

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

**CRIMINAL APPLICATION NO. 2402 OF 2020**

1. Raju Onkar Sandanshiv  
Age : 52 Years, Occu : Service,  
R/o. : Gandhlipura, Amalner,  
Tq. Amalner, Dist. Jalgaon.

2. Arvind Sambhaji Kadam  
Age : 54 Years, Occu : Service,  
R/o. : Bangali file, Amalner,  
Tq. Amalner, Dist. Jalgaon.

3. Santosh Pandharinath Birhade,  
Age : 45 Years, Occu : Service,  
R/o. : Amalner, Tq. Amalner,  
Dist. Jalgaon.

... Applicants

Versus

1. The State of Maharashtra  
Through Police Station  
Amalner, Tq. Amalner,  
Dist. Jalgaon.

2. Sitabai Jai Chavhan,  
Age : 45 Years, Occu : Service,  
R/o. : Gandhlipura, Amalner,  
Tq. Amalner, Dist. Jalgaon.

... Respondents

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Mr. Nikhil S. Jaju, Advocate for the Petitioners  
Ms. Preeti V. Diggikar, APP for Respondent No.1 / State  
Mr. S.T. Mahajan, Advocate h/f Mr. P.B. Patil, Advocate for  
Respondent No.2

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**CORAM : V. K. JADHAV AND  
SHRIKANT D. KULKARNI, JJ.**

**DATE : 10<sup>th</sup> AUGUST, 2021**

**FINAL ORDER (Per Shrikant D. Kulkanti, J.):-**

1. The applicants by invoking Section 482 of the Code of the Criminal Procedure, moved this application for quashing of First Information Report vide crime no. 641 of 2020 for the offence punishable under Sections 354, 323, 304, 506 read with Section 34 of the Indian Penal Code registered with Amalner Police Station, District Jalgaon.
2. Respondent No.2 / original complainant has filed criminal Misc. Application No.219 of 2020 before the Judicial Magistrate, First Class at Amalner and sought directions for investigation in view of Section 156(3) of the Code of Criminal Procedure. The learned Judicial Magistrate, First Class, Amalner was pleased to allow that application by an order dated 03.01.2020. On that basis, crime no.641 of 2020 came to be registered at Amalner Police Station on 10.09.2020.
3. In view of the above, the applicants are before us.
4. Heard Mr. Nikhil S. Jaju, learned counsel for the applicants, Ms. Preeti Diggikar, learned APP for respondent no.1 / State and Mr. S.T. Mahajan, learned counsel holding for Mr. P.B. Patil, learned counsel for respondent no.2 / original complainant.

5. Mr. Jaju, learned counsel for the applicants submitted that respondent no.2 / original complainant is serving as Sweeper in the Municipal Council, Amalner. Applicant no.1 is a Supervisor and applicant nos. 2 and 3 are the Sanitary Inspectors, serving with Municipal Council, Amalner. Mr. Jaju, learned counsel for the applicants vehemently submitted that alleged offences are not at all attracted against the applicants. He submitted that even for the sake of argument, and without admitting anything, if the allegations levelled in the complaint are accepted, offences punishable under Sections 354, 323, 504, 506 read with Section 34 of the Indian Penal Code do not make out. The original complainant has made false allegations with *mala fide* intention and with an ulterior motive for wreaking vengeance on the applicants in order to settle down the private and personal grudge. The allegations levelled against the applicants are vague. No specific role is attributed against them.

6. Mr. Jaju submitted that the husband of respondent no.2 was a member of Municipal Council, Amalner. Respondent no.2 wanted salary without doing any work under the garb of her husband happened to be ex-member of Municipal Council. She tried to put pressure on the applicants and even restrained them from discharging their official duty. Respondent no.2 was in habit to remain absent on work. She wanted that applicants to record her

presence so that she may get her salary. The applicants did not succumb to illegal demand of respondent no.2 and her husband. Respondent no.2 and her husband abused to the applicants. There are reports against respondent no.2 about her absence from duty. Respondent no.2 when served with a notice, she got angry and abused applicant no.1 Her husband also abused applicant no.1 and obstructed him from discharging the duty. Applicant constrained to submit report to Chief Officer about the same and on that basis, Chief Officer has reported the incident to the Police Inspector, Amalner and non cognizable case came to be registered for the offence punishable under Sections 186 and 504 of the Indian Penal Code. Thereafter, offence under Section 353 of the Indian Penal Code came to be registered against the husband of respondent no.2.

7. In order to give counter blow to the cases filed on behalf of the applicants, respondent no.2 has filed a complaint alleging about the incident dated 10.09.2020 about 7.30 a.m. when respondent no.2 came to mark her presence on duty alongwith her husband. It is alleged that applicant no.1 objected the presence of complainant's husband and thereafter, applicant no.1 caught hold of complainant's hand and outraged her modesty. Her husband intervened when applicants alleged to have beaten her husband by kicks and fist blows. Such type of incident never happened. There is no *prima facie*

case against the applicants. No purpose would be served to proceed with the prosecution. It would be an abuse of the Court process. Mr. Jaju, learned counsel for the applicants placed his reliance on following two citations:

(1) *State of Haryana Vs. Bhajan Lal and others* reported in *A.I.R. 1992 S.C. 604*.

(2) *Niloufer Irani and Ors. Vs. State of Maharashtra and anr.* reported in *2008 (2) BOM. C.R. (CRI) 751*.

8. Mr. Jaju, learned counsel for the applicants by taking help of above said citations, argued that no cognizable offences made out in the F.I.R against the applicants. The F.I.R. needs to be quashed.

9. Per contra, Ms. Preeti Diggikar, learned APP for respondent no.1 / State submitted that if allegations levelled in the F.I.R. are taken at their face value, the cognizable offences are disclosed. It is the case of sexual harassment at workplace. The allegation is of serious nature. The specific role of applicant nos. 1, 2 and 3 is disclosed in the F.I.R. The complainant / respondent no.2 was harassed even prior to the incident. It is not a fit case to quash the F.I.R. having regard to the serious nature of allegations and that too sexual harassment at work place.

10. Mr. S.T. Mahajan, holding for Mr. P.B. Patil, learned counsel for informant / respondent no.2 made indistinguishable submissions. He submitted that the complaint lodged by respondent no.2 is containing serious allegations. The allegations levelled in the complaint clearly constitute cognizable offence. Respondent no.2 was mentally and physically harassed at work place. No case is made out by the applicants to quash the F.I.R.

11. The law on quashing of first information report is settled in view of the landmark decision of the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal and others* (supra). The Hon'ble Supreme Court has set out the categories of cases in which the inherent powers under section 482 of the Criminal Procedure Code can be exercised. In this regard, Para 102 of the Judgment is important, which reads thus:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the

process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Whether the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate, as contemplated under section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceedings is instituted) to the

institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(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 and personal grudge.”

12. In case of the *State of Karnataka Vs. L. Muniswami*, reported in *(1997) 2 SCC 699*, it is held by the Hon’ble Supreme Court that-

“7. ... In the exercise of this wholesome power, the High court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court’s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.”

13. Now coming back to the factual scenario in order to consider the prayer for quashing of the F.I.R. made by the applicants. It is an admitted position that applicants and respondent no.2 / original complainant are in service with Municipal Council at Amalner. Applicant No.1 is serving as Supervisor and applicant nos. 2 and 3 are serving as Sanitary Inspectors. Respondent no.2 is serving as Sweeper. It is also evident from the record that there were complaints against respondent no.2 / original complainant about her absence from duty. Her work was not satisfactory. The copies of complaints are placed on record from page nos.35 to 44. Furthermore, one F.I.R. as well as one N.C. report dated 10.09.2020 seem to have been registered against the husband of respondent no.2.

14. It is important to examine the F.I.R. in question registered against the applicants. The F.I.R. vide crime no.641 of 2020 came to be registered with Amalner Police Station against the applicants for the offences punishable under Sections 354, 323, 504, 506 read with 34 of the Indian Penal Code on 04.11.2020 on the basis of directions given by the Judicial Magistrate, First Class, Amalner. On going through the allegations made in the F.I.R., it would reveal that even before the alleged incident dated 10.09.2020, applicant nos. 1, 2 and

3 were harassing respondent no.2 at work place. The incident is of 10.09.2020 in the morning about 7.30 a.m. Respondent no.2 as usual came to her work place to discharge her duty. She was accompanied by her husband, who happened to be ex-member of Municipal Council. Applicant no.1 alleged to have asked respondent no.2 as to why she was bringing her husband; she is in service and not her husband. Her husband asked account for that to the applicants when applicant no.2 alleged to have threatened to her husband to finish him. Applicant no.1 alleged to have caught hold the arm of the complainant / respondent no.2 and misbehaved with her and thereby outraged her modesty and abused them. Applicant nos. 2 and 3 pull down her husband on the ground and assaulted him by fist blows and kicks.

15. After examining the allegations levelled in the F.I.R. very carefully, it would reveal that the specific role is attributed to applicant nos. 1, 2 and 3. It seems to be a *prima facie* case of sexual harassment at workplace and outraging modesty of a working woman. Though the work of respondent no.2 / complainant may not be satisfactory, action has been taken against her by the authority. Nobody is above the law. If the allegations levelled against the applicants are taken at their face value, cognizable offence is

disclosed. At this stage, it is difficult to accept the argument advanced by Mr. Jaju, learned counsel for the applicants that respondent no.2 has filed false case against the applicants in order to settle down individual grudge and the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the applicants.

16. We have also gone through the citation in case of ***Niloufer Irani and Ors. Vs. State of Maharashtra and anr.*** (supra). In the cited case, there were no allegation of sexual harassment against the petitioners. Only allegation made against the petitioners is failure on their part to take immediate cognizance of the complaint regarding sexual harassment. The committee for sexual harassment at workplace was not constituted. The facts of the case in hand are distinguishable. In the case at hand, not only there are specific allegations of sexual harassment at workplace against the applicants, but also there is specific role attributed to applicant nos. 1, 2 and 3. There is specific allegation against applicant no.1 for outraging modesty of respondent no.2 / complainant at workplace. If the allegations levelled against the applicants are taken at their face value and accepted in their entirety, *prima facie* constitute cognizable offence against the applicants. The allegations made in the F.I.R if

uncontroverted, *prima facie* discloses commission of cognizable offence. As such, the investigation by the Police officer under section 156(1) of the Cr. P.C. is necessary.

17. There seems to be sufficient ground against the applicant to initiate criminal proceedings. There is no material which may speak that criminal proceedings initiated against the applicants is *mala fide* and/or proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the applicants. The defence tried to be put forth can not be entertained at this stage. The exercise of power under Section 482 of Cr. P.C. is an exception and not the rule. Power should be exercised *ex debito justitiae* to prevent the abuse of the process of the Court but not to stifle legitimate prosecution.

18. Having regard to the above reasons and legal position made clear in the case of ***State of Haryana and others Vs. Bhajan Lala*** (supra), it is not a fit case for quashing of the first information report registered against the applicants at Amalner Police Station. As such, we are not inclined to quash the first information report.

19. In view of the foregoing reasons, we proceed to pass the following order:

**ORDER**

- (i) The Criminal application stands dismissed.

**[ SHRIKANT D. KULKARNI ]**  
**JUDGE**

**[ V. K. JADHAV ]**  
**JUDGE**

S.P. Rane