

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

CRIMINAL APPLICATION (APL) NO. 703 OF 2019

Bandopant s/o. Shankarrao Mallelwar
aged about 64 years, Occ : Business,
R/o. Mallelwar House, Mul Road,
Bazaar Chowk, Subhash Road,
Gadchiroli

} .. Appellant

Versus

01. State of Maharashtra,
through its Police Station Officer,
Gadchiroli Police Station,
Tq. and District : Gadchiroli
02. Suresh s/o. Narayan Mohurle
aged about 47 years, Occ : Driver,
R/o. Teli Mohalla,
c/o. Sukhdeo Barsagale's chawl,
Ex- Police patil, Gadchiroli
- } .. Respondents

Mr. Anil Mardikar, Senior Advocate assisted by Mr. Sumit Joshi,
Advocate for applicant.

Ms. M. H. Deshmukh, APP for respondent No.1.

Mr. Ritesh Dawda, Advocate for respondent No.2.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 11/11/2022

ORAL JUDGMENT

Admit. Heard finally by the consent of the learned
counsel appearing for the parties. By invoking the inherent

jurisdiction of this Court, the petitioner is seeking to quash of FIR registered with Gadchiroli Police Station vide Crime No.318 of 2019, dated 29/06/2019, for the offence punishable under Section 195-A and 506 of the Indian Penal Code (IPC).

(2) The very maintainability of the prosecution has been challenged on the ground that in terms of Section 195-A of the Code of Criminal Procedure, 1973 (Cr.P.C.) a police report by private person pertaining to offence punishable under Section 195 of the IPC is not maintainable. Besides that it has been submitted that the informant Suresh Narayan Mohurle has deviated from his previous statement while giving evidence in Sessions Case No.184 of 2013 and therefore, out of fear of facing action of perjury, he has filed false report.

(3) The applicant was facing prosecution for the offences under Explosive Substances Act and other Acts which was numbered as Sessions Case No.184 of 2013. In said case, the informant Suresh Mohurle was cited as a witness. In said case the informant Suresh Mohurle was examined as PW-20 on 09/10/2015. Since he has not supported the prosecution case learned APP has

cross-examined him with permission of Court, which is commonly known as he turned hostile. In the wake of such back-ground again informant PW-20 was recalled and re-examined on 29/06/2019. This time also he has not adhered to his previous statement. However, on the same day in the evening he has lodged a report against applicant alleging that he has been threatened by applicant for not giving evidence against him. On the basis of said report, police have registered the crime.

(4) It reveals that on first occasion also this witness (informant) has not supported the prosecution case and the same thing was repeated lateron. Though the informant stated in his report that as applicant has threatened him, he has not deposed true facts, however, the fact remains that prior to that also in the year 2015 he did not support the prosecution case, which is doubtful.

(5) Pertinent to note that as per informant's case on 28/06/2019 in the late evening he has been allegedly threatened for not giving evidence. However, on the following day witness has appeared in the Sessions Court, but neither disclosed about the alleged threat, nor supported the prosecution case, but in the evening has

lodged a report. Therefore, there is every possibility that in order to avoid action for not giving evidence, he has lodged the report. The informant has appeared in this proceeding and filed his reply contending that he has lodged a report only out of fear of prosecution for giving false evidence. Non-disclosure of this witness to the concerned Court about alleged threat strongly goes against the credibility of the report.

(6) Besides that learned Senior Counsel appearing for the applicant has pointed out that in terms of Section 195-A of the Cr.P.C. a mechanism has been provided to file a complaint in case a witness is threatened. In other words he would submit that a police report is not tenable, as it cannot be termed as a complaint. The act of threatening a witness has been made punishable by way of amended Section 195-A of the IPC which has been inserted into the statute in the year 2006. Therefore, obviously the bar created under Section 195 of the Code would not apply. In order to connect the newly amended section corresponding amendment has been made in the Cr.P.C. by way of Section 195-A of the Code providing a specific mechanism for redressal in case of threats to the witness. Amended Section 195-A of the Cr.P.C. reads as below :-

“Section 195-A. Procedure for witnesses in case of threatening, etc. - A witness or any other person may file complaint in relation to an offence under section 195-A of the Indian Penal Code.”

(7) This Section unequivocally conveys that the remedy provided by the Code for the offence punishable under Section 195-A is by way of filing a complaint. Needless to say that in terms of Section 2(d) of the Code “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

(8) Undeniably the informant has not filed a complaint, however, it is a police report. Since the Code has made a specific provision, the contrary is not permissible i.e. a police report. Though Section 506 has been added, however, it relates to the principal allegation of threatening to the witness. Thus, on technical count also, proceeding is not maintainable.

(9) After examining the entire material we are of the opinion that continuation of prosecution amounts to abuse of the

process of the Court. This Court is invested with ample powers to pass suitable orders, so as to secure the ends of justice. Having regard to above facts, we are satisfied about the grounds raised in challenging the FIR. In view of that petition is allowed. The concerned FIR bearing Crime No.318 of 2019 registered with Gadchiroli Police Station, District Gadchiroli is hereby quashed and set aside.

(10) Application stands disposed of in above terms.

[MRS. VRUSHALI V. JOSHI, J.]

[VINAY JOSHI J.]

KOLHE