

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CRIMINAL APPLICATION NO.1456 OF 2021
WITH APPLN/609/2022 IN APPLN/1456/2021

AMOL TULSHIRAM KHAIRE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. R.P. Patwardhan, Advocate h/f Mr. S.S. Jadhav, Advocate for applicants

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

Mrs. Shilpa L. Awachar, Advocate (appointed) for respondent No.2

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

DATE : 12th AUGUST, 2022

PER COURT :

1 Criminal Application No.609 of 2022 stands allowed and disposed of. Amendment be carried out forthwith.

2 Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, for quashing First Information Report vide Crime No.2/2020 registered with Osmanabad City Police Station, for the offence punishable under Section 376,

493 read with Section 34 of the Indian Penal Code, 1860. By way of amendment prayer has been made for quashment of the charge sheet numbered as Regular Criminal Case No.447/2021 filed before Chief Judicial Magistrate, Osmanabad.

3 In view of the order passed by this Court on 26.08.2021 the criminal application stood dismissed as against applicant No.1 and now after hearing the learned Advocate for the applicants, when this Court showed disinclination to grant any relief for applicant No.3, the learned Advocate for the applicants seek withdrawal of the application for him also. The application proceeded for the relief claimed by the applicant No.2.

4 Heard learned Advocate Mr. R.P. Patwardhan holding for learned Advocate Mr. S.S. Jadhav for applicants, learned APP Mr. R.V. Dasalkar for respondent No.1 and learned appointed Advocate Mrs. Shilpa L. Awachar for respondent No.2.

5 Perusal of the First Information Report lodged by the respondent No.2 would show that present applicant No.2 who has been posed as accused No.2 is the friend of original accused No.1. The prosecutrix in her entire First Information Report has stated only about the presence of the applicant No.1, in Police Station, when she had gone to lodge the First Information Report.

In the First Information Report no specific overt act is attributed. It has been stated in para No.9 of the First Information Report that the present applicant No.2/original accused No.2 had instigated original accused No.1. The allegations against accused No.1 are that by giving false promises to marry, though he was already married and had two children at that time, had kept physical relations with the prosecutrix. There cannot be an instigation of such kind of act. Further, the First Information Report also states about the act that the present applicant had gone to the house of prosecutrix to see her at the time of settlement of marriage talks. The specific act done by the accused No.2 on that day has not been told. Accompanying original accused No.1 by itself will not amount to any offence even including Section 420 of the Indian Penal Code, as any representation that was made by accused No.2 or applicant No.2 has not been specifically stated.

6 Perusal of the charge sheet would show that twice supplementary statement of the informant/prosecutrix has been taken and it is almost the reiteration of the contents of the First Information Report. Except in the second supplementary statement, that is, stated to have been taken on 22.07.2021, she has stated that along with the applicant No.3/accused No.3, even the applicant No.2 had given threat in the Police Station that she would be at liberty to lodge case and they would spend on

the same. They will not allow her as well as her family to live. In her First Information Report the said threat is stated to have been given by the applicant No.3/accused No.3. Therefore, her second supplementary statement stating that even accused No.2 had given such kind of threat can be taken as improvement. Further, he is a friend of accused No.1. It is highly impossible that he would have shown such kind of interest. The statement of other witnesses is in respect of the relationship between the prosecutrix and accused No.1. We cannot forget that the prosecutrix was aged 29, that means major.

7 Though there appears from the application that the allegations are made that the prosecutrix herself had demanded some amount and in respect of that even the affidavit-in-reply by Assistant Police Inspector, Osmanabad City Police Station Mr. Salim Bashir Pathan has given; yet, that cannot be taken into consideration at this stage, as that electronic evidence will have to be proved by the accused persons as part of their defence, if they wish.

8 However, taking into consideration the contents of the First Information Report and the entire charge sheet it would be a futile exercise for the applicant No.2 to face the charge/case on the basis of those

allegations. Therefore, in view of **State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** this is a case made out for exercise of powers under Section 482 of the Code of Criminal Procedure for quashing the First Information Report as well as the charge sheet in respect of applicant No.2. Hence, following order.

ORDER

1 Application has already been dismissed as against applicant No.1 by order dated 26.08.2021.

2 Application stands dismissed as withdrawn in respect of applicant No.3.

3 Application stands allowed in respect of applicant No.2.

4 The First Information Report vide Crime No.2/2020 dated 03.01.2020 registered with Osmanabad City Police Station, for the offence punishable under Section 376, 493 read with Section 34 of the Indian Penal Code, 1860, and further Regular Criminal Case No.447/2021 pending before learned Chief Judicial Magistrate, Osmanabad and if the Sessions case has been committed to the Court of Sessions, then, the said Sessions Case stands quashed and set aside as against the applicant No.2 viz. Ganesh Digambar

Burade.

5 The fees of the appointed Advocate is quantified at Rs.5,000/- (Rupees Five Thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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