

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

CRIMINAL APPLICATION NO. 3622 OF 2022

1. Rahul Rajendra Agrawal
2. Pallavi Mahesh Shimpi .. Applicants

Versus

The State of Maharashtra & anr. .. Respondents

...

Mr. D.A. Madke, Advocate for applicants
Mr. A. R. Kale, A.P.P for State
Mr. Sagar A. Phatale, Advocate for respondent No.2.

...

**CORAM : R. G. AVACHAT AND
NEERAJ P DHOTE, JJ.**

DATE : 27th OCTOBER, 2023

ORAL ORDER (PER NEERAJ P DHOTE, J.) :

. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application to the extent of applicant No.1. Thus, the application to the extent of applicant no.1 stands disposed of as withdrawn.

2. Heard learned counsel for the applicants, learned counsel for the respondent No.2 informant and learned A.P.P for the State.

Perused the papers on record.

3. This is an application under Section 482 of the Code of Criminal Procedure for quashing the F.I.R. bearing No. 152/2022, registered at Jalgaon City Police Station for the offences punishable under Section 323, 406, 420, 504, 506 read with Section 34 of the Indian Penal Code (hereinafter referred to as the 'IPC') and the consequential Charge Sheet bearing No. 134/2022 and the criminal proceedings bearing R.C.C. No. 881/2022, pending before the learned Judicial Magistrate, First Class, Jalgaon.

4. Perusal of the FIR shows that, the respondent no.2 – informant was lured by the accused no.3 – Mahesh on the pretext that there is huge profit in the online business while they were on the trip with the teachers. Thereafter in May -2021 the accused no.3 called the informant on her mobile and asked her to participate in the online business meeting and thereafter the informant invested / deposited total amount of Rs.3,00,281/- in the said venture which caused her wrongful loss. The FIR further reveals that on 30.05.2022 when the informant went to the house of accused no.3 to demand her money back, the applicant no.2 who is the wife of the accused no.3 slapped

and punched the informant and threatened to kill her. Taking the FIR as it is, it does not connect the applicant no.2 with the aforementioned incident of online business and investment by the informant in a fake business which culminated into the registration of the FIR for the offence punishable under Sections 406, 420 of the IPC. The role attributed to the applicant no.2 in the FIR is for the offence punishable under Sections 323, 504 and 506 of the IPC which is shown as the different incident. From the FIR, the incidences for the offence under Sections 406, 420 of the IPC and offence punishable under Sections 323, 504 and 506 of the IPC are distinct and there is no allegation in the FIR against the applicant no.2 that she abetted the offences registered under Sections 406 and 420 of the IPC. The acts attributed to the other accused and the applicant no.2 cannot be considered together in view of the nature of allegations made against them. If at all the offences were committed by the accused persons it can be conveniently said that the alleged incident / offence attributed to the applicant no. 2 is a separate offence and she could not have been joined as the co-accused with other accused persons in the present FIR.

5. The role attributed to the applicant no.2 is only for the

offence punishable under Sections 323, 504 and 506 of the IPC which admittedly are non-cognizable. In view of the parameters laid down by the Hon'ble Apex Court in the case of **State of Haryana and Ors vs. Ch. Bhajan Lal and Ors., 1992 AIR 604** in respect of exercise of the extraordinary powers under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') one of the category of cases wherein such powers could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, is where the allegations in the FIR do not constitute a cognizable offence justifying the investigation by the police officers without an order of a Magistrate as contemplated under Section 155 (2) of the Cr.P.C. Thus, when the FIR do not disclose a cognizable offence against applicant No.2 and disclose only non-cognizable offence, it may lead to abuse of process of the Court and thus, we are inclined to exercise the powers under Section 482 of the Cr.P.C. to quash the FIR and the case registered against applicant no.2 as mentioned in paragraph no.3 above. Resultantly, the FIR and the case registered in the present matter is quashed and set aside to the extent of applicant no.2.

6. The application stands disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G.AVACHAT, J.]

fmp