

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

CRIMINAL APPLICATION (APL) NO.437 OF 2021

1. Smt. Kamrunnisa Mohd. Ashpak,
Aged 47 years, Occ. Household.
2. Mohd. Ashpak Sheikh Mehmood,
aged about 58 years, Occ. Private.

Both R/o Taj Nagar, Digras,
Tq. Digras, Dist. Yavatmal.

.... **APPLICANTS**

// V E R S U S //

1. State of Maharashtra,
Through Police Station Officer,
Digras, Police Station, Digras,
Dist. Yavatmal.
2. Ku. Vaishnavi Avinash Rathod,
aged 23 years, Occ. Private,
R/o Khedbid, Tq. Arni,
Dist. Yavatmal.

..NON-APPLICANTS

Shri Firdos Mirza, Advocate for applicants.

Mrs. Mayuri Deshmukh, Additional Public Prosecutor for non-
applicant No.1-State.

Mrs. D. I. Charlewar, Advocate for non-applicant No.2.

CORAM: V. M. DESHPANDE AND

G. A. SANAP, JJ.

DATED : 04/01/2022.

JUDGMENT : (PER G. A. SANAP, J.)

1. **Rule.** Rule is made returnable forthwith. Heard
finally with the consent of the learned counsel for the parties.

2. The applicant Nos.1 and 2 who are arrayed as the accused Nos.2 and 3 in Crime No.0164/2021 registered on 25/02/2021 under Sections 376, 377, 323, 504 and 506 read with Section 34 of the Indian Penal Code at Digras Police Station, Dist. Yavatmal has prayed for quashing the said First Information Report against them.

3. On the basis of the report lodged by non-applicant No.2, the above crime came to be registered against the son of the applicants and the applicants. The non-applicant No.2 alleged that the accused No.1 sexually assaulted her and the applicant Nos.1 and 2 assisted him in the commission of said crime. It is also a case that the applicants have beaten her brutally and extended threat to kill her. The accused No.1 took her to Pune with an assurance that he would marry her. They resided at Pune for 8 days in a lodge. The accused No.1 on the false promise of marriage during this period had sexual intercourse with the non-applicant No.2. The non-applicant No.2 was brought by the accused No.1 to Digras. She was kept

in a separate room. The accused No.1 after having sexual intercourse with her, drove her out of the house.

4. On the basis of allegations, the First Information Report, as above came to be registered against the accused No.1 and the applicant Nos.1 and 2. The applicant Nos.1 and 2 have stated that on bare perusal of the First Information Report, their complicity in the offence has not been made out. Their names have been mentioned with intention to harass them. The allegations made in the First Information Report vis-a-vis the applicants are too vague and general in nature. The prosecution against them is nothing but misuse of process of law. They have, therefore, prayed for quashing of the First Information Report.

5. The Investigating Officer has filed reply and opposed the application. In order to justify the prosecution against the applicants, the Investigating Officer has reiterated the facts stated in the First Information Report. It is contended that the applicants have abetted the commission of offence by

the accused No.1. Their involvement in the crime has been established on the basis of evidence. No case has been made out to grant the prayer.

6. Mrs. Deepa Charlewar, learned Advocate was appointed to represent the non-applicant No.2 by the High Court Legal Services Sub-Committee, Nagpur. The learned Advocate made oral submissions and opposed the application.

7. We have heard the learned Advocate for the applicants, the learned Additional Public Prosecutor for non-applicant No.1-State and the learned Advocate for non-applicant No.2. We have gone through the record and proceedings.

8. Shri Firdos Mirza, learned Advocate for the applicants took us through the First Information Report and submitted that the same does not disclose the involvement of the applicants in the commission of crime. The learned Advocate submitted that on the basis of such general and vague

allegations, the applicants cannot be made to face the prosecution. The learned Advocate submitted that this is a fit case to quash the First Information Report against the applicants.

9. The learned Additional Public Prosecutor submitted that the role played by the applicants has been specifically mentioned in the First Information Report. In the submissions of the learned Additional Public Prosecutor, the facts stated in the First Information Report, at this stage, are sufficient to prima facie establish the involvement of the applicants. The learned Additional Public Prosecutor further submitted that all throughout the applicants abetted the commission of crime by the accused No.1, who is their son.

10. The learned Advocate for the non-applicant No.2 adopted the arguments advanced by the learned Additional Public Prosecutor for the State.

11. In order to appreciate the rival submissions, we have gone through the contents of the First Information Report. The perusal of the First Information Report would show that no specific role has been attributed to the applicants in the commission of crime of sexual assault with the non-applicant No.2 by accused No.1. The perusal of the First Information Report would show that the allegations made against the applicant Nos.1 and 2 are of general nature. The so called allegations against the applicants would not constitute the offence alleged to have been committed by them. It is settled legal position that the powers under Section 482 of the Code of Criminal Procedure can be exercised where the allegations made in the First Information Report even if they are taken on their face value and accepted in the entirety do not prima facie constitute any offence or make out a case against the accused. If the uncontroverted allegations made in the First Information Report 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, then the accused cannot be made to undergo rigmarole of the criminal trial. The inherent powers given under Section 482 of the Code of Criminal Procedure is with the purpose and object of advancement of justice.

12. In our view, if the allegations made in the First Information Report are taken on their face value and accepted in their entirety would not prima facie constitute any offence or make out a case against the applicants. In our view, therefore, this is a fit case to grant the relief as sought for by the applicants. In our view, grant of such relief would meet the ends of justice. Therefore, we are not prepared to accept the submissions advanced by the learned Additional Public Prosecutor. In our view, the First Information Report, as mentioned above, is required to be quashed and set aside qua the applicants only. Hence, the following order :-

ORDER

- i] The criminal application is allowed.

ii] The First Information Report registered vide Crime No.0164/2021 on 25/02/2021 under Sections 376, 377, 323, 504 and 506 read with Section 34 of the Indian Penal Code at Digras Police Station, Dist. Yavatmal is quashed and set aside to the extent of applicants only.

iii] The fees of the learned Advocate appointed to represent the non-applicant No.2 is quantified at Rs.2,500/- (Rs. Two thousand five hundred only).

Rule accordingly. The criminal application is disposed of.

(G. A. SANAP, J.)

(V. M. DESHPANDE, J.)

Choulwar

VITHAL
MAROTRAO
CHOULWAR

Digitally signed by
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