

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

CRIMINAL APPLICATION (APL) NO.596 OF 2020

Sunita @ Lalita w/o Hiralal Matale,
Aged 48 years,
Occupation – Household
R/o. Kohalitola/Aadarsh,
Post-Dawwa, Tq. Sadak/Arjuni,
District Gondia - 441807

...APPLICANT

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 J.K. Matale, Advocate along with Shri S.A. Mohta, Advocate
for the applicant.
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.)

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

2. By preferring this application, the applicant 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 (hereinafter referred to as 'the Atrocities Act' for short).

3. The offence was registered on the basis of report lodged by non-applicant No.2 on an allegation that she was working on 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 is the son of the present applicant who used to stare at her and was passing sexually remark and tried to develop the physical relationship with her. It is further alleged that said Milind Matale who is accused No.1 subjected her for forcible sexual intercourse in the hospital of another accused – Dr. Vinod Nirgude. She further alleged that said Milind Matale also promised her for marriage and subjected her for sexual intercourse. It is alleged against the present applicant is the mother of Milind Matale and when the informant went to the office, the

applicant obstructed her and restrained her from attending the office and abused her on her caste. On the basis of said report, police have registered the offence against the present applicant.

4. It is the contention of the applicant that no such incident has taken place. She is implicated only because she is the mother of accused No.1-Milind Matale. The vague allegations are made against her. Compelling her to face the trial would be abuse of the process of law and hence FIR registered against the applicant be quashed and set aside.

5. Said application is strongly opposed by the learned APP for non-applicant No.1 and learned Counsel for non-applicant No.2 on the ground that there is *prima facie* material against the present applicant to show her involvement in the alleged offence. It is specifically alleged against the present applicant that the present applicant restrained the informant from attending the office and abused her on her caste. Considering the *prima facie* material, the application deserves to be rejected.

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

7. The offence was registered on the basis of allegation levelled by the informant that she was subjected for forceful sexual intercourse by

one Milind Matale who is the son of the present applicant. She further alleged that said Milind Matale promised her for marriage and subjected her for sexual intercourse. As far as allegation against the present applicant who is the mother of accused No.1-Milind Matale is concerned, only allegation is that she had abused her on her caste. In the entire FIR, the exact words or exact abuses uttered by the present applicant are not mentioned. General allegation is made against the present applicant that she had abused her on her caste. But the abuses uttered by the present applicant are not mentioned in the said FIR.

8. The recitals of the FIR indicates that general and omnibus allegations are made against the present applicant. No *prima facie* case is made out against the present applicant on the basis of recitals of the FIR.

9. It is well settled that compelling the applicant on the basis of general and vague allegation to face the trial would be abuse of the process of law. It is time and again reiterated by the Hon'ble Apex Court 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. At the same time, it is also well settled that the criminal proceedings can be said to be abuse of the

process of Court, to warrant intervention under Section 482 of Cr.P.C., when the allegations in the FIR do not 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. Said view is recently reiterated by the Hon'ble Apex Court in the case of ***Jagmohan Singh Vs. Vimlesh Kumar and ors. 2022 LiveLaw (SC) 546.***

10. 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.

11. In the present case, admittedly, general and omnibus allegation are made against the present applicant which do not disclose any offence and there are no materials on the basis of which Court can reasonably arrived at a conclusion that offence is committed by the present applicant. In this circumstances, compelling the present applicant to face the trial would be abuse of process of law. Hence, the application deserves to be allowed and the same is allowed accordingly.

12. 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

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

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*