

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

CRIMINAL WRIT PETITION NO.713 OF 2018

Nikhil s/o Dharmaraj Kakade
Age 26 years, Occu. Nil,
R/o Plot No.41,
New Shanti Niketan Colony,
Jawaharnagar Colony, Aurangabad
Tq. Aurangabad, Dist. Aurangabad

...PETITIONER

VERSUS

1. The State of Maharashtra
through Police Inspector,
Satara Police Station,
Tq. Aurangabad, Dist. Aurangabad.

(Copy to be served on Public
Prosecutor, High Court of Bombay,
Bench at Aurangabad)

2. Pooja w/o Chetan Rajole
Age 23 years, Occu. Housewife,
R/o Narayan Nagar,
Future Home Apartment,
Satara Area, Satara,
Tq. Aurangabad, Dist. Aurangabad.

...RESPONDENTS

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Shri V.S. Panpatte, Advocate for petitioner
Shri R.V. Dasalkar, A.P.P. for respondent No.1
Shri N.N. Desale, Advocate for respondent No.2
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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 20th February, 2019

Date of pronouncing judgment : 7th March, 2019

JUDGMENT (PER R.G. AVACHAT, J.)

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks quashment of the F.I.R. bearing Crime No.0133/2018, registered with Satara Police Station, Taluka and District Aurangabad and the consequential proceedings in R.C.C. No.1134/2018, pending before the Court of Chief Judicial Magistrate, Aurangabad.

3. Shri V.S. Panpatte, learned counsel for the petitioner would submit that, a false F.I.R. is filed with a view to settle the civil dispute. There were money transactions between husband of first informant and accused No.1. The petitioner is a bonafide student of the Second Year B.C.S. The petitioner being the close friend of Akshay (accused No.1), has been roped in. Taking us through the papers of investigation, the learned counsel would submit that the statements of

witnesses are based on hear-say. The husband of the first informant agreed to sell his house to Akshay. In view of learned counsel, if the petitioner is subjected to criminal prosecution, his educational career may be ruined. The learned counsel ultimately urged for quashment of the proceedings.

4. Mr. Dasalkar, learned A.P.P. and Mr. Desale, leaned counsel for respondent No.2 would, on the other hand, submit that, the averments in the F.I.R. prima facie make out an offence against the petitioner. The petitioner did not deny to have been named in the F.I.R. and in the supplementary statement by the first informant. Both the learned counsel ultimately urged for dismissal of the petition.

5. The F.I.R. has been lodged on 3.4.2018 relating to the incident that took place at 3.30 p.m. on the previous day. It has been alleged in the F.I.R. that, the first informant was alone at her residence. At the relevant time, Akshay (accused No.1), Nikhil (present applicant) and one unknown person came to her residence. They enquired with her about the whereabouts of her husband. Akshay told her that her husband owed him money. He made demand of money. He also told her that if she was unable to pay him money, she

should give him sexual favour. The applicant is alleged to have told her that they would be back to her home by 5.00 p.m. on the same day. It was a veiled threat.

6. The first informant, in her supplementary statement, gave the applicant's full name. It is true that, the allegations in the F.I.R. indicate that the first informant had facial acquaintance with the petitioner. She did not know his full name. However, the petitioner did not dispute his identity. It is true that, the documents on record undoubtedly indicate that there were some monetary transactions between Akshay and the husband of the first informant. Those are in the nature of money lending. Be that as it may, the allegations in the F.I.R. undoubtedly indicate the petitioner to have had accompanied the accused No.1 and one unknown person to the house of the first informant. The petitioner gave veiled threats to the first informant. As such, prima facie offence under Sections 452, 504, 506 of the Indian Penal Code are made out against the petitioner. Since nobody is said to have witnessed the incident, the statements of the neighbours are bound to be not so consistent with the allegations in the F.I.R. It may be true that, the petitioner is taking education. The same, however, cannot a ground for quashment of the proceedings.

7. Learned counsel for the applicant has relied on the judgment of the Hon'ble Apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 SC 604** and also in the case of **M/s Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others**, reported in **AIR 1992 SC 128**. There can be no two views over what has been observed and held in the aforesaid two authorities. We have, however, to go by the factual matrix of the case on hand.

Since the allegations in the F.I.R. prima facie indicate involvement of the petitioner in the offence in question, we are not inclined to grant the relief of quashment of the F.I.R. and consequential proceedings in R.C.C. No.1134/2018.

8. In the result, the petition fails and is dismissed. Rule discharged. Interim relief is vacated.

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/