

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1792 OF 2022

Prashant s/o Dilip Thorat ... PETITIONER

**VERSUS**

The State of Maharashtra & anr. ... RESPONDENTS

.....  
Mr. K.R. Doke with Mr. Rahul A. Shinde, Advocates for petitioner  
Mrs. V.N. Patil Jadhav, A.P.P. for respondent No.1.  
Mr. N.R. Thorat, Advocate for respondent No.2.  
.....

**CORAM : SMT. ANUJA PRABHUDESSAI AND  
R.M. JOSHI, JJ.**

**DATE : 22nd FEBRUARY, 2023**

**P.C. :**

With the consent of learned counsel for rival parties,  
heard finally at the stage of admission.

2. This is a petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure to quash the First Information Report bearing Crime No.326/2022, registered at Mukundwadi Police Station, Taluka and District Aurangabad for offence punishable under Section 377 of the Indian Penal Code.

3. The aforesaid crime was registered pursuant to the First Information Report dated 23/9/2022, lodged by respondent No.2. The marriage between the petitioner and respondent No.2 was solemnized on 13/12/2018. She left the matrimonial home sometime in July 2019 due to matrimonial dispute. She lodged the First Information Report on 23/9/2022 alleging that on 17/4/2019 the petitioner had unnatural sex with her without her consent. She has explained the delay in reporting the incident by stating that she was too embarrassed to narrate the incident to anyone.

4. Learned counsel for the petitioner states that, the allegations of carnal intercourse have been levelled only after the divorce petition filed by the petitioner has been allowed. He submits that though the respondent No.2 had filed several proceedings against the petitioner, the allegations of carnal intercourse were never made in such previous proceedings. He submits that the petitioner is serving as a Havaldar in Indian Army since last 12 years and that the main intention of the respondent No.2 is to ensure that he loses his job in Indian Army. He submits that the allegations in the F.I.R. are absurd as well as malicious. He submits that subjecting the petitioner

to face the trial in such proceedings would be sheer abuse of the process of Court.

5. Per contra, learned counsel for respondent No.2 submits that the respondent No.2 had not made such a grievance in previous proceedings as she was trying to save her marriage. He submits that, the First Information Report prima facie shows the essential ingredients of the offence and that this Court cannot quash the proceedings on an assumption that the allegations are false.

6. We have perused the records and considered the submissions advanced by learned counsel for the respective parties.

7. At the outset, it may be mentioned that powers under Section 482 of the Code of Criminal Procedure can be exercised inter alia to secure ends of justice or to prevent an abuse of the process of the Court. In the case of **State of Haryana & ors. Vs. Ch. Bhajan Lal [ AIR 1992 SC 604 ]**, the Apex Court has laid down guidelines while exercising powers under Section 482 of the Code of Criminal Procedure. The illustrations given therein can be reappreciated as under :

*“(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 FIR 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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of*

*the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fides 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.”*

8. In the instant case, the material on record reveals that the marriage between the respondent No.2 and the petitioner herein was solemnized on 12/12/2018. She left the matrimonial home in July 2019. The records reveal that the respondent No.2 had filed several proceedings against the petitioner, viz. :

- (i) proceedings under the Domestic Violence Act bearing P.W.D.V.A. No.233/2020,
- (ii) proceedings under Section 125 of the Criminal Procedure Code (Petition E. No.54/2022),
- (iii) F.I.R. under Section 494 of the Indian Penal Code (Criminal M.A. No.408/2022),
- (iv) proceedings for offences under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act (R.C.C. No.2343/2021),

- (v) proceedings being Petition A.No.211/2020 for restitution of conjugal rights,
- (vi) Writ Petition No.2953/2022 and
- (vii) proceedings under Section 190 of the Army Act seeking deduction of 22% of the income of the petitioner and to take penal action against him.

9. The respondent No.2 had also contested the divorce petition filed by the petitioner. All the proceedings were filed prior to lodging of the First Information Report. The respondent No.2 had not levelled accusations of unnatural sex in any of the proceeding. We are cognizant of the fact that mere delay in lodging the First Information Report is not a ground for quashing the First Information Report and the criminal proceedings. We are also conscious of the position of law that while exercising powers under Section 482 of the Code of Criminal Procedure the Court does not examine the correctness of the allegations in the complaint. However, as held by the Hon'ble Apex Court in case of Daxaben Vs. State of Gujarat & ors. [2022 SCC OnLine SC 396], in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not constitute any offence, such powers can be exercised.

The facts of the case reveal that the relationship between the parties has been severely strained. The respondent No.2 had already approached the police and levelled several accusations against the petitioner and his family members. In fact, in Criminal Misc. Application No.408/2022, the respondent No.2 has implicated the petitioner and 45 other members of his family. As noted above, the respondent No.2 had not levelled any such allegations against the petitioner in the previous proceedings, which run in several pages. The explanation that such allegations were not made earlier, in an attempt to save the marriage, is inconceivable in view of the number of proceedings filed and the nature of accusations made not only against the petitioner but against his entire family. It is also pertinent to note that though the respondent No.2 has made specific allegations that the petitioner had time and again subjected her to anal intercourse, the medical report does not substantiate the said allegations.

10. The accusations of unnatural sex were made for the first time after the petition for divorce filed by the petitioner on the ground of cruelty was allowed and after dismissal of the First Appeal filed by respondent No.2 herein. The respondent No.2 has stated that the acts committed by the petitioner were

disgusting, perverse and shameful, yet she has been strenuously pursuing the proceedings for restitution of conjugal rights. In this fact scenario, the allegations made in the First Information Report appear to be absurd.

11. The statement made by the respondent No.2 in the previous proceedings filed by her against the petitioner reveals that the main grievance of the respondent No.2 was that at the time of marriage, the petitioner herein had represented that he was a Army Officer and it is only after the marriage that she learnt that the petitioner was serving as a Havaldar in Indian Army. This was the main cause of marital discord which has resulted in filing of several proceedings against the petitioner.

12. Having gone through the entire records we are of considered view that the allegations made in the First Information Report are absurd and inherently improbable and are manifestly attended with malafides for wreaking vengeance due to marital discord. The case is squarely covered by illustrations No.5 and 7 in the case of Bhajan Lal (supra). In such circumstances, subjecting the petitioner, who is serving in Indian Army, to face criminal trial on such unfounded allegations would be an abuse of the process of law. Moreover,

the Court cannot allow judicial process to be an instrument of harassment or to unleash vendatta.

13. In the result, the petition is allowed in terms of prayer clause (A). The First Information Report bearing Crime No.326/2022, registered at Mukundwadi Police Station, Taluka and District Aurangabad for the offence punishable under Section 377 of the Indian Penal Code is quashed.

**(R. M. JOSHI, J.)**

**(SMT. ANUJA PRABHUDESSAI, J.)**

fmp/-