

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

946 CRIMINAL APPLICATION NO.1301 OF 2022
WITH
CRIMINAL APPLICATION NO.2529 OF 2022

1 Abhijit Sureshchandra Bihani,
Age 46 yrs., Occ. Business,

2 Deepali w/o Abhijit Bihani,
Age 45 yrs., Occ. Homemaker,

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Applicant Nos.1 to 4 are
R/o Aishwarya Nagari, Savedi,
Ahmednagar, Dist. Ahmednagar.

5 Sagar Sureshchandra Bihani,
Age 43 yrs., Occ. Business,
R/o Anandnagar Society, Gulmohor road,
Ahmednagar, Dist. Ahmednagar.

6 Rahul Subhash Sonimandlecha,
Age 44 yrs., Occ. Business,
R/o Arihant Saras Nagar, Market Yard,
Ahmednagar, Dist. Ahmednagar.

... Applicants

... Versus ...

- 1 The State of Maharashtra,
Through Kotwali Police Station,
Ahmednagar, Dist. Ahmednagar.
- 2 Raksha Ramesh Hankare @
Raksha Santosh Patwa,
Age 47 yrs., Occ. Business,
R/o Dharti Chowk, Near Inamdar Press,
Ahmednagar, Dist. Ahmednagar.

... **Respondents**

...

Mr. Mukul Kulkarni, Advocate h/f Mr. D.R. Jethliya, Advocate for applicants

Mr. R.V. Dasalkar, APP for respondent No.1

Mr. V.P. Latange, Advocate for respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 26th AUGUST, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Criminal Application No.2529 of 2022 has been filed for amending Criminal Application No.1301 of 2022, in view of the fact that during the pendency of the application charge sheet came to be filed. In view of the limited prayer in the said application, it stands allowed and disposed

of. Amendment to be carried out within a period of 15 days.

3 The applicants in Criminal Application No.1301 of 2022 have invoked the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, for quashing the First Information Report vide Crime No.85/2022 dated 02.02.2022 registered with Kotwali Police Station, Ahmednagar, for the offence punishable under Sections 143, 147, 323, 504, 506, 354-B, 326 of the Indian Penal Code, 1860 and by way of amendment to quash the charge sheet bearing Regular Criminal Case No.948/2022 pending before Additional Chief Judicial Magistrate, Ahmednagar.

4 Heard Learned Advocate Mr. Mukul S. Kulkarni holding for learned Advocate Mr. D.R. Jethliya for the applicants, learned APP Mr. R.V. Dasalkar for respondent No.1 and learned Advocate Mr. V.P. Latange for respondent No.2 in both matters.

5 After the submissions were heard and this Court has shown disinclination to grant any relief to the applicant Nos.1, 2, 5 and 6, the learned Advocate appearing for the applicants, on instructions, seeks withdrawal of the application. There is no hurdle in allowing the said oral request.

6 Applicant Nos.3 and 4 are the minor children of applicant Nos.1 and 2. They have also been arrayed as an accused. It is to be noted that applicant Nos.3 is aged 12 and applicant No.4 is aged 6. Admittedly, the incident has taken place in the queue for tickets of S.T. Bus at S.T. Bus Stand, Ahmednagar. It is also a fact that a cross complaint was filed by applicant No.2 against the respondent No.2 and her son. It was filed on the same day and it appears that within half an hour of the present First Information Report it was registered as Crime No.86/2022 with the same Police Station, for the offence punishable under Sections 354, 325, 323, 504, 506 of the Indian Penal Code. Both these First Information Reports are in respect of incident dated 02.02.2022. Therefore, definitely, some incident had taken place on that day. Since now we are considering the application to the extent of the minor children applicant Nos.3 and 4, this Court proposes to scan the evidence from that angle only. If we consider the contents of First Information Report, then, in the First Information Report it is stated that the informant - present respondent No.2 was not even knowing the names of applicant Nos.3 and 4, but then, it is stated that they had opposed and gave threat to kill the informant. Informant is a 47 years old lady. Therefore, it is hard to believe that a girl aged 12 and a boy aged 6 would abuse and give threat to kill when their parents are with them. The incident is stated to have started, as per the First Information Report, when the respondent No.1 was in

the queue to take the tickets for Pune and she was accompanied by her son. The First Information Report also gives an impression that prior to that incident the respondent No.2 was not knowing the applicants. Under such circumstance, whether the applicant Nos.3 and 4 would have acted with *mens rea*. At this stage, the police/prosecution has not invoked either Section 149 or Section 34 of the Indian Penal Code to contend that the applicant Nos.3 and 4 had common intention or common object with the co-accused to commit any offence.

7 Another fact will have to be stated that though the First Information Report was under Sections 143, 147, 323, 504, 506 of the Indian Penal Code, after investigation at the time of charge sheet Sections 354-B and 326 of the Indian Penal Code came to be added. Still Section 149 or Section 34 of the Indian Penal Code has not been invoked by the prosecution or investigating agency. Certain improbabilities, taking into consideration the supplementary statement of the informant that was recorded on the next day which she has not told on the day of incident, have tried to be highlighted on behalf of the applicants, however, as aforesaid, this Court is considering the application only to the extent of applicant Nos.3 and 4. Yet, some observations are necessary, taking into consideration the charge sheet. When it was noticed by this Court that statements of witnesses have been recorded,

who were alleged to be present at the S.T. stand and they are resident of different area or village; yet, their statements are stereotype rather copy paste and, therefore, this Court by order dated 03.08.2022 asked the Investigating Officer to file affidavit explaining those circumstances. It was also noticed that as per the second proviso to Section 161 of the Code of Criminal Procedure, the statement of a woman against whom an offence under Section 354-B of the Indian Penal Code is alleged to have been committed, then, such statement should be recorded by a woman Police Officer. In his affidavit, Investigating Officer Devram Bahirnath Dhage has accepted his mistake and tendered unconditional apology that he has recorded the supplementary statement, when in fact, it ought to have been recorded by a woman Police Officer. Further, he has also accepted his mistake that the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure are similar and even wordings are similar, as if the statement is copy pasted. In this connection, it will have to be observed that the law expects that the statements of the witnesses under Section 161 of the Code of criminal Procedure should be recorded in the wordings of the witnesses and it cannot be in any way copy pasted. In majority of the cases this Court is observing that the Investigating Officers are using the computers just to copy paste the statements of the witnesses and those statements are not in the wordings of the witnesses. This practice will have to be

deprecated. Whether under such circumstance, that is, the statements are copy pasted, even the paragraphs are same, then, whether those statements can be considered as statements under Section 161 of the Code of Criminal Procedure, will have to be decided in an appropriate proceeding. At this stage, suffice it to say that, this Court disapproves such practice and hope the Investigating Officers adopt a proper procedure, which is contemplated under law.

8 Coming back to the facts of the case, even if we consider those copy pasted statements of the witnesses under Section 161 of the Code of Criminal Procedure, no specific role has been attributed to applicant Nos.3 and 4. In fact, merely because the minors are made accused the Investigating Officer ought to have considered the case against them and he ought not to have invoked Section 143, 147 of the Indian Penal Code as against the minor children. It is hard to believe that those two persons would have shared common intention.

9 The charge sheet, which has been filed before learned Chief Judicial Magistrate, Ahmednagar/Judicial Magistrate First Class, Ahmednagar does not say any specific words that a separate charge sheet has been filed/forwarded to Juvenile Justice Board. Even in his affidavit the

Investigating Officer has not stated that he has forwarded separate charge sheet to Juvenile Justice Board, Ahmednagar. Under such circumstance, the quashing of the First Information Report would be the result for the quashing of the charge sheet to be filed before Juvenile Justice Board, Ahmednagar also. Taking into consideration the future of the minor children and the fact that no specific role is attributed to them either in the First Information Report or in the entire charge sheet before learned Judicial Magistrate First Class, this is a fit case where the powers of this Court under Section 482 of the Code of Criminal Procedure deserve to be used. It would then be inappropriate to ask the children to face the trial before Juvenile Justice Board. Since the parameters laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** have been complied with, the application deserves to be allowed. Accordingly, it is allowed. Hence, following order is passed.

ORDER

1 Criminal Application No.2529 of 2022 stands allowed and disposed of. Amendment be carried out within 15 days.

2 Criminal Application No.1301 of 2022 stands disposed of as withdrawn as against applicant Nos.1, 2, 5 and 6.

3 Criminal Application No.1301 of 2022 stands allowed in respect of applicant Nos.3 and 4.

4 The First Information Report vide Crime No.85/2022 dated 02.02.2022 registered with Kotwali Police Station, Ahmednagar, for the offence punishable under Sections 143, 147, 323, 504, 506, 354-B, 326 of the Indian Penal Code and the entire proceedings of Regular Criminal Case No.948/2022 pending before learned Additional Chief Judicial Magistrate, Ahmednagar stand quashed and set aside as against applicant Nos.3 and 4. Consequently, no proceedings be taken up arising out of First Information Report vide Crime No.85/2022 registered with Kotwali Police Station, Ahmednagar, for the offence punishable under Sections 143, 147, 323, 504, 506, 354-B, 326 of the Indian Penal Code, before Juvenile Justice Board, Ahmednagar as against applicant Nos.3 and 4.

5 Rule made absolute in above terms.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)