

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

CRIMINAL APPLICATION NO.537 OF 2020

GANESH PANDURANG GORE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicants : Shri S. S. Jadhavar
APP for Respondent No.1 : Shri K. S. Patil
Advocate for Respondent No.2 : Shri A. R. Devkate
...

**CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR, JJ.**

**DATE : 01st APRIL, 2021 AND
03rd APRIL, 2021**

PER COURT :

1. All these 18 applicants are accused in Crime No.01 of 2020, registered at the Jamkhed Police Station, Jamkhed. Respondent No.2 is the informant who is the legally wedded wife of applicant No.1. Offences alleged to have been committed by the applicants are punishable under Sections 489-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code.

2. The applicants have put forth prayer clauses (B) and (C), which read as under :-

“(B) By issuing appropriate order or direction, the FIR vide Crime No.1/2020 registered at Jamkhed Police Station Jamkhed against the applicants, for the offences punishable under Section 498-A, 323, 504 and 506 r/w 34 of the Indian Penal Code, may kindly be quashed and set aside;

(C) Pending hearing and final disposal of this Criminal Application, further investigation of FIR vide Crime

No.1/2020 registered at Jamkhed Police Station,
Jamkhed, may kindly be stayed”

3. This Court has not granted any interim protection to the applicants.

4. We have considered the strenuous submissions of the learned advocate for the applicants, the learned prosecutor on behalf of respondent No.1 – State and the learned advocate representing respondent No.2 – informant.

5. The contention of the applicants is that, not only the members of the immediate family of the informant, post her marriage to applicant No.1, has been arraigned in the FIR, but a tenant has also been arraigned and some other relatives who are in between 75 years to 85 years of age, have also been accused of having committed offences against the informant.

6. For the sake of clarity, we record the status of the applicants vis-a-vis the informant, as under :

- a) Applicant No.1 Ganesh is the husband of the informant.
- b) Applicant No.2 Pandurang and applicant No.3 Lata, are the parents-in-law of the informant.
- c) Applicant No.4 Atul is the younger brother of the informant’s husband.
- d) Applicant No.5 Birbal and applicant No.6 Putalabai, are the parents of the mother-in-law of the informant.

- e) Applicant No.7 Balasaheb is the maternal uncle of applicant No.1
- f) Applicant No.8 Sushila is the wife of applicant No.7 Balasaheb
- g) Applicant No.9 Mahadeo is the maternal uncle of applicant No.1 Ganesh.
- h) Applicant No.10 Vaishali is the wife of applicant No.9 Mahadeo.
- i) Applicant No.11 Mayank is a tenant of applicant No.5 Birbal.
- j) Applicant No.12 Gayabai is the grand mother-in-law of the informant Priyanka
- k) Applicant No.13 Dattatraya is the brother of applicant No.2 Pandurang.
- l) Applicant No.14 Rekha is the wife of applicant No.13 Dattatraya.
- m) Applicant No.15 Changdev is the nephew of applicant No.2 Pandurang.
- n) Applicant No.16 Vijaya is the niece of applicant No.2 Pandurang.
- o) Applicant No.17 Karan is the son of applicant No. 15 Changdev and applicant No.16 Vijaya.
- p) Applicant No.18 Hausrao is also the son of applicant No. 15 Changdev and applicant No.16 Vijaya.

7. Having considered the strenuous submissions of the

learned advocate for the respective sides, we have gone through the application paper-book, with their assistance.

8. The informant has set out in the FIR registered on 02-01-2020 that applicant No.1, her husband, is a Sales Tax Inspector, with whom she got married on 19-04-2018. After marriage, it appears that he and his immediate family members developed an interest in getting Sakshi, daughter of applicant Nos. 9 and 10, for the second marriage of applicant No.1 and it was with this object that the entire family members, including the parents of Sakshi, started harassing the informant. It is further set out in the FIR that a demand of Rs.45 lakhs was made with the informant and her parents, so as to enable applicant No.1 to purchase a flat in Pune. Since, the parents of the informant were of a humble background, they could not satisfy the said demand. Barring applicant Nos. 11 to 18, rest of the applicants started pressurising the informant to consent for a divorce with applicant No.1, as he was already in love with another lady. It appears from the FIR that the said lady is said to be other than Sakshi.

9. The informant has then stated in the FIR that she used to get beaten and abused at the hands of the husband applicant No.1. She has also stated in the FIR that when her husband used to be away at his posting, applicant No.2, father-in-law, used to corner her in the house when she was alone in some room, hold her hand,

and used to say that she is not a perfect match for applicant No.1 and she should act as per the dictates of applicant No.2, failing which he would convince applicant No.1 to divorce her. When the informant narrated such instances to her husband, when he used to come back home, her husband's reaction was that 'you do whatever my father says'.

10. The informant has then contended that on 20-11-2018, applicant No.3, her mother-in-law took her to her maternal home (of applicant No.3) at Tandulwadi, Tq. Paranda, Dist. Osmanabad, along with applicant No.2. At that place, applicant Nos. 5, 6, 7, 8, 9 and 10, together have abused her and physically beaten her, in order to compel her to sign down a consent divorce, so as to enable applicant No.1 to get a divorce. All these applicants have then disclosed to the informant that they intend to get applicant No.1 married to Sakshi.

11. The informant has then narrated the incident, that occurred three days later i.e. on 23-11-2019, when the tenant (applicant No.11) residing in the home of applicant Nos. 5 and 6, who are the parents of applicant No.3, came with a bottle containing some liquid and handed it over to applicant No.3. He, along with applicant No.3, then attempted to forcibly administer the liquid to the informant. She has then narrated the continuous taunts by applicant Nos. 12 to 14, who are closely related to the

husband of the informant and were constantly supporting those applicants for pressurising the informant.

12. The informant then narrated an incident, that occurred on 12-12-2018 at around 09:00 a.m., when applicant Nos. 1 to 4 and applicant Nos. 15 to 18, along with other applicants, whose names have been specifically mentioned by the informant in the FIR, gathered at Tandulwadi, Tq. Paranda. The informant felt cornered and she was insisted upon by all these applicants that she should fetch Rs.45 lakhs from her parents or else she would be thrown out of the house. Due to her resistance, all these applicants have removed her ornaments and bundled her into a four wheeler and sent her to parent's home at Khamgaon, Tq. Jamkhed at around 09:00 p.m. Ever since her reaching her parents home at 09:00 p.m. on 12-12-2018, she has been residing with her parents.

13. The learned advocate for the applicants has stated that the FIR has been registered on 02-01-2020 at about 19.41 hours. The informant had been living with her parents since 13-12-2018 and the FIR has been lodged after one year.

14. The learned advocate for the informant has contended that it is not for this Court within its jurisdiction as prescribed under Section 482 of the Code of Criminal Procedure, to assess the probative value of any evidence that is available. So also, purely on the ground of delay, no FIR can be quashed and it is not the law as

is settled that an FIR can be quashed only on the ground of delay. He further submits that even if there is a delay, each case has to be considered on the facts emerging before the Court and merely because a delay has been caused in such matrimonial matters, this Court should not exercise its powers under Section 482 of the Cr.P.C.

15. He submits that the informant was in a state of shock after having been robbed of her ornaments, beaten and abused, driven out of the home, forcibly bundled into a car and dropped at her parent's home at 09:00 p.m. Naturally, the approach of the parents of the informant was to sort out the matrimonial discord, as it was a matter of life and death for the informant. Several efforts were made for reconciliation and despite the efforts of the parents of the informant, the husband of the informant and his close relatives were unrelenting. They were under an incorrect impression that as the informant was diagnosed to be Hepatitis-B positive on 23-05-2018, it was amounting to a venereal disease (Gupt Rog).

[Shri Jadhavar, learned advocate has been constantly interrupting the Court, while the order was being dictated in the open Court. His continued interruption has, therefore, compelled us to stop the dictation in open Court, so as to dictate the rest of the order in the Chamber.]

DATE : 03rd APRIL, 2021

16. The learned advocate for the informant further submits that the husband thereafter took the informant for a further test on 23-05-2018 to Pooja lab, Paranda. This was followed by another test on 26-05-2018 at Dr. Patil laboratory, Barshi. This was followed by yet another test on 28-05-2018 in Dr. Kale's Sanjeevan Nursing Home, Kurduwadi Road, Barshi. Though none of these doctors, who conducted the tests, opined that a marriage breaks down and the couple is incompatible because the wife is Hepatitis-B positive, applicant No.1 husband seized this opportunity by alleging that the said illness is termed as Gupt Rog and is sexually transmittable, so as to seek a divorce from the informant. H.M.P. No. 15 of 2018 was preferred by him for seeking a divorce with the informant, so that he could marry either his girl friend or the other lady namely Sakshi.

17. He further submits that Hepatitis-B is a liver infection which, though may spread by sexual contact, is treatable by medical assistance. There are several anti-viral drugs as a mode of treatment. Since the husband was an Excise Inspector and was more interested in a second marriage, he was not patient with the medical condition of the informant and sought a divorce vide his H.M.P. proceedings in August, 2018, which was after less than four months of the marriage. The parents of the informant laboured for almost 16 to 18 months, attempting reconciliation, so as to save the

marriage of their daughter. When they realised that the accused did not have a humane touch, that they deemed it appropriate to take assistance of the law and hence, the FIR was registered on 02-01-2020.

18. We have carefully gone through the FIR in the light of the submissions of the applicants. There are pointed allegations against applicant Nos. 1 to 11. Several instances of demand for Rs.45 lakhs, mental and physical torture and physical assault have been alleged against applicant Nos. 1 to 10. While considering a proceedings for quashing of FIR, this Court does not have unfettered powers and is not expected to assess the merits of the allegations. Considering the various allegations against applicant Nos. 1 to 10, we do not find that it would be appropriate to exercise our jurisdiction under Section 482 of the Cr.P.C.

19. Practically, in all matters under Section 482 of the Code of Criminal Procedure, 1973, the accused approaches the Court on the ground that the First Information Report (F.I.R.), on the face of it, does not disclose ingredients that would constitute a cognizable offence. Thus, the inherent power of the High Court, in its jurisdiction under Section 482, is invoked for seeking the quashing of the F.I.R..

20. In ***C.B.I. vs. Tapan Kumar Singh, (2003) 6 SCC 175 : AIR 2003 SC 4140***, the Honourable Supreme Court has held

in paragraph 22 that “*The law does not require the mentioning of all the ingredients of the offence in the FIR. It is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency.*” It is observed that an FIR is not an encyclopedia which must disclose all the facts and details relating to the offence alleged to have been committed. It requires no debate that an FIR is merely a report by the informant about the commission of a cognizable offence and it cannot be ruled out that minute details may not be mentioned. It cannot be ignored that an FIR pertains to an offence, which is alleged to have been committed and the informant, in a disturbed state of mind and shaken on account of a serious offence committed, approaches a police station for recording an FIR.

21. In the ***State of Punjab vs. Dharam Singh, 1987 SCC (Cri.) 621 : 1987 Supp. SCC 89***, the Honourable Supreme Court held that the High Court had erred in quashing the FIR by going beyond the averments, to consider the merits of the case even before the investigating agency has embarked upon the legal exercise of collecting evidence.

22. In ***Kurukshetra University vs. State of Haryana, (1977) 4 SCC 451 : AIR 1977 SC 2229 (a Three Judges Bench)***, the Honourable Supreme Court has observed thus:-

“It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482, Criminal Procedure Code, it could quash an FIR. The Police had not even commenced investigation into the complaint filed by the warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice.”

23. In ***Geeta Mehrotra and another vs. State of Uttar Pradesh and another, (2012) 10 SCC 741***, the Honourable Supreme Court has held that in the absence of any specific allegation and an FIR, prima facie, indicating no case against the co-accused, the Court would have the power to quash an FIR.

24. In ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017) 9 SCC 641***, the Honourable Supreme Court has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under:-

“(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal

Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court.

(5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a

conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(9) There is yet an exception to the principle set out in propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

25. We carefully scrutinized the FIR to assess whether applicant No.11, who is a tenant of applicant Nos. 5 and 6, could be involved in this matter. A specific incident is narrated in the FIR, which is said to have occurred on 23-11-2018. The tenant carried a bottle containing some liquid. He handed over the bottle to applicant No.3, mother-in-law and both of them tried to forcibly make the applicant drink the said liquid. Considering the said incident, we do not think it appropriate to grant any relief to applicant No.11.

26. We find that the FIR contains vague allegations against applicant No.12 (an 85 years old grand-mother of the informant's husband) and applicant Nos. 13 to 18. They were said to be a part of a large group of family members of the husband, who came together on 12-12-2018 at around 09.00 a.m. and tried to pressurise the informant to agree to pay Rs.45 lakhs to the

husband, so that her marriage could be saved. All these 18 persons are alleged to have, then, robbed the informant of her ornaments and she was then driven out of the marital home. Though applicant No.12 may be residing with applicant Nos. 2 and 3, being a 85 years old grand-mother, we do not find it believable that she could have assaulted a grand daughter-in-law, so also, applicant Nos. 13 and 14, is a married couple who live separately. Applicant Nos. 15 and 16 is also a married couple who reside in a different premises. Applicant Nos. 17 and 18 are the young children of the couple (applicant Nos. 15 and 16), who are taking education. There is no specific allegation against these applicants. We are therefore, inclined to consider their case favourably.

27. In view of the above, this application is dismissed to the extent of applicant Nos. 1 to 11. This application is partly allowed to the extent of applicant Nos. 12 to 18, in terms of prayer clause (B).

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)