

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR

CRIMINAL APPLICATION (APL) NO. 205 OF 2014

Sanjay S/o. Shivram Ingole,
Aged – 47 years, Occ. Advocate,
R/o. Near Bus Stand, Akola Road,
Washim.

... **APPLICANT**

...V E R S U S...

1] The State of Maharashtra,
Through the Police Station Officer,
Police Station Washim (Gramin),
District – Washim.

2] Ku. Vandana Haribhau Kamble,
Age - 20 yrs, Occu. Student,
R/o. Rithad, Tq. Risod,
Dist. Washim.

... **NON-APPLICANTS**

Shri S. V. Sirpurkar, Advocate for Applicant.

Shri M. K. Pathan, A.P.P. for Non-applicant No.1/State.

Shri. S. D. Malke, Advocate for Non-applicant No.2.

**CORAM:- Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATED :- 02.11.2020

ORAL JUDGMENT (PER: AMIT B. BORKAR, J.) :-

1. This is an application under Section 482 of the Code of Criminal Procedure challenging the First Information Report bearing

No. 59/2012 registered with the non-applicant No.1 for the offences punishable under Sections 342, 376(G), 506 read with Section 34 of the Indian Penal Code.

2. The case of the applicant is that on 23.05.2012, the non-applicant No.2 filed First Information Report against six persons wherein the name of applicant was not included. The persons against whom the FIR was lodged were arrested on 07.05.2012.

3. It is the case of the prosecution that the statement of the complainant i.e. non-applicant No.2 was recorded on 08.05.2012 under the pressure of co-accused persons. It is alleged that on 23.08.2012, additional statement of the non-applicant No.2 was recorded by the non-applicant No.1, wherein for the first time, the name of present applicant is incorporated. It is alleged that the present applicant threatened non-applicant No.2 for supporting the case of the co-accused whose names were mentioned initially in the FIR.

4. The applicant has, therefore, filed present application challenging FIR No.59/2012 mainly on the ground that the applicant is falsely implicated only because he was appearing as an Advocate for the co-accused originally named in the FIR.

5. Shri. S. V. Sirpurkar, learned Advocate for the applicant submitted that it is only because the applicant represented the co-accused in his capacity as Advocate, the name of present applicant has been included to unleash the personal vendetta against the applicant. It is submitted that inclusion of the name of applicant is an abuse of

process of law and prosecution as against the applicant cannot be continued. It is therefore, prayed that the FIR to the extent of present applicant be quashed and set aside.

6. Shri M. K. Pathan, learned APP for non-applicant No.1/State and Shri S. D. Malke, learned Advocate for the non-applicant No.2 submitted that from the averments in the FIR and in particular, in view of statement of non-applicant No.2 recorded on 23.08.2012, there are specific allegations made against the present applicant and therefore, offence under Section 506 of the Indian Penal Code is made out. It is submitted that all the essential ingredients of Section 506 of IPC are fulfilled in the present case and therefore, the prosecution against the present applicant needs to be continued for the trial. It is therefore prayed that the present application may kindly be dismissed.

7. We have heard learned Advocates for both the sides and scrutinized the contents of FIR and the statement of the non-applicant No.2 dated 23.08.2012. After considering the fact that in the original FIR, no role was attributed to the applicant, it is only due to the statement dated 23.08.2012 of non applicant No.2 that the name of the applicant is incorporated in the FIR. There is no statement of any supporting witness to corroborate the allegations against the applicant. Prima facie, we are satisfied that since the applicant was appearing in his capacity as Advocate to represent the accused originally named in the FIR, the present applicant is arraigned as an accused relying on the statement dated 23.08.2012. Considering the fact that there is no other witness supporting the case of the applicant and the applicant represented co-accused in the original FIR, we are of

the opinion that continuance of the prosecution against the present applicant would amount to abuse of process of law.

8. We therefore, pass the following order.

ORDER

The First Information Report registered against the applicant in connection with Crime No. 59/2012 filed by non-applicant No.1 for offences punishable under Sections 342, 376(G), 506 read with Section 34 of the Indian Penal Code is quashed and set aside qua the applicant.

9. The Criminal Application stands allowed in the aforesaid terms.

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