

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

CRIMINAL APPLICATION NO. 3982 OF 2019

Ram Uttamrao Shinde

Age: 43 years, Occu: Business,

R/o Matoshri Nagar, Pimpargaon Road,

Beed, Tq. & District Beed

... Applicant

Versus

1. The State of Maharashtra
Through Commissioner of Police,
Aurangabad
[Copy to be served on Government
Pleader High Court of Bombay
Bench at Aurangabad]

2. Police Inspector,
Satara Police Station, Aurangabad
Tq. & District Aurangabad

3. Vidya w/o Mahadeo Dahe
Age 40 years, Occu: Household,
R/o Gurukrupa Nivas, Plot No.2-B,
Gut No.144, Satkarm Nagar,
Near Ayyappa Mandir, Satara,
Aurangabad,
Tq. & District Aurangabad

... Respondents

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Mr. Vivek V. Kabade, Advocate for the applicant

Mr. R. B. Bagul, APP for State

Mr. Rohit P. Patwardhan, Advocate for respondent No.3

Ms Nita D. Joshi, Advocate for respondent No.3 (appointed)

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CORAM : T. V. NALAWADE AND

R. G. AVACHAT, JJ.

DATED : 22nd SEPTEMBER, 2020

JUDGMENT (*Per R. G. Avachat, J.*) :-

. This is an application under Section 482 of the Code of Criminal Procedure. The applicant seeks quashing of First Information Report (FIR) bearing C.R.No.365/2019 registered with Satara Police Station, Aurangabad, for the offences punishable under Sections 354, 452, 504 and 506 of the Indian Penal Code and consequential charge-sheet filed i.e. R.C.C. No.798/2020 pending before the Court of Chief Judicial Magistrate, Aurangabad.

2. Rule. Rule made returnable forthwith. By consent, heard finally at the stage of admission itself.

Shri Kabade, learned Advocate for the applicant would submit that a false and concocted FIR has been lodged only with a view to avoid repayment of money due to him from the husband of the informant. The learned Advocate took us through certain documents to indicate the applicant to have advanced a sum of Rs.5,00,000/- (Rupees Five Lakh Only) to the husband of the informant. Our attention was also drawn to Call Data Record (CDR) of the cell phone of the husband of the informant to suggest that during relevant days he was very much available at his residence. The same falsifies the averments in the FIR that the husband of the informant had been away at Bhusawal. According to the learned

Advocate, the FIR has been lodged six days after the alleged incidence. The explanation offered as regards delay in lodging of the FIR is after thought. The learned Advocate ultimately urged for grant of the application.

3. Learned APP and the learned Advocate appointed to represent respondent No.3, would submit that the allegations in the FIR do make out the offence. Veracity of the allegations in the FIR could not be tested by this Court in this proceedings. Both of them, therefore, ultimately urged for rejection of the application.

4. Allegations in the FIR are to be tested/appreciated in the light of facts and circumstances of the case. The record indicates, the petitioner to have advanced a sum of Rs.5,00,000/- (Rupees Five Lakh) to the husband of the informant as hand loan in April-2017. The informant's husband has executed a receipt acknowledging to have received a sum of Rs.5,00,000/- (Rupees Five Lakh). He, even issued a cheque as security for repayment of loan amount. According to the applicant, he has not been repaid the amount. The case of the applicant of having not been repaid the entire amount itself gets reinforced by virtue of the allegations in the FIR. It has been alleged that on 23.10.2019, the applicant went to the house of

the informant and inquired about whereabouts of her husband. The informant, in turn, asked the applicant that since it was monetary transaction between him and her husband, it is better for the applicant to talk with her husband.

The question is whether the allegations in the FIR that the applicant caught-hold of a hand of the informant with a view to outrage her modesty and abused her, is *prima-facie* true. The allegations in the FIR indicate that the informant was alone home. The applicant came her home by 7.00 p.m. on 23.10.2019. He inquired about whereabouts of her husband. As he (husband) was not home, he abused the informant and caught-hold of her hand with a view to outrage her modesty. It is also alleged in the FIR that the applicant had come along with three unknown persons in a jeep.

5. True, if the allegations in the FIR are taken as it is, it may *prima-facie* constitute offence/s alleged to have been committed by the applicant. In the case of State of Haryana and others v. Ch. Bhajan Lal and others reported in AIR 1992 SC 604 it has been observed that where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and

with a view to spite him due to private and personal grudge, the proceedings may be quashed in exercise of power under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure.

6. The alleged offence took place on 23.10.2019 by 7.00 p.m. The informant was stated to be alone home. Her husband was stated to be away at Bhusawal. The CDR of the cell phone of the informant's husband do indicate that on the given day and 3-4 days the next thereto, he was at Aurangabad itself. It is averred in the FIR that the informant had called her husband on his cell phone while he was at Bhusawal. The CDR of her husband's cell phone falsifies informant's claim in the FIR. Moreover, there is delay of about six days in lodging of the FIR. The informant has a grown up son, aged 18 years. She could have approached the concerned Police Station, immediately. The contention of the applicant that the false and concocted FIR has been lodged only with a view to avoid repayment of money by the husband of the informant appears to be reasonable. There is nothing on record to indicate the informant's husband to have repaid loan amount in its entirety. The CDR record indicates that on the given day and even on subsequent days, he was at

Aurangabad. The averments in the FIR that he was away in Bhusawal and then the informant, her family members went to Beed for Diwali festival, appear to be untrue. We have, therefore, every reason to observe that the FIR appears to have been lodged with an ulterior motive as has been averred/alleged by the applicant. If the applicant is made to stand trial based on such FIR, it would be nothing but an abuse of process of Court. The FIR and consequential proceedings in R.C.C.No.798/2020, are therefore, required to be quashed and set aside. We are, therefore, inclined to allow the application in terms of following order :

ORDER

- (i) The application is allowed in terms of prayer clauses (B) and (C).
- (ii) The fees of the appointed Advocate Ms Nita D. Joshi, is quantified at Rs.3000/- (Rupees Three Thousand Only), as she remained present on all the occasions. As earlier the counsel was not engaged by the complainant, the fees be paid through High Court Legal Aid Services Sub-Committee, Aurangabad.
- (iii) Rule is made absolute in above terms.

[R. G. AVACHAT, J.]

SMS

[T. V. NALAWADE, J.]