

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

948 CRIMINAL APPLICATION NO.1576 OF 2021

MUSKAN BEGUM W/O IRSHAD ATTAR (NEE SONAL D/O
SAJEEVKUMAR ACHARE) AND ANOTHER
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Rajiv B. Deshmukh

APP for Respondent No.1 : Mr. M. M. Nerlikar

Advocate for Respondent No.2 : Mr. B. N. Gadegaonkar

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CORAM : V. K. JADHAV AND

SHRIKANT D. KULKARNI, JJ.

DATED : 28th SEPTEMBER, 2021

PER COURT:-

1. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no.1 Muskan begum w/o Irshad Attar.

2. Leave granted. The application of applicant no.1 Muskan begum w/o Irshad Attar is dismissed as withdrawn.

3. So far as applicant no.2 Irshad s/o Mohiyoddin Attar is concerned, learned counsel submits that co-accused Muskan, whose name before conversion from Hindu religion to Muslim

religion was Sonal d/o Sajeevkumar Achare, is the daughter of respondent no.2 herein. Co-accused Muskan and applicant no.2 Irshad are major and they have performed marriage at Telangana, Hyderabad. Learned counsel submits that by order dated 09.03.2021, the Chairperson of Telangana State Human Rights Commission has directed the concerned police to extent full cooperation and protection to co-accused Muskan and the present applicant Irshad in the event of anybody gives any threat or alleged any compliant against the couple and take necessary action by counseling the parents. It is also observed that both the petitioners (applicants herein), who are present before the commission are to be seen that they lead marital life in a peaceful manner. Accordingly, the Telangana State Human Rights Commission has disposed of the complaint.

4 Learned counsel for the applicants submits that almost more than two months thereafter, respondent no.2 has lodged the complaint against the applicant Irshad, his own daughter and also two brothers and father of the applicant Irshad for having committed theft in his house. It has been alleged in the complaint that accused persons have committed theft of cash amount of Rs.

25,00,000/- and 73 *tola* of gold from the house of respondent no.2-informant. Learned counsel submits that it has been specifically stated in the complaint that on 28.02.2021, respondent no.2-informant slept in his house in the drawing room and his wife and co-accused Sonal slept in the bedroom. In the morning at about 4 a.m. to 5 a.m., wife of respondent no.2 informed him that co-accused Sonal left the house. Thus, respondent no.2-informant, after taking search of co-accused Sonal and even after taking search of his house itself, found that the amount of Rs.25,00,000/- kept in the cupboard for purchasing agricultural land and also the golden ornaments weighing 73 *tola* and certain silver ornaments was missing. Learned counsel submits that except these allegations, there is nothing in the FIR to indicate that applicant Irshad went there for commission of the crime. Even there are no allegations that at the instigation of applicant Irshad, co-accused Sonal while leaving the house committed theft of the said cash amount and golden and silver ornaments. Learned counsel for the applicants submits that the allegations have been made with an ulterior motive for wreaking vengeance as against applicant Irshad, with whom the daughter of respondent no.2 has performed marriage.

5. Learned counsel for respondent no.2 submits that as per the directions given by the concerned Magistrate under Section 156(3), the FIR came to be registered on 31.05.2021. Learned counsel for respondent no.2 submits that there are specific allegations against co-accused Sonal that she left the house in the wee hours along with the huge cash amount and the golden ornaments and joined the company of applicant Irshad. Thereafter, both of them fled away. It is not within the knowledge of respondent no.2 as to whether they have performed marriage or not. The investigation is going on. For the purpose of recovery of the said amount and the golden ornaments, custodial interrogation of applicant Irshad is required. This is premature stage for quashing of the FIR since investigation is still going on.

6. Learned APP submits that even in the missing report, respondent no.2-informant has alleged that his daughter Sonal has left the house along with huge cash amount and also the golden and silver ornaments. Learned APP submits that the investigation is going on. Learned APP however has fairly accepted that during the course of investigation, the Investigating Officer has searched the house of applicant Irshad at Hyderabad where he is residing along

with co-accused Sonal. Even the Investigating Officer has checked the entries in their bank accounts. However, nothing has been found.

7. We have carefully gone through the police papers, particularly the complaint. It has been alleged in the complaint that on 01.03.2021 in the wee hours, wife of respondent no.2 has informed respondent no.2 that co-accused Sonal has left the house. There is no reference as to how co-accused Sonal has committed theft of the said huge amount of Rs.25,00,000/- and golden and silver ornaments weighing 73 *tola*.

8. We have carefully gone through the order passed by the Telangana State Human Rights Commission on 09.03.2021. It has been observed by the Human Rights Commission that applicant Irshad and co-accused Sonal loved each other and decided to enter into a marital life. However, father of co-accused Sonal was not consenting for the same. It has also been observed by the Human Rights Commission that without any coercion from anybody co-accused Sonal has converted into Islam and became Muslim. On 01.03.2021, both of them approached religious scholar at

Nampally, Hyderabad and submitted her willingness to convert her present religion and to accept Islam as her permanent religion. It has also been observed by the Human Rights Commission that on 02.03.2021, both of them approached to the office of Qazzath at Qila Mohammed Nagar, Golconda and out of their free will and consent, they performed marriage as per Muslim rites and customs. They have also informed about the said marriage to respondent no.2 and his wife though they did not agree for the said marriage. It appears that the Human Rights Commission has also observed that at present the couple is living at Hyderabad in house bearing H.No. 14-20-238, Pandit Nehru Nagar, Borabanda, Hyderabad. The Human Rights Commission has further observed that since both of them are major and their marriage is performed as per Islam rites and customs, they have been issued a marriage certificate. They have a right to select their life partner with each other. The Chairperson of the Telangana State Human Rights Commission has finally given the following directions to the concerned police;

“Under these circumstances, the concerned police is directed to extend full cooperation and protection to both of them in the event of anybody gives any threat or alleged any complaint against the couple

and take necessary action by counselling the parents. Both the petitioners who are present before the Commission are to be seen that they lead marital life in a peaceful manner. With the above observation, complaint is disposed of.”

9. It further appears that on 31.05.2021, respondent no.2-informant has lodged the specific complaint against the applicant Irshad and his father and two brothers. We find that the allegations have made with an ulterior motive for wreaking vengeance against the applicant Irshad.

10. In the case of *State of Haryana and others v. Ch. Bhajan Lal and others*, reported in AIR 1992 SC 604, in para 105 of the judgment, the Supreme Court has formulated the categories of cases by way of illustration, wherein powers under Section 482 of the Code of Criminal Procedure could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Clause 7 of these guidelines is relevant for the present consideration which is reproduced herein below:

“105 (7) 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 or personal grudge.”

11. In the instant case, in our considered opinion, respondent no.2 has lodged the complaint against applicant Irshad with some ulterior motive for wreaking vengeance since applicant Irshad has not only converted the religion of co-accused Sonal but also performed marriage with her. Moreover, there is absolutely no evidence against applicant Irshad for having committed the offence of theft. Even in the search of house of applicant Irshad in Hyderabad, where he resides with co-accused Sonal, nothing is found and even there are no entries in their bank account indicating that the amount allegedly stolen has been kept in the bank account. In view of the same and in terms of the ratio laid down by the Supreme Court in the case cited above, we are inclined to allow this application so far as applicant Irshad is concerned. Hence, we proceed to pass the following order:

ORDER

I. The criminal application is hereby allowed to the extent of applicant no.2 Irshad s/o Mohiyoddin Attar in terms of prayer clause "B"

II. The criminal application is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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