

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.39 OF 2022

1. Mayuri Vijaykumar Waikar @
Mayuri Prakash Kumbhar

2. Ujwala Prakash Kumbhar

.. Applicants

Versus

1. The State of Maharashtra

2. Vijaykumar Deelip Waikar

.. Respondents

...

Mr. Joydeep Chatterji, Advocate for applicants.

Mr. M. M. Nerlikar, APP for respondent No.1 - State.

Mr. P. D. Suryawanshi, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 28-11-2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. The dispute between the husband and wife has taken a different turn and the husband i.e. respondent No.2, who is a government servant, has filed FIR vide Crime No.832 of 2021 with Tophkhana Police Station, Dist. Ahmednagar for the offences punishable under Section 353, 504, 506 of Indian Penal Code (for short "IPC") against the wife as well as mother-in-law and upon investigation, the charge-sheet is also filed vide R.C.C. No.275 of

2022, which is pending before the learned Chief Judicial Magistrate, Ahmednagar. The wife as well as mother-in-law have filed the present application by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashment of the FIR as well as the proceedings.

2. It will not be out of place to mention here that when this Court expressed its disinclination to grant any relief in favour of applicant No.1, learned Advocate for the applicants, on instructions, seeks withdrawal of the application in respect of applicant No.1. Accordingly, application stands disposed of as withdrawn in respect of applicant No.1. Matter proceeded for the reliefs claimed by applicant No.2 - mother-in-law.

3. Heard learned Advocate Mr. Joydeep Chatterji for the applicant, learned APP Mr. M. M. Nerlikar for respondent No.1 - State and learned Advocate Mr. P. D. Suryawanshi for respondent No.2.

4. The informant - respondent No.2 lodged report with Tophkhana Police Station, Dist. Ahmednagar on 27.09.2021 against the applicants. It is stated that the informant is working as an Engineer in Maharashtra Jivan Pradhikaran, Ahmednagar. On 20.09.2021, at about 12.30 p.m., applicant No.1 entered into

informant's office and started demanding his salary slip in presence of the other officers in the said office. She gave threat to the informant that if he didn't give salary slip, she will commit suicide. Informant told her that if she want his salary slip then she should give application to his office, at that time she also abused the informant and also threw away his files. According to the informant his wife made him to talk to her mother on mobile and the mother had abused the informant and told that he should not tell anything about applicant No.1. She can do anything and he should tackle with it. It is then also stated that applicant No.2 gave threat to the informant by saying that she would see him. It is further stated that applicant No.1 also obstructed the way of the informant when he wanted to attend one meeting. Anyhow the informant attended the said meeting and thereafter, approached the police station and lodged the report.

5. Thus, the story narrated in the FIR would show that the incident has taken place in the Government Office at about 12.30 p.m. on 20.09.2021. The charge-sheet contains statements of witnesses, who are mainly the employees working in the office and they have stated as to what applicant No.1 had told to respondent No.2. As regards applicant No.2 is concerned, even as per the FIR she was not present/had come to the office of respondent No.2, at

the relevant time. The FIR says that applicant No.1 gave phone call to applicant No.2 and then made respondent No.2 to speak with her. In the FIR, it is stated that applicant No.2 had abused respondent No.2 and told that he should not tell anything about applicant No.1. She can do anything and he should tackle with it. It is then also stated that applicant No.2 gave threat to respondent No.2 by saying that she would see him. Here, except the bare words, the charge-sheet does not contain anything. Even the call record of applicant No.1's mobile has not been collected. Even if for the sake of arguments we accept that those words were uttered by applicant No.2 to respondent No.2, it was on phone and, therefore, it cannot be within the ingredients of Section 353 of IPC. The alleged abuses and threat have not been given and, therefore, it cannot be said that there was a criminal intimidation or insult. It was not even heard by anybody else because it was on phone. Therefore, perusal of the entire charge-sheet including the FIR would show that no offence can be said to have been made out against applicant No.1.

6. Respondent No.2 has filed affidavit-in-reply, which is mainly in respect of the matrimonial dispute which is going on between him and applicant No.1. It need not be therefore considered for the relief claimed by applicant No.2 in respect of the FIR in question.

7. For the aforesaid reasons, the case is made out to exercise the inherent powers of this Court under Section 482 of the Code of Criminal Procedure in favour of applicant No.2, as the case is squarely falls within the parameters of the decision in ***State of Haryana and others Vs. Ch. Bhajanlal and others, [AIR 1992 SC 604]***. It would be a futile exercise to ask applicant No.2 to face the trial. Hence, the following order :-

ORDER

I) Application stands allowed in respect of applicant No.2.

II) Application stands disposed of as withdrawn in respect of applicant No.1.

III) The FIR bearing Crime No.832 of 2021 dated 21.09.2021 registered with Tophkhana Police Station, Dist. Ahmednagar for the offences punishable under Sections 353, 504, 506 of IPC as well as the further proceedings i.e. R.C.C. No.275 of 2022 pending before the learned Chief Judicial Magistrate, Ahmednagar, stand quashed and set aside as against applicant No.2.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm