

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL APPLICATION NO. 2966 OF 2022

1. Tushar S/o. Rambhau Yeole
Age : 33 years, Occ. Service,
2. Varsha W/o. Tushar Yeole
Age : 30 years, Occ. Service,

Both R/o. Survey No.41/2,
Bappa Residency, Flat No.109,
Sakhare Wasti Road, Hinjwadi,
Pune, Tq. & Dist. Pune.

... Applicants
(Ori. Accused)

Versus

1. The State of Maharashtra
Through Investigation Officer
Parner Police Station,
Tq. Parner, Dist. Ahmednagar.

(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay Bench at Aurangabad)
2. Hanuman S/o. Natha Ugale
Age : 37 years, Occ. Service
(PSI Parner Police Station),
R/o. C/. Parner Police Station,
Tq. Parner, District Ahmednagar.
Mob. No. 9922932230

... Respondents
(R.No.2-Orig. Complainant)

.....
Advocate for Applicants : Mr. Narayan B. Narwade
APP for Respondent-State : Mr. S. J. Salgare
.....

**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 15 NOVEMBER 2022

ORDER :-

1. Heard.
2. The applicants are seeking quashment of crime no.573 of 2022 registered with Parner Police Station, District Ahmednagar for the offences punishable under Sections 353, 186, 332, 323, 504, 506 r/w 109 of IPC.
3. The sum and substance of the allegations as can be discerned from the FIR lodged by respondent no.2, who is a Police Sub Inspector who was posted at the self-same police station, are to the effect that the present applicant no.1 had obtained an anticipatory bail in connection with another crime and had come to the police station with applicant no.2, who happens to be his wife also serving in the police department. It is alleged that when respondent no.2 asked them to comply with the necessary formalities for releasing applicant no.1 on bail pursuant to the order of the Court and asked them to wait till he put up a uniform, both of them started shouting and questioning him by asserting that they were being falsely implicated. They also objected to his calling the applicant no.1 as an accused. They also threatened him of ending their lives. It is further

alleged that applicant no.2 also boasted of serving as constable in the wireless department of police and even started creating obstacles while he was discharging his duty of completing the formalities for releasing applicant no.1 on bail. She had to be taken out of the police station with the help of some constables. Thereafter, when he started completing the documentation for releasing applicant no.1 on bail, the latter caught hold him by collar and again objected him by saying that he could not have called him an accused. Applicant no.1 then pushed and pulled the respondent no.2 resulting in the latter sustaining some abrasions on his nose and neck. The buttons of his shirt were torned off and thereby applicant no.1 caused obstruction in his discharging a public duty. It is also alleged that applicant no.2 again instigated applicant no.1 to assault the respondent no.2. It is then alleged that with the help of the police staff present, the respondent no.2 was rescued and the applicants were taken in custody.

4. Learned advocate for the applicants would submit that they are being falsely implicated with a concocted version. No incident had taken place. In fact, the applicant no.1 was assaulted and to cover up that incident, a false and fabricated FIR has been lodged. He would point out that the applicants had even lodged a detailed complaint

with the Superintendent of Police on 11.08.2022 narrating the episode and their version as to how the incident had taken place. He would submit that the necessary ingredients for constituting the offences cannot be made out from the FIR. It would be a sheer abuse of the process of law if the applicants are made to face the investigation and a possible trial. The case is squarely covered by the principles laid down in the matter of ***State of Haryana v. Ch. Bhajan Lal and others*** ; AIR 1992 SC 604 and the application be entertained.

5. Learned Advocate Mr. Narwade would also cite the decision of this Court in the matter of ***Tarachand S/o Mansukhlal Sancheti v. The State of Maharashtra and another*** in Criminal Application No.2300 of 2019 dated 07.12.2021 to buttress his submission that without there being any assault, the offence under Section 353 of IPC does not get attracted.

6. Learned APP opposes the application. He submits that there are specific and precise allegations in the FIR and at this juncture, there is nothing to disbelieve the version of respondent no.2 and the application be rejected.

7. We have carefully considered the FIR and the papers as also the rival submissions. On being asked, even the learned advocate for the applicants has tendered across the bar a certified copy of the FIR in crime no.56 of 2018 dated 02.03.2018 also registered for the offences under Sections 353, 323, 427 etc. of the IPC against the applicant no.1 and his relatives in which he was granted anticipatory bail for furnishing which he had been to the respondent no.2 when the alleged incident had occurred.

8. A bare look at the present FIR clearly reveals that the applicants had been to the police station pursuant to the order of anticipatory bail obtained by the applicant no.1 in connection with crime no.56 of 2018. Even the applicants, in their application, have specifically admitted to have been to the police station for that purpose. Even in their complaint filed with the Superintendent of Police [Exhibit "D"] dated 11.08.2022, they admit about having gone to the police station and made an attempt to furnish bail before respondent no.2.

9. A bare look at the FIR reveals that by no stretch of imagination the allegations can be said to be absurd or improper which is one of the parameters to be borne in mind by the courts as is indicated in the matter of *Bhajan Lal* (supra).

10. It cannot be a sheer coincidence that the applicants, and particularly, applicant no.1 has been involved in a similar incident. Admittedly, even the anticipatory bail which he was to furnish was in respect of offence of a similar kind and the FIR was lodged by a medical officer who had issued an injury certificate mentioning the injuries to be simple and the applicant no.1, along with other accused, had gone there questioning the medical officer as to how and why, instead of a certificate regarding serious injuries, he had issued only a certificate mentioning the injuries to be simple. Over and above, the applicant no.2 has also been serving in the same department, i.e. the wireless department, as a constable. No previous animosity or grudge has been imputed to respondent no.2 either in the application or even in the complaint lodged by the applicants with the Superintendent of Police so that *prima facie* inference can be drawn about false implication. Going by the allegations in the FIR, the ingredients for constituting the offence punishable under Section 353 of IPC, which is a serious offence which has been recently made sessions court triable, can be easily made out. The application does not fall into the category of the cases contemplated in the matter of ***Bhajan Lal*** (supra).

11. It is necessary also to note that the FIR was lodged on 19.07.2022 and in all probability, by indulging in some deliberation,

the applicants had filed the complaint with the Superintendent of Police [Exhibit "D"] on 11.08.2022. If really the incident had taken place as per their version in this complaint, no plausible explanation can be found in the application as to why this complaint could not be filed promptly and required a further period of more than 21 days. Consequently, this complaint cannot be considered to be impeccable material which can be looked into in the proceeding for quashment of the crime.

12. The application is rejected.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]

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