

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 176 OF 2019

Babu Mahamad Shaikh and Others ..PETITIONERS

VERSUS

State of Maharashtra and Another ..RESPONDENTS

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Mr. Z.H. Farooqui, Advocate h/f Mr. N.V. Gaware, Advocate for petitioners
Mr. N.T. Bhagat, A.P.P. for respondent no.1 – State
Ms. K.R. Jamdade, Advocate for residence no.2 (appointed)

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 12th JUNE, 2023**

PER COURT :

1. This petition has been filed for quashing of the First Information Report ('F.I.R.'), being C.R No. 84 of 2018 registered with Sangamner Police Station, Dist. Ahmednagar for the offences punishable under Sections 354(A) (1), 354(D) and 506 of the Indian Penal Code ('I.P.C.') and under Section 8 of Prevention of Children from Sexual Offences Act, 2012 and consequential charge-sheet in Special Case No. 7 of 2021 pending on the file of Additional Sessions Judge, Sangamner.

2. The petitioners are the accused in the F.I.R. and the charge-sheet as well. The F.I.R. was lodged by 'M' (name withheld) on 12th March, 2018 in

relation to the incidents that took place on 04th and 07th March, 2018. It has been averred in the F.I.R. that Sajid (co-accused) would trouble the informant one or the other way. He used to follow the informant on her way to school. He would make obscene gestures at her. He had made number of calls on the cell phone of the parents and other family members of the informant. Sajid had come to her residence on 04th March, 2018 by 05:00 p.m. The informant was alone home. He embraced and asked her to allow him to have sex with her. The informant raised alarm. Her parents arrived. Sajid then fled. Petitioner Nos. 1 and 2, uncle and aunt of Sajid were informed. They came to the house of the informant. The matter was settled. SIM card from the cell phone of Sajid was removed and destroyed as well. Petitioner No.2 tendered apology and assured good behaviour by Sajid. It has further been averred in the F.I.R. that again on 07th March, 2018 by 07:00 p.m., Sajid, the petitioners and Ayub came to the residence of the informant. Petitioner No.1 - Babu asked father of the informant to give her in marriage to Sajid. He (father) flatly refused. Ayub thereupon asked Sajid to catch hold hand of the informant and take her along. He also told that he would call police van. Petitioner No. 3 - Saukat gave threats to the informant and her family members. He also abused them in filthy language. Petitioner No.1 Babu then told them that he was going to ensure that Sajid marries the informant. All of them then left.

3. It has further been averred that the matter was settled. On 08th March, 2018 parents of the informant did not return home till late in the evening. She was, therefore, worried. She then realised of a false F.I.R. to have been lodged against her parents alleging to have robbed and assaulted Sajid. Thereafter present F.I.R. came to be lodged. On investigation of the crime, charge-sheet came to be filed against the petitioners, Sajid and Ayub.

4. This Court, vide judgment and order dated 03rd December, 2018 quashed the F.I.R. as against Ayub, since the Court found Ayub was not involved in the crime. He was not even present at the alleged crime scene.

5. Learned counsel for the petitioners would submit that a false F.I.R. has been lodged as a counter blast to the F.I.R. registered at the instance of Sajid. Sajid consumed poison in an attempt to commit suicide. The informant and her family members got frightened. A false F.I.R., therefore, has been lodged. According to learned counsel, there is delay of over four days in lodging of the F.I.R. The F.I.R. has been quashed against Ayub. Same suggests a false and concocted F.I.R. has been lodged. Turning to the papers of investigation, he would submit the independent witnesses do not attribute overt act against the petitioners herein. According to him, allowing prosecution to proceed against the petitioners would be an abuse of process of Court. He, therefore, urged for allowing the petition.

6. Learned A.P.P. and learned counsel for the informant would, on the other hand, submit that names of the petitioners figure in the F.I.R. Their roles in the alleged crime has been described. On investigation of the crime, the charge-sheet has been filed. The delay in lodging of the F.I.R. has been duly explained. It is, therefore, for the trial Court to proceed with the matter by framing charge. Learned counsel ultimately urged for dismissal of the petition.

7. Perused the F.I.R. and papers of investigation. Considered the submissions advanced. Although this is a writ petition, relief has mainly been sought under Section 482 of Code of Criminal Procedure. The Apex Court in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors., AIR 1992 SC 604*** has observed thus :-

“In following categories of cases, the High Court may in exercise of powers under Article 226 or the under Section 482 of the Code of Criminal Procedure may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

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 F.I.R. 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.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of F.I.R. was not justified.”

8. Close reading of the F.I.R. indicates that all was not well between the informant and her family members on one hand and co-accused - Sajid and his close relations viz. the petitioners herein on the other. The F.I.R. has been lodged about four days after the alleged incident. Since no offence against human body has been alleged, there is no material in the nature of injury certificate. This Court quashed the F.I.R. as against co-accused - Ayub, since it was found that he was not involved in the crime. He was not even present at the crime scene. Same suggests falsity of the F.I.R. It appears that Sajid was emotionally involved with the informant. It might be a case of unrequited love. At the instance of Sajid, the F.I.R. has been lodged against the parents of the informant. They were alleged to have assaulted him and robbed of valuables as well. It also appears that Sajid attempted to commit suicide. Family members of the informant were, therefore, apprehensive of being charged for the same. In this factual backdrop, the averments in the F.I.R. are to be looked into.

9. The crime mainly came to be registered in relation to the incident dated 07th March, 2018. It has been averred in the F.I.R. that the petitioners alongwith Sajid and Ayub came home of the informant. The overt acts attributed to the petitioners herein are - Petitioner No.1 - Babu asked the informant's father to give the informant in marriage to Sajid. The father refused. This allegation do not constitute an offence. He is then alleged to

have told Sajid to take the informant with him. He will call a police vehicle. Petitioner No.3 - Shaukat is alleged to have abused the informant and her parents in the filthy language. Sajid (not before the Court) thereupon caught hold hand of the informant and pulled her. She got herself rescued. Petitioner No.1 thereupon asked all of them to think over and agree for marriage of the informant with Sajid.

10. There are statements of independent eye witnesses. Shermohammad Kasam Shaikh and his wife Jaibunnisa claiming to have heard some quarrel. Both of them were specific to state that none of the petitioners assaulted either the informant or her family members.

11. Close reading of the averments in the F.I.R. would suggest that no overt act has been attributed to Petitioner No.2 - Hamida. She is sixty-six years of age. Petitioner No.1 - Babu is sixty-nine years of age. He is alleged to have asked father of the informant to give his daughter (informant) in marriage to Sajid. True, he is alleged to have asked Sajid to take the informant with him. This so called instigation would be short of constituting an offence under the I.P.C. It is reiterated that the F.I.R. was lodged against a judicial officer (Ayub), who was not involved in the alleged crime nor was he even present at the crime scene. The said fact cast a serious doubt over veracity of the averments in the F.I.R.

12. In our view, allowing prosecution to proceed against the petitioners herein would therefore be an abuse of process of Court. We are, therefore, inclined to allow the petition. Writ petition, therefore, succeeds in terms of prayer clauses (B) and (BB). Fees of Ms. K.R. Jamdade, learned counsel, appointed to represent Respondent No.2, is quantified at Rs.6,000/- (Rupees Six Thousand).

SSD

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)