

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD

37 CRIMINAL APPLICATION NO. 2489 OF 2021

1. Gaus s/o Mohiyoddin Attar
2. Ismail s/o Mohiyoddin Attar
3. Mohadin s/o Abdul Attar

Versus

1. State of Maharashtra
2. Sanjeevkumar s/o Kashinathappa Achare

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Mr. Rajiv B. Deshmukh and Mr. Rahul R. Deshmukh, Advocates
for the Applicants.

Mr. R. V. Dasalkar, APP for Respondent No.1-State.

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CORAM : SARANG V. KOTWAL
BHARAT P. DESHPANDE, JJ.
DATED : 20 JUNE 2022

PER COURT:-

1. This is an application for quashing of the FIR registered vide C.R. No. 88/2021 at Markhel Police Station, Taluka Degloor, District Nanded against the applicants. The FIR is lodged for commission of offence punishable under Section 379 r/w Section 34 of IPC. Applicant no.3 is father of Irshad Attar and other two applicants are Irshad's brothers. Before proceeding to decide this matter, it is necessary to mention that the same FIR against Irshad Attar is quashed by this

Court (Coram : V. K. Jadhav and Shrikant D. Kulkarni, JJ.) vide order dated 28.09.2021 passed in Criminal Application No. 1576 of 2021.

2. Heard Mr. Rajiv B. Deshmukh, learned counsel for the applicants and Mr. R. V. Dasalkar, learned APP for the respondent State.

3. The office note shows that notice for final disposal was served on respondent no.2. However no one appears for respondent no.2 and therefore, we have decided this application with assistance of learned counsel for the applicant as well as learned APP.

4. The FIR is lodged by respondent no.2 on 31.05.2021. The FIR is a result of an order passed under Section 156(3) of Cr.P.C. by learned Judicial Magistrate, First Class, Deglur. It is mentioned in the FIR that the applicant was residing with his family at Hanegaon. On 28.02.2021, he slept in his hall. His wife and daughter Sonal slept in a different room. In the early morning, the informant was awakened by his wife. She told him that their daughter Sonal was not found in the house. They took search for her. She was not found. They also realized that an amount of Rupees twenty five lakh and about 73 *tola* gold and

some silver were missing from the house. It is his case that Irshad and the present applicants along with the informant's daughter Sonal had taken away this property. In the morning, the informant went to the house of applicant no.3 to question him. It is alleged that, at that time, the applicant no.3 told him that all of them and Sonal had stolen his property and that they were not afraid of the informant. It is the case of the informant that thereafter, he approached the police but they did not pay any heed and finally he approached the Court of Magistrate after which this FIR was lodged.

5. Learned counsel for the applicants submits that the applicants' role is not different from the other accused Irshad, in whose favour the aforementioned order was passed directing quashing of the FIR lodged against him. He submitted that on the ground of parity, the same treatment should be given to the applicants and the FIR against them should also be quashed. He further submitted that only to seek revenge against the applicants; as the informant's daughter had eloped with Irshad, this FIR is lodged with *mala fide* intentions.

6. Learned APP fairly admitted that the aforementioned order passed by the Division Bench was in respect of Irshad and his case is not different from that of the present applicants. He also submitted that the investigation carried out did not reveal that the property was taken away by the present applicants. Search of their house did not yield anything.

7. We have considered these submissions and we have perused the aforementioned order passed by the earlier Division Bench. Important observations in that order are made in para 9 and 11 which read thus:

“9. It further appears that on 31.05.2021, respondent no.2-informant has lodged the specific complaint against the applicant Irshad and his father and two brothers. We find that the allegations have been made with an ulterior motive for wreaking vengeance against the applicant Irshad.

10. ...

11. In the instant case, in our considered opinion, respondent no.2 has lodged the complaint against applicant Irshad with some ulterior motive for wreaking vengeance since applicant Irshad has not only converted the religion of co-accused Sonal but also performed marriage with her. Moreover, there is absolutely no evidence against applicant Irshad for having committed the offence of theft. Even in the search of house of applicant Irshad in Hyderabad, where he resides with co-accused

Sonal, nothing is found and even there are no entries in their bank account indicating that the amount allegedly stolen has been kept in the bank account. In view of the same and in terms of the ratio laid down by the Supreme Court in the case cited above, we are inclined to allow this application so far as applicant Irshad is concerned. Hence, we proceed to pass the following order.....”

8. Same consideration must apply for the case of the present applicants. Their case is not different from that of Irshad. We are in respectful agreement with the observations made in the said order dated 28.09.2021. Therefore, even this application deserves to be allowed with similar relief. Hence the following order:

ORDER

- I. The application is allowed in terms of prayer clause “B”.
- II. The FIR registered vide C.R. No. 88/2021 at Markhel Police Station, Taluka Degloor, District Nanded is quashed qua the present applicants.
- III. The application is disposed off.

BHARAT. P. DESHPANDE, J.

SARANG V. KOTWAL, J.