Nikhil showed sword to her and gave threat to kill her. Accused Shahu torn her clothes and slapped her. Nikhil and Vishal abused her in filthy language. Thereby all of them had assaulted her and the male accused persons had outraged her modesty. All the accused persons had formed unlawful assembly.

7. The applicants have contended that, contents of the FIR are

false and concocted. Respondent No.2 is not at all related to the family of applicants or related to Akash. There was no reason for her to give a missing report regarding Akash. She is a married lady. There was absolutely no such incident occurred so as to blame them. In fact the informant had lodged offence punishable under Section 376, 417 of Indian Penal Code and also under Atrocities Act against her own husband and his family members. A complaint was lodged against her for the offence punishable under Section 394, 170 read with 34 of Indian Penal Code bearing Crime No. 208 of 2015. It would be injustice for them to ask them to face the trial, and therefore, they have prayed for quashment of the FIR.

8. Heard Mr. I. D. Maniyar, Advocate for applicants, Ms. V. S. Choudhary, Addl. Public Prosecutor, for respondent No.1/ State, and Mr. A. G. Jadhav, Advocate (Appointed) for respondent No.2. Perused the police papers.

9. In order to know as to what was the relationship and the reason as to why it is stated in the FIR that, said Akash was staying with the informant. The papers were called and it appears that, in the past a complaint was filed by the informant against said Akash stating that, he had committed rape on her. However, on 30-05-2018 she gave a statement before Police that, she had come to police station to lodge a report against Akash under Section 376 of

Indian Penal Code but Akash is ready to stay permanently with her and he has made that promise in presence of his family members, and therefore, she has no intention to give any complaint against Akash. The said background was necessary. Thus it is to be noted that, under which circumstance Akash was stated to be residing with the informant. We have also perused the statement of Akash since he is not traced out. He has stated that, the respondent No.2 used to blackmail him and used to keep him under stress. He was fed up with her, and therefore, decided to go away from her. It was also apprehension in his mind that, she would lodge a false case against him and / or against his family members, and therefore, he did not directly go to his house but was roaming at some places. Thus the behaviour of the respondent No.2 has been told by him.

10. Serious allegations have been made in the FIR, however the statements recorded by police do not support her contention. The statement is in the neighbour of friend of the informant but her statement is hearsay, so also the brother of the informant. Even in the FIR she has not stated that, these two witnesses were present when the incident took place. Thus, it can be seen that the FIR has been lodged with ill intention or it is not bonafied, and therefore it comes within the parameters laid down in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, reported in AIR 1992 Supreme Court 604. It would be futile exercise to ask the applicants

to face trial with such kind of evidence. Hence, following order.

ORDER

- 1) Application is allowed.
- 2) Relief is granted in terms of prayer Clause 'B' and 'B-1'.
- 3) Rule made absolute in those terms.
- 4) Fees of the learned appointed counsel is quantified @ of Rs.3,000/- (three thousand) which is to be paid through High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.