

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 322 OF 2015

Anil Son of Ganpatrao Giradkar,
aged about 42 years,
Occupation : Advocate,
Resident of Gurumauli Society,
Mahakali Ward, Chandrapur,
Tq. & Distt. Chandrapur.

.... **APPLICANT.**

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Chandrapur City Police Station,
Chandrapur.
2. Sau. Vimal Anilrao Tapase,
aged 54 years, Occupation:
Household, Resident of Near
Jod Deul Pathanpura Ward,
Chandrapur, Tq. & Distt. Chandrapur.

.... **NON-APPLICANTS.**

Shri M.P.Khajanchi, Advocate for Applicant.
Shri S.D.Sirpurkar, A.P.P. for Non-applicant No.1.
Shri S.A.Malani, Advocate for Non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : MARCH 04, 2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

2. **RULE.** Rule made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure the applicant has challenged registration of the First Information Report No.89 of 2015 for the offence punishable under Sections 354, 354-A, 323 and 506 of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant with the accusations that on 1st April 2015 the non-applicant No.2 visited the office of the applicant who was working as an Advocate who had appeared in the matter of husband of the non-applicant No.2. It is alleged that when the non-applicant No.2 visited the house of the applicant, the applicant refused to give his No Objection to engage another Advocate in the said matter and allegedly assaulted son of the non-applicant No.2. It is further alleged that during the said incident, one unidentified person came at the spot and held son of non-applicant No.2. It is further alleged that the applicant said that he will not give no objection to the non-applicant No.2 and will not allow other Advocate to appear in the matter of the husband of non-applicant No.2. It is further alleged that when the non-applicant No.2 tried to release her son from the custody of the unidentified person, the applicant assaulted the non-applicant No.2 and torn her blouse and abused

the non-applicant No.2 in filthy language. It is further alleged that in the assault, the non-applicant No.2 suffered injury to her wrist. The applicant has therefore, filed present application challenging registration of the First Information Report.

5. This Court on 12th May 2015 issued notice and directed that charge-sheet shall not be filed without leave of this Court. On 15th July 2015 this Court admitted this application and expedited the hearing of the present matter.

6. The non-applicant No.1 has filed reply and it is stated that there is sufficient material available with the Investigating Agency in support of the report lodged by the non-applicant No.2. It is further alleged that the Investigating Officer had recorded statement of son of the prosecutrix and has also recorded statement of one Sk. Rahim Sk. Afzal. It is further stated that the Investigating Officer had seized the torned blouse of the prosecutrix. It is submitted that since sufficient material is available against the applicant, there is no merit in the application and the same deserves to be dismissed.

7. The non-applicant No.2 has filed reply and it is stated that on 01/04/2015 the applicant refused to give No Objection to the non-applicant No.2 and due to altercation between the applicant and the non-applicant

No.2, the applicant assaulted the non-applicant No.2 and torned her blouse. It is stated that the Investigating Officer had seized the torned blouse of the non-applicant No.2 which substantiates the story of the prosecution. Therefore, it is prayed that the application deserves to be dismissed.

8. We have carefully considered the allegations in the First Information Report. From the allegations in the First Information Report, it appears that there was dispute between the non-applicant No.2 and the applicant who was handling the litigation of the husband of the non-applicant No.2. It appears that due to misunderstanding between the applicant and the non-applicant No.2, there was altercation between the non-applicant No.2 and the applicant.

9. We have considered the provisions of Section 354 of the Indian Penal Code, which reads as under:

“354. Assault or criminal force to woman with intent to outrage her modesty— Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”

A plain reading of Section 354 of the Indian Penal Code makes it clear that the assault or the use of criminal force on any woman must be

with an intention to outrage or there must be knowledge that the said outrage was to offend her modesty. In the facts of the present case, even if the allegations in the First Information Report are accepted as correct, still the ingredients of the offence under Section 354 of the Indian Penal Code are not made out.

10. Insofar as the offence under Section 354-A(3) of the Indian Penal Code, which has been alleged against the applicant is concerned, we have carefully considered Clause (iv) of Section 354-A(1) which requires making of sexually coloured remarks against the woman. In the facts of the present case, there is no allegation against the applicant that the applicant has made any sexually coloured remarks against the non-applicant No.2.

11. Insofar as the offences under Section 323 and 506 of the Indian Penal Code are concerned the offences are non-cognizable and therefore, without there being order under Section 155(2) of the Code of Criminal Procedure, the police cannot investigate into the said offences. On overall consideration of the allegations in the First Information Report, the replies filed by both the non-applicants, material produced by the applicant, we are satisfied that the ingredients of the offences alleged against the applicant are not fulfilled. Therefore, the continuation of the proceedings against the applicant would amount to abuse of process of the Court.

12. We therefore, pass the following order:

The First Information Report No.89 of 2015 registered against the applicant with the non-applicant No.1 Police Station for the offences punishable under Sections 354, 354A(3), 323 and 506 of the Indian Penal Code is quashed and set aside.

Rule is made absolute accordingly.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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