

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 179 OF 2023

Abdullah Bin s/o Amar Hilabi

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. XYZ

..RESPONDENTS

...
Advocates for Applicant : Mr.Shaikh Sohail Subhedar
APP for the Respondent/State : Mr.M.M. Nerlikar
Advocate for respondent no.2 : Mr.Dhananjay S. Patil
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATED : 17th JULY, 2023.

ORDER (PER Sanjay A. Deshmukh, J.) :-

1. This is an application filed under section 482 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C.") for quashing of FIR bearing C.R. No.0015 of 2021 registered with City Chowk Police Station, District Aurangabad for the offence punishable under sections 354 and 504 of the Indian Penal Code, 1860 (for short, "IPC") and consequential charge-sheet in R.C.C. No.1533 of 2021 pending before the learned Judicial Magistrate, First Class, Aurangabad.

2. Informant Nasim Khaled Bin Amar Hilabi lodged the report in City Chowk Police Station, Aurangabad alleging that she is residing with another wife of her husband at Delhi Gate, Aurangabad. Her husband Khaled Bin Amar Hilabi died on 22nd February, 2007. In her marriage, her husband Khaled gave plot no.17 N-12 B, Professor Colony in her name. Her father gave to her house at House No.5, N-12, CIDCO, Aurangabad. It is also in her name. Her brother-in-laws Abdulla Bin Amar Hilabi and Hamed Bin Amar Hilabi started harassing her to get share in those two houses.

3. On 05.01.2021, when she was walking at about 9 to 10 p.m. in front of lane of her house and she reached in front of house of Advocate Sikandar at about 9.30 p.m., applicant Abdullah stopped his motorcycle near her and asked her as to why she is not giving share to him in those properties. He abused her and pulled her tippet. He also touched near to her breast and outraged her modesty. Therefore, she shouted and at that time, Farukh Khan Aziz Khan, who was working for construction of her house came there and the applicant thereafter ran away. Farukh Khan tried to catch hold him but he was not found. Accordingly, the report was lodged on 12.01.2021 in the Police Station City Chowk, Aurangabad.

4. The learned advocate for the applicant submitted that the

report is falsely lodged due to the enmity between the applicant and informant. There is delay of 7 days for lodging the report. If the applicant is compelled to face the trial would be abuse of process of the Court. Therefore, it is lastly prayed to quash the report and R.C.C. No.1533 of 2021 pending before the Judicial Magistrate, First Class, Aurangabad.

5. The learned advocate for respondent no.2 – informant and the learned APP for the State argued that there is no reason to disbelieve the version about the incident of outraging of her modesty. Her story is corroborated by the statement of eye witness Shaikh Mohamad Mohsin. Several applications are given by the applicant to the City Chowk Police Station, Aurangabad. No action was taken. Therefore, it is lastly prayed to reject the application.

6. It is admitted fact that Special Civil Suit No.350 of 2020 is pending in the Court of Civil Judge, Senior Division, Aurangabad.

7. The alleged incident took place on 05.01.2021 and report is lodged on 12.01.2021. The reason of delay caused for lodging the FIR is not explained. There is earlier enmity between the applicant and informant on account of civil litigation of the applicant is highly probable as alleged by the applicant. Hence in such fact situation, it

would not be legal and proper to compel the applicant to face the trial, which would be an abuse of process of law.

8. The Hon'ble Supreme Court in the cases of ***State of Haryana and others v. Ch. Bhajan Lal and others*** reported in ***AIR 1992 SC 604*** and ***Inder Mohan Goswami and another v. State of Uttaranchal and others*** reported in ***(2007) 12 SCC 1*** has held that when dispute was of purely civil nature, initiation of the criminal proceeding against the applicant is clearly abuse of process of Court.

9. For the reasons discussed above, the argument of the learned counsel for respondent no.2 and learned APP is not acceptable in this regard. The application deserves to be allowed.

10. In the result, the application is allowed in terms of prayer clauses "B" and "C".

11. No costs.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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