

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

CRIMINAL APPLICATION (APL) NO.964/2018

Smt. Rukmini W/o. Sahebrao Bhange Vs. State of Maharashtra and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri N. R. Saboo, Advocate for the applicant.
Shri N. S. Rao, A.P.P. for the non-applicant No.1/State.
Shri R. D. Dhande, Advocate for the non-applicant No.2.

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

DATE : 10/02/2021.

1. Heard.
2. The accused has filed this application under Section 482 of the Code of Criminal Procedure praying that the First Information Report registered against her with the non-applicant No.1-Police Station vide Crime No.547 of 2018 for the offences punishable under Sections 332, 353, 504 and 506 of the Indian Penal Code be quashed.
3. According to the applicant/accused, the incident occurred on 27.08.2018 and the present applicant had reported the matter to the Police Station Officer, Mahagaon, however, it was registered as non-cognizable. According to the applicant/accused, the non-applicant No.2 had also reported the matter to the Police Station Officer, Mahagaon on 27.08.2018 at 11.06 hours and that was also registered as non-cognizable. According to the applicant/accused, surprisingly, the First Information Report is registered against the applicant on 28.08.2018 on the basis

of the report lodged by the non-applicant No.2 in respect of the same incident of 27.08.2018. The legality of registration of the First Information Report is questioned relying on the provisions of Section 155(2) of the Code of Criminal Procedure, on the ground that once the report was registered as non-cognizable, the Police Authorities could not have registered the First Information Report against the applicant for the same incident.

4. To support the submission, learned Advocate for the applicant relied on the following judgments :

i] Judgment given in the case of *Keshav Lal Thakur Vs. State of Bihar* reported in **(1996) 11 SCC 557**.

ii] Judgment given in the case of *T. T. Antony Vs. State of Kerala* reported in **(2001) 6 SCC 181**.

5. In response to the notice issued by this Court, the non-applicant No.1-Investigating Agency has filed its reply and in paragraph No.4 it is stated that after the registration of the First Information Report, the Investigating Agency had swung into action and the non-applicant No.2-Informant was sent for medical examination and the Medical Examination Report shows that the complainant suffered three injuries on her face. In the reply filed by the non-applicant No.2-Informant, it is stated that though the report lodged by her was registered as non-cognizable, she was sent to hospital for medical

examination and after receipt of Medical Examination Report and enquiry in the matter, the non-applicant No.1-Police Station Officer registered the First Information Report on 28.08.2018.

6. After considering the rival submissions, specially the contentions of the non-applicant No.2-Informant, we are of the view that the provisions of Section 155(2) of the Code of Criminal Procedure, 1973 will not be attracted in the present case. Section 155(2) of the Code of Criminal Procedure prohibits a Police Officer from investigating a non-cognizable case without the order of the Magistrate. It is not the case of the applicant/accused that the First Information Report is registered for the offences which are non-cognizable. Consequently, the judgments relied upon by learned Advocate for the applicant also do not help the applicant.

7. The issue as to whether the First Information Report could have been registered in respect of the incident which occurred a day earlier i.e. on 27.08.2018 and which was treated as non-cognizable, cannot be examined under Section 482 of the Code of Criminal Procedure, as the parties are disputing the factual aspects.

8. Hence, leaving this issue open for adjudication at the trial, the Criminal Application is dismissed.

JUDGE

JUDGE