

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.81 OF 2021

1. Smt. Mina w/o Prashant Shinde
Aged about 30 years,
Occupation – Household
R/o. at Post and Tq. Mahagaon,
District Yavatmal - 445205
2. Prashant s/o Dhonderao Shinde
Aged about 37 years,
Occupation – Marketing,
R/o. at Post and Tq. Mahagaon
District Yavatmal – 445205
3. Ganesh s/o Rajkumar Nikam
Aged about 20 years,
Occupation – Marketing,
R/o. at Bhojala, Tq. Pusad,
District Yavatmal – 445204
4. Jamil s/o Mohan Manjre
Aged about 41 years,
Occupation – Milk distribution,
R/o Subhash Chauk, Gueuwar Bazar,
Post and Tq. Washim,
District Washim – 444505
5. Ekanath s/o Ashok Kalbande,
Aged about 34 years,
Occupation Motor Mechanical,
R/o at Zakalawadi, Post Tamasi,
Tq. and District Washim – 444505
6. Dr. Vinod s/o Laxman Nirgude,
R/o. Washim, Post Washim,
Chandika Wesh, Chamunda Devi Road,
District Washim - 444505

...APPLICANTS

VERSUS

1. The State of Maharashtra,
through P.S.O., P.S. Washim (City),
Tq. and District Washim
2. X.Y.Z. (though name of the victim
is mentioned in the appeal memo,
it is concealed due to mandate
of Section 228-A of the IPC)

...NON-APPLICANTS

Shri S.A. Mohta, Advocate for applicants.
Shri V.A. Thakare, Additional Public Prosecutor for non-applicant
No.1/State.
Shri M.L. Vairagade, Advocate for non-applicant No.2.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : NOVEMBER 10, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

The application is not pressed for applicant Nos.1, 2 and 6.

2. **ADMIT.** Heard finally with the consent of learned Counsel for
the parties.

3. By preferring this application, the applicants seeking relief for
quashment of First Information Report (hereinafter referred to as the
'FIR' for short) vide Crime No.107/2020 and the charge-sheet bearing
No.163/2020 registered at police station Washim (City), District Washim
for the offences punishable under Sections 354-A, 363, 366, 376(2)(n),

323, 504 and 506 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC' for short) and Section 3(1)(w)(i), 3(1)(w)(ii), 3(1)(s) and 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Non-applicant No.2 had lodged the report with police station, Washim (City) on 04/03/2020 alleging that she is working for the post of Merchandiser to Branch Manager since last one and half years in the Mahananda Sanjivni Company Branch at Washim. The Branch Manager Milind Matale used to stare at her and was passing sexually remark and attempted to develop the physical relationship with her. She informed Milind Matale who is accused No.1 that she will left the job but accused No.1 - Milind Matale took her to the hospital of Dr. Vinod Nirgude and subjected her for forcible sexual assault. It was further alleged by her that these accused also advised her to maintain the physical relationship with Milind Matale for achievement of success in the Company. She further alleged that accused No.1 - Milind Matale promised her for marriage within next 15 days and on the promise of marriage also subjected her for sexual assault. As accused No.1 - Milind Matale has not performed the marriage with her she approached to him, at that time Sunita Matale who is the mother of accused No.1 - Milind Matale obstructed her and abused her on her caste. She further alleged that one Jamil Manjre and Ekanath Kalbande i.e. applicant Nos.4 and 5 took

her and Milind Matale to the railway station and assisted accused No.1 - Milind Matale to elope from the said place. Since then Milind Matale is absconding. Thus, she alleged that applicant Nos.3, 4 and 5 assisted accused No.1 - Milind Matale to elope from Washim.

5. It is the contention of the applicants that non-applicant No.2 is taking undue advantage of her caste for obtaining illegal money from the present applicants and compelling accused No.1-Milind Matale to perform the marriage with her. In fact, no such incident had taken place. Accused No.1 - Milind Matale is not concerned with the alleged offence. No *prima facie* material against the present applicants to connect with the alleged offence. Compelling them to face the trial would be abuse of process of law and hence FIR registered against the applicant Nos.3 to 5 be quashed.

6. Said application is strongly opposed by the learned Additional Public Prosecutor appearing for the State on the ground that the present applicants in furtherance of their common intention assisted accused No.1 - Milind Matale to commit the offence and accordingly accused No.1 - Milind Matale subjected the victim for sexual assault and thereby committed grievous offence. The allegation of the complainant that she was forced to have physical relationship with the said Milind Matale by threatening her. Thus, there is *prima facie* material against the present

applicants. Applicant Nos.4 and 5 assisted accused No.1 – Milind Matale to elope from the place, since then he is absconding. The accused No.1 - Milind Matale promised her for marriage and on the promise of marriage subjected her for sexual assault. Thus, there is sufficient allegations and material against the applicants to connect them with the alleged offence, hence application deserves to be rejected.

7. Shri S.A. Mohta, learned Counsel for the applicants submitted that now investigation is completed and the charge-sheet is filed. General and omnibus allegations are made against applicant Nos.4 and 5 that they have assisted accused No.1 - Milind Matale to run away from the District Washim. No other role is assigned to these applicants. Thus, compelling them to face the prosecution would be abuse of process of law. Hence, the FIR registered against them be quashed and set aside.

8. Learned Additional Public Prosecutor reiterated the contention that there is *prima facie* material against the present applicants to connect them with the alleged offence.

9. Heard both the sides and perused the FIR as well as the material evidence collected during the investigation.

10. The recitals of the FIR shows that the informant and accused No.1 - Milind Matale were working in one company. As per the allegation said Milind Matale subjected her for sexual assault on the promise of marriage. It was further alleged by her that said Milind Matale had forcibly sexual intercourse with her and other applicant Dr. Vinod Nirgude hurt him.

11. As far as the allegations against applicant No.3-Ganesh Nikam, applicant No.4-Jamil Manjre and applicant No.5-Ekanath Kalbande are concerned is that they assisted accused No.1 - Milind Matale to elope from the Washim. There is no any other allegations against them. General and omnibus allegations are made against them. The allegation is not regarding the specific instances or the specific act committed by them with intend to assist accused No.1 - Milind Matale. Considering the general and omnibus allegations against them no *prima facie* material is on record to show that they have committed any offence as alleged by the informant. Even the allegations are taken as it is at its face value no offences are made out against them.

12. In such circumstances, compelling them to face the prosecution would be abuse of the process of law. It is held by the Hon'ble Apex Court in the case of ***Jagmohan Singh Vs. Vimlesh Kumar and ors. 2022 LiveLaw (SC) 546*** wherein it is held that while exercising

jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself. It is further held that the criminal proceedings can be said to be in abuse of the process of Court, to warrant intervention under Section 482 Cr.P.C., when the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding that the proceedings are in abuse of the process of the Court.

13. The Hon'ble Apex Court in the case of ***Khuman Singh Vs. State of Madhya Pradesh (2020) 18 SCC 763*** has held that the prosecution has to establish that the offence has been committed only because the deceased is belonging to Scheduled Caste or Scheduled Tribe, which is not even the case of the prosecution here.

14. Thus, it is well settled that when the allegations in the FIR to not at all disclosed any offence or there are material on record from which the Court can reasonably arrived at a finding that the proceedings are in the abuse of the process of the Court. The intervention to avoid the abuse of process of the Court is required. In view of that, application deserves to be allowed and the same is allowed accordingly.

15. In the result, we proceed to pass the following order :

(i) The criminal application is allowed.

(ii) The First Information Report vide Crime No.107/2020 and the charge-sheet bearing No.163/2020 registered at police station Washim (City), District Washim for the offences punishable under Sections 354-A, 363, 366, 376(2)(n), 323, 504 and 506 read with Section 34 of the Indian Penal Code and Section 3(1)(w)(i), 3(1)(w)(ii), 3(1)(s) and 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, are quashed and set aside

16. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*