

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CRIMINAL APPLICATION NO. 3073 OF 2021

NITIN S/O VIJAY KHARAT
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Applicant : Mr. B. R. Sontakke Patil
APP for Respondent-State : Mr. S. D. Ghayal
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 12th JANUARY, 2022**

PER COURT:-

1. We have heard learned counsel for the applicant for sufficient time. Learned counsel for the applicant submits that respondent no.2-informant is a prostitute and several complaints came to be registered against her. Even few days prior to the incident, mother of the applicant has filed an application in the concerned police station alleging therein that respondent no.2-informant, who is their neighbour, is threatening them to file a complaint against the applicant, who is a police constable, and to see that he will be suspended. Learned counsel submits that the applicant has been falsely implicated and the complaint came to be lodged with some ulterior motive.

2. We have carefully gone through the contents of the complaint. It appears that the incident had taken place on 12.11.2021 at about 09.00 p.m. The informant alongwith her husband had gone to her old house situated in Laxminagar area for collecting rent from their tenants and at that time, the applicant herein has abused her by referring her as prostitute. There are clear allegations against the applicant.

3. In the case *State of Haryana and others v. Ch. Bhajan Lal and others*, reported in **AIR 1992 SC 604** in para 114 of the judgment, the Supreme Court has observed that it is a well established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence, does not become vitiated on account of malafides. In the instant case, the informant has made allegations by filing the complaint in the concerned police station and there are witnesses to the said incident, as referred in the complaint itself.

4. Though learned counsel for the applicant has vehemently raised many other grounds, however, at this stage we cannot consider the probable defence of the applicant-accused. Furthermore, we cannot conduct mini trial here.

5. In the case of ***State of Orrisa v. Pratima Monahti*** (*Criminal Appeal No. 1455-1456 of 2021 decided by the Supreme Court on 11.12.2021*), the Supreme Court in para 6.2 has made the following observations:

"6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the chargesheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."

6. In view of the above and in terms of the ratio laid down by the Supreme Court in the recent case of *State of Orrisa v. Pratima Monahiti* (supra), we are not inclined to entertain this application. The criminal application is hereby dismissed.

7. The applicant is at liberty to file an application for discharge. It is however for the trial court to consider the same on its own merits.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)