

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 248 OF 2019

1. Sanjay s/o. Vasant Kalange,
Age 42 years, Occ. Private Job
R/o. Chatrapati Nagar, Plot No.34,
Gut No. 139, Satara Parisar,
Aurangabad,
Taluka and Dist. Aurangabad
At present R/o. At Karanjgaon,
Taluka Vaijapur, Dist. Aurangabad.
2. Vijay s/o. Vasant Kalange
Age 38 years, Occ. Service,
R/o. At Karanjgaon,
Taluka Vaijapur, Dist. Aurangabad.
3. Kavita w/o. Vijay Kalange
Age 33 years, Occ. Household
R/o. At Karanjgaon,
Taluka Vaijapur, Dist. Aurangabad.

... Applicants

Versus

1. The State of Maharashtra
Through Investigation Officer,
Satara Police Station, Aurangabad.
Tq. Chakur, Dist. Latur.
2. Shobha w/o. Sanjay Kalange,
Age 35 years, Occ. Household
R/o. Chatrapatinagar Plot No.34,
Gut. No. 139, Satara Parisar, Aurangabad.
Tal. and Dist. Aurangabad.

... Respondents

Advocate for the Applicants : Shri. Avinash D. Aghav
APP for the Respondent No. 1 : Mrs. V.N. Patil Jadhav
Advocate for the Respondent No. 2 : Shri A.S. Gandhi.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 27th JUNE, 2019.**

ORAL JUDGMENT : [PER K.K. SONAWANE,J]

1. Heard. Rule. Rule is made returnable forthwith. Matter is taken up for finality with the consent of learned counsel for parties.
2. The applicants preferred present application under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") seeking relief to quash and set aside the First Information Report ("FIR") bearing Crime No.481/2018 registered at Satara Police Station, Aurangabad, for the offence punishable under Sections 354, 323, 504, 506 r/w. Section 34 of the Indian Penal Code ("IPC").
3. It has been alleged that the First Informant Shobha Kalange, on 19th November, 2018, visited to the Satara Police Station, Aurangabad and filed a complaint that she is residing with her husband Sanjay and 2 children in Chatrapati Nagar locality of Aurangabad. Her husband was not doing any work for eking livelihood. She used to conduct coaching classes, for earning. There were frequent quarrels in between the spouses. Her husband used to suspect about her character. On the day of incident, i.e. 19.11.2018, in the morning, she had gone out of the house in her four-wheeler vehicle for visiting to her driving school. There was a bed-sheet on the back side of the vehicle. The husband cast allegations of infidelity and suspect about her character. He

picked up quarrel with first informant – wife. In the fight, her husband called his brother – Applicant Vijay, by making a phone call at Aurangabad. In the noon hours, at about 4.00 p.m., the applicant Vijay and his wife Kavita, arrived at the house of complainant. Her husband narrated the incident to the brother and made allegations against the wife-first informant – Shobha. Thereafter, they all picked up quarrel with the first informant and started assaulting her. In the fight, the applicant No.2 Sanjay-brother in law, with ill-intention caught hold the blouse of first informant-Shobha from the front side and attempted to touch her breast. Her husband and brother in law gave threats of life to the first informant and her children. Eventually, she approached to the police and filed the report.

4. Pursuant to FIR, Police of Satara Police Station, Aurangabad. registered the crime and set the penal law in motion. Pending the investigation, applicants moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the penal proceeding initiated against them.

5. Learned counsel for applicants vehemently submits that the allegations made in the FIR are vague and general in nature. They are totally false and baseless. The first informant has filed present penal proceeding with ulterior motive to harass the applicants. The Learned counsel for applicants relied upon the legal guidelines delineated by the Apex Court in the case of *State of Haryana Vs. Chi. Bhajanlal and others reported in 1992(1) SCC 335*.

The learned counsel further submits that the present applicants Nos. 2 and 3 are brother in law and his wife, respectively. They are the distant relatives. They are residing separately with husband at their matrimonial home. They have no reason to cause interference in marital life of complainant. The allegation of molestation and assault all are fabricated and imaginary one.

6. The learned APP as well as learned counsel for respondent No. 2-first informant vociferously opposed the contentions put-forth on behalf of applicants and submit that the allegations of assault and outraging modesty nurtured on behalf of complainant in the FIR discloses commission of crime punishable under Sections 354,323,504, 506 of the IPC. The complainant categorically described the episode of assault and outraging modesty at the hands of applicants.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of applicants Nos. 1 and 2 for exercise of inherent powers under Section 482 of Cr.PC. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants Nos. 1 and 2. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 and 2.

8. In so far as the allegation nurtured against applicant No. 3 Kavita is

concerned, we find that the allegations cast against her are all vague and general in nature. She is residing separately at Vaijapur. The only allegation is that the applicant No.3 was present at the time of assault. She hurled abuses to the first informant and gave threat of life. There were no detail particulars given in the FIR about the participation of the applicants No. 3 in incident of assault or abusing. There is no impediment to conclude that the present FIR against applicant No.3 would be an abuse of process of law. The circumstances on record reflect that the accusation made against applicant – Kavita were with ulterior motive to harass the applicants.

9. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia** reported in **AIR 1988 SC 709** categorically elucidated in paragraph No. 7 as under:

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the

special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

10. The Honourable Apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others** reported in **MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC)** held that “*where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR*”. Moreover, if the allegations in the FIR against the applicants are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicants, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

11. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicant No.3. It would be an futile efforts and would cause injustice if the applicant No.3 Kavita is compelled to face the agony of trial. It would also dissipate the precious time of Court of law as the possibility of her ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicant No.3 may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicant No.3 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

1. The Criminal Application is allowed partly.
2. Application in respect of applicants No. 1 and 2 stands dismissed as withdrawn.
3. Application in respect of applicant No. 3 is hereby allowed.
4. The penal proceeding initiated against applicant No.3 bearing FIR No. 481 of 2018, for the offences punishable under Sections 354, 323,504, 506 read with Section 34 of IPC registered with Police Station, Satara, Aurangabad as well as the charge sheet No. 206 of 2018 filed pursuant to said FIR, is quashed and set aside, to the extent of applicant No.3.
5. Rule is made absolute partly in terms of prayer clauses “B” and “B-1”.
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/