

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

CRIMINAL APPLICATION NO.863 OF 2023

Kaka @ Sandip Appasaheb Jadhav & ors. ... APPLICANTS

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. B.S. Chondhekar, Advocate for applicants
Mr. R.B. Bagul, A.P.P. for respondent No.1.
Mr. R.C. Brahmarkar, Advocate for respondent No.2.
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 3rd AUGUST, 2023

ORDER :

Heard. This application has been filed for quashment of the F.I.R. bearing Crime No.0827/2021, registered with Rahuri Police Station, District Ahmednagar for the offence punishable under Sections 354, 143, 147, 149, 323, 504, 506 of the Indian Penal Code and the consequential criminal proceedings bearing R.C.C. No.22/2022, pending before the learned Judicial Magistrate, First Class, Rahuri.

2. The F.I.R. has been lodged by the victim herself on

29/9/2021 in relation to the incident that took place on 30/1/2021 at 1.30 p.m. at the matrimonial house of her sister Rohini.

The gist of the prosecution case is that, the informant had gone to her sister's matrimonial home. By that time, the applicants herein questioned her as to why did she come there. They assaulted her with fists and kicks. Applicant Kaka embraced her and even fondled her breasts with a view to outrage her modesty.

3. Based on the said allegations, the crime has been registered and charge sheet has been filed.

4. The learned A.P.P. and learned counsel for the informant would submit that, there is injury certificate to suggest the informant to have been assaulted by the applicants herein. Inadvertently, she could not narrate the allegations regarding outraging of her modesty while she first approached to the police station. She had, therefore, to file a complaint. The Court took cognizance. The complaint thereafter was withdrawn and then the F.I.R. was lodged. According to learned counsel for the respondent No.2, the applicants, although not for the offence punishable under Section 354, have to face trial for rest of the offences. They, therefore, urged for rejection of the application.

5. True, some incident took place on 30/1/2021 by 1.30 p.m. at the residence of the present applicant. Soon after the said incident, the informant approached the concerned police station. She gave her report thereof, stating therein the applicants Kaka, Appasaheb, Shobha and Yashoda questioned her over her visit to their house and beat her up. The police, therefore, registered a non-cognizable case. In the said report, the allegations regarding outraging of modesty are conspicuously absent. The respondent No.2 thereafter filed a complaint before the Court of Judicial Magistrate, First Class, Rahuri. Therein, she made Sitaram as one of the culprit, in addition to those four names in the N.C. Making Sitaram an accused is nothing but an afterthought. In the said complaint, she was examined on oath. Her brother was also examined. It is not known as to why she then withdrew the said complaint. Needless to mention, withdrawal from the prosecution results into acquittal. Thereafter the informant lodged the report about 9 months after the very incident, introducing the allegations of outraging of her modesty. As such, the respondent No.2 has taken the criminal law to ride with a view to see the applicants are taught a lesson. A petty quarrel of non-cognizable offence was sought to be converted into a cognizable one with the very purpose. Interest of justice demands allowing the application.

6. In view of the above, the application is allowed in terms of prayer clause (B).

7. Fees of learned Advocate appointed for respondent No.2 is quantified at Rs.7,000/- (Rupees seven thousand).

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-