

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

CRIMINAL APPLICATION [APL] NO.934 OF 2022

Applicant : Vinod s/o Prabhakar Rao Deshpande,
 : Age 63 Yrs., Occu. Retired,
 : R/o Jain Mandir Ward, Hinganghat, Dist. Wardha,
 : Presently residing at Nagpur.

– Versus –

Non-Applicants : 1. State of Maharashtra,
 : Through Police Station Officer,
 : Police Station, Hinganghat, Dist. Wardha.
 : 2. Victim/Complainant XYZ,
 : Crime No.619 of 2022,
 : Police Station Hinganghat,
 : Hinganghat, Dist. Wardha.

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Shri S.G. Deshpande, Advocate for the Applicant.

Shri S.S. Doifode, A.P.P. for Non-Applicant No.1.

Mrs. Archana P Murrey, Advocate (appointed) for Non-Applicant No.2

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CORAM : **SUNIL B. SHUKRE AND M.W. CHANDWANI, JJ.**

RESERVED ON : **25th NOVEMBER, 2022.**

PRONOUNCED ON : **22nd DECEMBER, 2022.**

J U D G M E N T : (Per M.W. Chandwani, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

02] This is an unfortunate case, wherein out of family feud, wild allegations have been leveled against a father and a brother by the prosecutrix

of rape on her. The applicant, who is father of the prosecutrix, by this application seeks to invoke inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “Cr.PC.” for short) for quashing criminal proceedings filed pursuant to F.I.R. No.619/2022, whereby offence under Section 376(1), 506 read with Section 34 of the Indian Penal Code came to be registered against the applicant and his son Varun Deshpande.

03] Criminal law put into motion on 16/05/2022 when the F.I.R. came to be lodged by the prosecutrix with the Police Station Hinganghat. The prosecutrix alleges in F.I.R. that she resides with her parents including the applicant and her brother. On 27/07/2021, when her mother went to lodge false complaint against the prosecutrix, at that time, the applicant forcefully committed rape on the prosecutrix. The prosecutrix informed this fact to her mother. She threatened the prosecutrix for life, if she will tell the incident anywhere. It is also alleged by the prosecutrix that on the next day i.e. on 28/07/2021 at about 01:00 p.m., her brother Varun Deshpande also committed rape on her and threatened her not to tell anybody, else he will spoil her life. On these allegations, the aforesaid offences came to be registered against the applicant and Varun Deshpande.

04] It is submitted on behalf of the learned Counsel for the applicant that the dispute is going on between the prosecutrix and her family members viz. father, mother and brother. According to him, the prosecutrix is a short tempered and whimsical in nature. She is abusive and aggressive. She used to make unreasonable demands and if the applicant and his wife failed to agree with her unreasonable demands, she used to quarrel with them and even she used to beat her own parents. She also used to quarrel with her brother. On 27/07/2021, she quarreled with the applicant, her mother and brother. Therefore, the mother of the prosecutrix lodged a complaint against her. As a counterblast, on 28.07.2021, the prosecutrix also lodged another complaint against her brother. Both the complaints came to be filed by the police, being non-cognizable complaints. The applicant and his wife i.e. mother of the prosecutrix are fed up with her behaviour and quarrel, therefore, they left the house and started residing separately from the prosecutrix since August, 2021. Now, the prosecutrix has occupied the entire house. According to him, the applicant and his wife i.e. mother of the prosecutrix, lodged various complaints against the behaviour of the prosecutrix with the Police Station. He submits that the applicant and his son Varun Deshpande who resides abroad have been framed in this false case by the prosecutrix just to make the applicant, her mother and brother Varun to concede her illegal demands of demanding money every now and then. There is an inordinate delay of about

10 months in filing the complaint. The prosecutrix on several occasions visited the Police Station Hinganghat between the alleged incident and the date of the present complaint, but she never disclosed the alleged incident. According to him, she is misusing the process of law by framing his own father and brother in false cases. Therefore, the charge-sheet filed against the applicant on the report lodged by the prosecutrix be quashed.

05] The State as well as non-applicant No.2 have filed the replies and opposed the submission of the learned Counsel for the applicant. In replies, it is contended that there is a *prima facie* case against the applicant of committing crime. Learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 submit that there is a sufficient material to proceed against the applicant and, therefore, sought rejection of the application.

06] We have given our anxious consideration to the charge-sheet, the documents filed by the applicant and circumstances. A perusal of the charge-sheet reveals that the relations between the prosecutrix on one part and the applicant, his wife and his son on other part were strained prior to the alleged incident. The statement of the mother of the prosecutrix, which is a part of the charge-sheet depicts that the prosecutrix quarreled with her brother Varun Deshpande on 26/07/2021 and 27/07/2021. In the said quarrel, she

ransacked the household articles. Fed up with behaviour of the prosecutrix on 27/07/2021, her mother Versha Deshpande lodged complaint with Police Station against the prosecutrix regarding the incident of quarrel.

07] This takes us to the complaint dated 28/07/2021 filed along with the application as Annexure-A. This is another complaint which has been filed by the prosecutrix by visiting in Police Station at 3.35 p.m. on 28/07/2021 against her brother Varun Deshpande and one Pranjal Sonawane for another incident i. e. defamation. The time and date of this complaint is visible from the endorsement of the Police Station on the said complainant. This fact is not denied by learned Counsel for the prosecutrix.

08] Notably, the prosecutrix alleges occurrence of the incidents of rape on 27/01/2022 and 28/01/2022, which are prior in time to lodging of the complaint by the prosecutrix for defamation on 28/07/2021. If that is so, then why the prosecutrix did not refer any incident of rape either by her father on 27/07/2021 or by her brother at 01.00 p.m. on 28/07/2021 in the said complaint filed by her against her brother for defamation, which was filed at 03.35 p.m. on 28/07/2022. when the alleged incident occurred just prior to lodging of the complaint for defamation against the very same brother. Thereafter also prior to lodging of the FIR in questions the prosecutrix lodged various complaints (Annexure-H) not only against the applicant father, but

also brother and mother and various other persons. The details of the complaints filed by the prosecutrix in intervening period are given below:

Sr. No.	Complaint Dated	F.I.R. No. & Date	Police Station	Sections	Non-Applicant/Accused
1	28/07/2021	-	Dhantoli, Nagpur	-	1. Varun Deshpande 2. Pranjal Sonawane
2	19/10/2021	-	Hinganghat, Dist. Wardha	-	-
3	08/09/2021	-	Hinganghat, Dist. Wardha	-	Varun Deshpande
4	02/12/2021	-	Hinganghat, Dist. Wardha	-	Sau. Mala Maid
5	-	FIR 0126 01/03/2016	Dhantoli, Nagpur	354-D IPC 67(A) IT Act	Diwakar Kathyat
6	-	FIR 0043 26/02/2020	Dhantoli, Nagpur	354, 341, 323, 504, 34 IPC	1. Nitin Damodar Hirulkar 2. Mrunal Nitin Hirulkar
7	-	NCR 0443 26/08/2018	Dhantoli, Nagpur	504, 506 IPC	Sonfulebail

09] Prior to lodging of the FIR in question by the prosecutrix, the applicant and the mother of the prosecutrix filed various complaints against the prosecutrix (Annexure-G). The crux of these complaints are: the prosecutrix beat them, ousted them from the house; whenever the applicant tried to prevent her from beating, she used to lodge false complaint of outraging the modesty against the applicant; fed up with her behavior, when the applicant and his wife shifted to their flat at Nagpur, the prosecutrix broke open the lock of the flat and intruded in the flat; and the prosecutrix threatened the applicant of false implication. There are more than six complaints lodged by the applicant and his wife against their own daughter i.e. the prosecutrix.

10] Further, the applicant has filed whats up messages of the prosecutrix, which were sent to the applicant i.e. her father and which were exchanged prior to lodging the FIR in question, which are not disputed by the prosecution. These messages show that she had demanded money from the applicant threatening him that she would see that image of the applicant was ruined and the applicant booked and arrested by the police. Prescriptions also show that the prosecutrix has been taking treatment of psychiatrist from 2014 onwards. There is no denial to these facts as well as lodging of the complaints referred in foregoing paras, either by the prosecution or by the prosecutrix.

11] From above referred material on the record, the following undisputed facts emerge:-

- (a) The prosecutrix used to ask for unreasonable demand of money from the applicant and her mother. On denial she used to beat her parents including applicant.
- (b) She was taking treatment of psychiatrist due to her behavioural issues.
- (c) The prosecutrix does not hesitate to lodge complaint against her father, mother and brother and so on for any reason or no reason or on small issues.

- (d) On 27/07/2021, the mother had filed police complaint against the prosecutrix about the incident of quarrel with her brother on 26/07/2021 and 27/07/2021 and ransacking house hold articles by the prosecutrix.
- (e) The prosecutrix made allegation about the incident of rape by her father i.e. applicant on 27/07/2021 after her mother went to lodge the complaint against the prosecutrix and on 28/07/2021 at 01.00 p.m.
- (f) In spite of visiting police station immediately after the incident on 28/07/2021, at 03.35 p.m. and lodging another police complaint against her brother and one Pranjal Sonawane about the earlier incident of defamation., she did not whisper any incident of heinous crime of rape by the applicant and her brother.
- (g) She kept mum for about 10 months and on 16/05/2022 lodged the FIR in question for alleged incidents of rape by the applicant and her brother on 27/07/2021 and 28/07/2021.
- (h) In other various complaints, filed by the prosecutrix during the period between the alleged incidents of rape and the FIR in question, there is no mention of alleged incidents of rape.

- (i) On the contrary, prior to lodging FIR in question, there are various complaints filed by the applicant and his wife against the prosecutrix for atrocities done by the prosecutrix on the old, aged parents. They left the house at Hinganghat and shifted to Nagpur. The prosecutrix behind the back of the applicant and her mother had broken open the lock of the flat and had started residing there.
- (j) She has threatened the applicant that she would ruin his image by booking him in a criminal case.
- (k) After a gap of about 10 months, she has lodged a complaint of rape on 16/05/2022.

12] The above said facts, which are not disputed, when are read together, falsify the entire story of the prosecutrix of the alleged incident of rape either on 27/07/2021 or 28/07/2021. The prosecutrix, who happened to be in police station just after the incident and even thereafter many times, did not whisper anything about the incident; She used to beat her father i.e. the applicant and her mother; She threatened the applicant of false implication; and then she lodged the complaint alleging rape by the applicant (father) on 27/07/2021 and by her brother on 28/07/2021. In these state of affairs, the only conclusion which possibly can be made is that the allegations are totally

untrue and even absurd and improbable. Thus, I do find force in the argument of the learned Counsel for the applicant that the present case is nothing but an abuse of process of law by the prosecutrix which in fact has been made by the legislature to protect the weaker section of the society i.e. women and not to serve as weapon for undeserving women to harass the innocent.

13] The Hon'ble Supreme Court in its judgment in the case of **State of Haryana and others vs. Bhajan Lal and others** – 1992 Supp (1) SCC 335, in paragraph 102 has given categories of cases by way of illustration, wherein power under Article 226 or the inherent powers of given under Section 482 of the Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, which read thus:

- (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 mala fide 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.*

14] In the present case, the wild allegation made in FIR by the prosecutrix are absurd and patently improbable. The case of the applicant is covered by guideline Nos.2 and 5 mentioned in the case of ***Bhajan Lal*** (*supra*). The continuation of the criminal proceedings against the applicant will be nothing but an abuse of process of law and, therefore, it is required to be set aside. In view thereof, the criminal proceedings pursuant to FIR No.619/2022 registered for the offences punishable under Sections 376(1), 506 read with Section 34 of the Indian Penal Code are quashed and set aside.

15] Rule is made absolute in the above terms with no order as to costs.

(M.W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)

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