

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2579 OF 2021

Ajit S/o Gokulprasad Jaiswal,
Age-56 years, Occu:Service as Principal
of the Senior College at Nawapur,
R/o-Gujar Galli, Nawapur,
Tq-Nawapur, Dist-Nandurbar.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Nawapur Police Station,
Dist-Nandurbar,
- 2) Kum. Harshada D/o Prakash Mali,
Age-22 years, Occu:Education,
R/o-Gujar Galli, Nawapur,
Tq-Nawapur, Dist-Nandurbar.

...RESPONDENTS

...
Mr.Chaitanya C. Deshpande Advocate for Applicant.
Mr.S.D. Ghayal, A.P.P. for Respondent No.1.
Ms. Sabahat T. Kazi Advocate for Respondent No.2.
...

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

DATE : 5th SEPTEMBER, 2022

ORDER :

1. The applicant has been arrayed as accused No.2 in the First Information Report (for short "FIR") vide Crime No.151 of

2021 registered with Nawapur Police Station, District-Nandurbar, which has been registered for the offence punishable under Sections 354-A, 354-D, 109, 504, 506 of the Indian Penal Code at the behest of respondent No.2. The applicant, by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure seeks quashment of the said FIR as well as the entire proceedings of R.C.C. No.47 of 2021 pending before the Court of Judicial Magistrate First Class, Nawapur, District-Nandurbar, under Section 482 of the Code of Criminal Procedure, to the extent of present applicant.

2. Heard learned Advocate Mr. Deshpande appearing for the applicant, learned APP Mr. Ghayal appearing for respondent No.1 and learned Advocate Ms. Kazi appearing for respondent No.2.

3. The learned Advocate for the applicant submits that perusal of the FIR as well as the entire charge-sheet does not specify any role to the applicant. It is the say of respondent No.2 that she was making complaint against accused No.1 to the present applicant but he has not taken any action under the pretext that the College would be defamed. Even if this allegation is taken as it is, it does not amount to abetment as contemplated under Section 109 of the Indian Penal Code. All

the allegations and the evidence is against accused No.1. The applicant is the Principal of the Senior College. It would be unjust to ask him to face the trial for the act which he never committed.

4. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the Application and submitted that being the Principal of the College where respondent No.2 was taking education, applicant was supposed to take action against accused No.1 but on some flimsy grounds that the College would be defamed, applicant has not taken any action. Definitely such acts would give courage to persons like accused No.1 to commit crime. This is not a fit case where only on the basis of charge-sheet the action deserves to be taken and the trial Court, after considering the evidence that is adduced, would decide the matter.

5. Respondent No.2 is 22 years girl who has taken education in B.Sc. Around the date of FIR she was studying in M.Sc. She has stated in the FIR that in the year 2018-2019 when she was studying in S.Y.B.Sc. accused No.1 was teaching her physics subject. She has stated in the FIR that since 2018-2019 accused No.1 was following her and behaving in such a manner which

would outrage her modesty. Accused No.1 had given her some objectionable message on 28th February 2021 when she was working as invigilator at the time of examination of health department. She says that she informed about the behavior of accused No.1 to the applicant on the same day i.e. 28th February 2021 around 7.00 p.m. and requested him to take action against accused No.1. The informant says that applicant behaved arrogantly with her and told her that she should inform it to the chairman of the institution and he should also be called there. Informant says that applicant has avoided to take any action against accused No.1 due to the fear of defamation to the College.

6. If we consider the statements of the witnesses, which are consisting of family members of the informant and the students those were studying along with informant, her own statement under Section 164 of the Code of Criminal Procedure and statements of other persons, the same would show that mainly the allegation is against accused No.1 and except the alleged incident with applicant around 7.00 p.m. on 28th February 2021, there is absolutely no role attributed to the applicant. As regards that role also, it is her say that she along with her family members met the applicant, who is the Principal of the College,

and told him that he should take action against accused No.1. It appears that the applicant told them that they should inform it to the chairman of the institution and avoided the action as the College would be defamed. It is to be noted that whether under any other provisions of law the applicant had authority to take action against accused No.1 is a different question. Merely because applicant is not taking that action, whether it amounts to instigation, that too to be made punishable under Section 109 of the Indian Penal Code is required to be considered.

7. For Section 109 of the Indian Penal Code which provides for punishment, we will have to consider Section 107 of the Indian Penal Code, which runs thus:

“107. Abetment of a thing.- A person abets the doing of a thing, who –

First.- Instigates any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

8. Section 108 of the Indian Penal Code defines word 'abettor' as the person who abets an offence. Explanation 1 to Section 108 provides that the abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act. The abetment is then made punishable under Section 109 of the Indian Penal Code. We can rely on the decision in ***Saju vs. State of Kerala, AIR 2001 SC 175***, wherein it has been held that:

"To prove the charge of abetment, the prosecution is required to prove that the abettor had instigated the doing of a particular thing or engaged with one or more other person or persons in any conspiracy for the doing of that thing or intentionally aided by an act of illegal omission, doing of that thing."

9. Here the prosecution story does not travel beyond the date of 28th February 2021. In the supplementary statement respondent No.2 states that her mother gave a letter in writing on 6th March 2021 to take action against accused No.1, but according to the informant the applicant intentionally remained absent. Absentee of a person to receive the representation or complaint application does not amount to abetment in any way. That complaint application was received by Vice Principal of the College. There is absolutely no evidence collected which would show that present applicant was in contract with accused No.1 in any manner and by any specific act he was helping accused No.1 in outraging the modesty of the informant or criminally intimidating or insulting the informant or her family members. Being the Principal of the College it might be expected from the applicant to take action against the persons like accused No.1 who are harassing the girls coming for taking education in the College. But there are rules and laws which give right to such girls to have their grievances redressed. But inaction on the part of the Principal of the College will not amount to an offence punishable under Section 109 of the Indian Penal Code as contemplated under Section 107 of the Indian Penal Code.

10. It would be a futile exercise to ask the applicant to face the trial and therefore the Application deserves to be allowed in view of the parameters laid down in ***State of Haryana and others vs. Ch. Bhajan Lal and others***, reported in **AIR 1992 SC 604**, Hence following order:-

ORDER

(I) The Application stands allowed in terms of prayer clause "(B)", as against the present applicant only.

(II) The Application stands disposed of, accordingly.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE