

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.804 OF 2021

1. Vinayak Bhanudas Bhosale
Age 52 yrs, Occ: business,
2. Shailesh Vinayak Bhosale
Age 25 yrs, Occ:business,
3. Suyash Vinayak Bhosale
Age 22 yrs, Occ: student,
All r/a NelKaranji,
Tal-Atpadi, Dist-Sangli ... Petitioners.

V/s

1. The State of Maharashtra
(Through Senior Police Inspector
Vita Police Station, District-Sangli
2. Pournima Sahebrao Budhawale
Age 30 yrs, Occ: Household,
r/a Nimbawde, Taluka Atpadi
District-Sangli ... Respondents.

...
Mr Mahindra B. Deshmukh for the Applicants.

Mr S. S. Hulke, APP for State.

....

***CORAM : REVATI MOHITE DERE
& R.N.LADDHA, JJ.
DATE : 21st November, 2022.***

ORDER (PER R.N.LADDHA, J) :

Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties.

3. By this Criminal Application, under Section 482 of the Code of Criminal Procedure, 1973, the Applicants seek the quashing of C.R. no.143 of 2021 dated 30.03.2021, registered against them at Vita Police Station, Vita, District -Sangli at the instance of respondent no.2, for the offences punishable under Sections 452, 354, 323, 504 506 read with Section 34 of the Indian Penal Code, 1860.

4. It is alleged that on 30.3.2021, the Applicants had assaulted, abused and threatened respondent no.2 and her mother and in the said incident, Applicant No.1 had inappropriately touched and outraged the modesty of respondent no.2.

5. Mr M.B.Deshmukh, learned Counsel appearing on behalf of the Applicants, submitted that the alleged incident never occurred, and the impugned FIR has been lodged malafidely. On the contrary, the family members of respondent no.2 had committed a deadly assault on Applicants No.1 and 2. He

submitted that at the relevant date and time, Applicants were not present at the alleged spot. The CCTV footage collected by the Vita Police Station shows that at the relevant date and time, Applicants No.1 and 2, along with their family members, were travelling in their car 30 k.m. away from the alleged spot of the incident and Applicant No.3 was present in Goa.

6. According to Mr Deshmukh, learned Counsel for the Applicants, the said CCTV footage falsifies the allegations made by respondent no.2. He submitted that, the allegations mentioned above, in the impugned FIR against the Applicants, when read in their entirety and accepted as true, do not make out any case against the Applicants under Sections 452, 354, 323, 504, 506 r/w 34 of the Indian Penal Code. He submitted that the case of the Applicants squarely falls within the exceptions, as held by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*. Therefore, impugned FIR is bad in law and needs to be quashed.

7. Mr S.S.Hulke, learned Additional Public Prosecutor, contested the contentions of the learned Counsel for the Applicants. He submitted that while

exercising the powers under Section 482 of the Code of Criminal Procedure, the High Court is not required to enter into and consider the case's merits and the *plea of alibi* in detail, which as such, are required to be considered at the time of trial. He submitted that when there are serious triable allegations in the report, it is inappropriate to quash the FIR in exercising the powers inherent in the High Court.

8. Further, he submitted that the Applicants could not insist that this Court ought minutely to examine the allegations made in the complaint to ascertain whether all the ingredients of the offence are present therein or not. He submitted that even though the inherent powers of this Court under Section 482 of the Code of Criminal Procedure to interfere with criminal proceedings are wide, such powers have to be exercised with circumspection and only in exceptional cases. In his view, the offences committed by the Applicants are crimes against the women.

9. The rival contentions now fall for our determination.

10. In ***Central Bureau of Investigation Vs. K.M.Sharan***¹ the Hon'ble Supreme Court observed thus:

“31. At this stage, the High Court in its jurisdiction under Section 482 Cr.PC was not called upon to embark upon the inquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the court concerned after the entire material is produced before it on a thorough investigation and evidence is led.”

11. In ***Dineshbhai Chandubhai Patel Vs. State of Gujarat***², it has been held that ;

“29. The High court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of FIR, complaining commission of several cognizable offences by the accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court can not act like an investigating agency and nor can exercise the powers like an Appellate Court. The question, in our opinion,

1 (2008)4 SCC 471

2 (2018)3 SCC 104

was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so, when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the chargesheet is filed alongwith such material as to how far and to what extent reliance can be place on such material.”

31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.”

12. ***In Superintendent of Police, CBI Vs. Tapan Kumar Singh***³, the Hon’ble Supreme Court, in paragraph 22 has held that,

“The law does not require the

3 (2003) 6 SCC 175.

mentioning of all the ingredients of the offence in the first information report. It is only after a complete investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency.”

13. In *State of Punjab Vs. Dharam Singh*⁴, the Hon’ble Supreme Court, in para 2 has held that-

“The High Court has, however, not confined its scrutiny to the averments contained in the first information report but has traversed beyond and examined the case in the light of the contentions put forth by the respondents in their petition under Section 482 Cr.P.C. By indulgence in such exercise the High Court has come to the conclusion that the second respondent Cooperative Society cannot be termed a dealer of the alleged adulterated fertilizer distributed to its members because there was no sale involved in the transaction, that for the same reason the second respondent Society was not bound to obtain a Registration Certificate for selling fertilizer and furthermore the alleged sale of adulterated fertilizer was itself open to serious doubt because of conflicting analysis reports issued by the Chemical Analyst regarding the fertilizer and hence the emergent position is cognizable offences. Thus

4 1987 SCC (Cri) 621.

what the High Court has done is to go far beyond the contents of the first information report and enter into a discussion on the merits of the case before the Investigating Agency had conducted investigation and collected evidence.”

14. The Hon’ble Supreme Court in ***Bhajan Lal*** (supra) has laid down the guiding principles to be considered in determining whether an FIR, could be quashed as under.

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made

in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the*

rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

15. In the present case, prima facie, it appears from the contents of the impugned FIR that the Applicants have assaulted the Respondent No.2 and the Applicant No.1 in the said incident inappropriately touched and outraged the modesty of Respondent No.2. We prima facie find that Respondent No.2/Informant has spelt out the offending acts of the Applicants. In the instant case, the impugned FIR discloses a prima facie commission of cognizable offence alleged by Respondent No.2 against the Applicants.

16. As far as, the plea of *alibi is concerned the same is a question* of fact and has to be proved with absolute certainty. However, in the present case, the Applicants are yet to prove that at the relevant date and time, they were not present at the alleged spot of

the incident and were present elsewhere. The CCTV footage, before being relied upon, has to be proved by leading evidence, and it can not be taken into consideration and believed at its face value to hold that the case against the Applicants is false.

17. Upon perusal of the categories as enumerated by the Hon'ble Supreme Court, in the case of *Bhajan Lal* (supra), it reveals that the case of the petitioner does not fall under the parameters to quash the FIR.

18. Besides, applying the law laid down by the Hon'ble Supreme Court in the decisions above to the facts in the case in hand, we are of the opinion that no case is made out to quash the impugned FIR. However, we abstain from discussing the statements of the witnesses and the extent of their substantiation of the FIR for fear of creating an unconscious impression on the trial Court. We wish to mention that this order should not be construed as having ruled on the merits of the matter. Consequently, the learned trial Court shall not be influenced by the observations in this order.

19. In light of the above, the present petition, being without merit, is accordingly dismissed.

R.N.LADDHA,J. REVATI MOHITE DERE,J.