

Chitra Sonawane.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Application No.644 OF 2019

Mr Kamlesh Uttam Bhillore @ Pardeshi

Age 50 years, Occ: Business

R/O Pimpalchawk, Thakare Road,

Bhadrakali, Nashik.

..... Applicant.

Versus

1. State of Maharashtra
(to be served through the
office of learned Public Prosecutor
High Court, Mumbai.)

2. Smt. Parvin Babu Shaikh

Age 50, Occ-Business

House no.113, Thakare Galli,

Behind Sandharba Hospital,

Bhadrakali, Nashik.

Current Address-Rangrej Mala,

Zhopadpati Vadala Shivar,

Indiranagar, Nashik.

..... Respondents.

.....

Mr Pratik R. Kalantri, Advocate for the Applicant.

Mr A.R.Kapadnis, APP for Respondent-State.

.....

**Coram : Nitin W. Sambre &
R.N.Laddha, JJ.**

Date : 2 March 2023.

Page No. 1 of 13

2 March 2023.

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Order (Per R.N.Laddha) :

Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

2. By this criminal application under Section 482 of the Code of Criminal Procedure, 1973, the Applicant has prayed for quashing the prosecution initiated on the strength of the first information report no.340 of 2019 dated 7.4.2019, registered against him at Bhadrakali Police Station, Nashik for the offences punishable under Sections 354, 452 and 504 of the Indian Penal Code, 1960.

3. It is alleged in the F.I.R. that on 30.3.2019, at around 7.00 p.m., the applicant/accused entered the house of the informant/respondent no.2, held her hand, pulled her close to him, and threatened her using abusive language.

4. It is stated in the Application that respondent no.2 is operating a brothel in Thakare galli, Bhadrakali, Nashik. In the same area, the present applicant/accused runs his business. It is stated that the applicant and some other residents of the area have made several complaints to the police department about brothel

being operated by respondent no.2. Therefore, on 11.02.2019, the police department filed a report under Section 18 of the Immoral Traffic (Prevention) Act, 1956 against the informant. The learned Judicial Magistrate First Class at Nashik by its order dated 13.3.2019 accepted the proposal forwarded by the police and the premises, i.e. survey no.224, house no.113 situated at Pimpal Chowk Navapura, Thakare galli, Nashik was attached for one year. The owner was instructed to obtain prior permission from the Magistrate before letting the premises. Additionally, the occupants were ordered to vacate the premises.

5. The applicant herein claims that he has been falsely implicated in the crime and that there is no evidence connecting him to the alleged offence. No complaints have been made against him at any time. The allegations made by respondent no.2 against the applicant are claimed to be malicious, frivolous and baseless. It is stated that there is no material to register a crime against the applicant as the essential ingredients of Sections 354, 452 and 504 of the Indian Penal Code are missing. The FIR was allegedly lodged only to harass the applicant, and respondent no.2's intentions were not good.

6. It is submitted that the applicant/accused, and other individuals in the area, have preferred writ petition no.4552/2019

before the High Court. After that, the police authorities submitted a report to JMFC, Nashik, resulting in an order to seal the property as stated hereinabove was passed. It is said that respondent no.2 holds a grudge against the applicant/accused, due to his actions and has lodged a false complaint against the applicant. It is submitted that the applicant/accused has also made several complaints to the police department. It is claimed that the impugned FIR does not disclose the commission of the alleged offence. The informant/respondent no.2 herself admitted that prostitution is being conducted in house no.113, Thakare galli, Nashik. It is submitted that the impugned FIR was lodged eight days after the alleged incident, and the delay was not explained.

7. Mr Pratik Kalantri, learned Counsel appearing for the applicant, submitted that the impugned FIR deserves to be quashed as it was lodged with malicious intent and is an attempt to take revenge and intimidate the applicant into not interfering with respondent no.2's unlawful activities. He submitted that several complaints have been lodged by the applicant against respondent no.2's unlawful acts and on his complaints, a proposal was forwarded to the Court of JMFC, Nashik, under Section 18 of the Immoral Traffic (Prevention) Act, 1956. It is claimed that the impugned FIR was registered in collusion with the police. The same is an abuse of the process of law. It was only registered after

the JMCF, Nashik, passed an order against respondent no.2, a habitual offender. He submitted that merely mentioning the Sections and their language is not sufficient to lodge a proper complaint. According to him, *prima facie*, the FIR does not disclose the offence as alleged against the applicant. The general allegations against the applicant are ambiguous. The FIR was lodged about a week after the alleged incident and the delay was not explained properly. Furthermore, respondent no.2 did not disclose the fact that the applicant had filed several complaints, a writ petition, and that an order was passed on the proposal report of the police under Section 18 of the Immoral Traffic (Prevention) Act, 1956 by the learned JMFC against her. In his opinion this suggests that the allegations are false, fabricated and made with malicious intent.

8. Mr Pratik Kalantri argued that the Court has the power to quash the FIR under Section 482 of the Code of Criminal Procedure, 1973. He also informed the Court that the Applicant is a highly respected individual and that his reputation has been tarnished by the impugned FIR.

9. On the other hand, Mr A.R. Kapadnis, learned Additional Public Prosecutor for the State has submitted that appropriate

action has been taken against the applicant according to the law based on the complaint received from respondent no.2. He submitted that the allegations made in the impugned FIR are specific and that second respondent did not lodge the FIR against the applicant with any hidden motive. In his opinion this is not a suitable case to exercise inherent powers under Section 482 of the Code of Criminal Procedure. It is submitted that the Application to quash the FIR is untenable since the proceedings have progressed beyond the stage of FIR and have resulted in a charge sheet.

10. We have given anxious consideration to the rival contentions and examined the record with reference to the applicable law.

11. In *State of Haryana and Others Vs. Bhajan Lal & Ors.*¹, the Supreme Court established a specific, precise and well-defined set of guidelines outlining when the inherent power to quash an FIR could be exercised. The relevant portion of that judgment is quoted below ;

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary

1 1992 Supp (1)SCC 335.

power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 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 malafide 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.*

12. On the anvil of the above-noted legal position, it is clear that a criminal proceeding that is motivated by bad intentions or that is

maliciously instituted with a hidden or ulterior motive for wreaking vengeance on the accused and to spite him due to personal animosity is not valid.

13. The learned Counsel for the applicant invited our attention to the complaints made by the applicant and other people residing in the area, an order passed in the criminal writ petition no.4552 of 2018 dated 04.01.2019 which granted the petitioners leave to make a proper representation with necessary facts so that the authorities could consider their request for taking steps under Section 18 of the Immoral Traffic (Prevention) Act, 1956 and also the order dated 11.2.2019 passed by the learned JMFC, which approved the said proposal and ordered the occupants to leave the premises.

14. It revealed from the record that the impugned FIR was lodged about a week after the alleged incident. This is more significant when the applicant had lodged several complaints against the second respondent, and had succeeded in pursuing the police to file a proposal under Section 18 of the Immoral Traffic (Prevention) Act, 1956. Moreover, based on such a proposal, the learned JMFC ordered the attachment of the premises of respondent no.2 as she improperly used the said premises and also ordered the occupants to vacate the premises.

15. It is a settled position of law that an inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. In the present case, the informant/respondent has not given any satisfactory explanation for the delay of a week caused in filing the FIR. In fact, the lack of such an explanation only makes the Court suspect some malicious intent behind starting the criminal proceedings.

16. The record also shows that the applicant and others repeatedly complained against respondent no.2 for her alleged illegal business and the police filed FIR against her. It is claimed that the FIR in question was filed with a malicious intention to take revenge on the applicant due to personal grudge and the FIR was a counter measure meant to pressure the applicant. Moreover, on perusal of the impugned FIR and the statements of the witnesses prima facie no offence is made out as alleged against the applicant.

17. This Court deeply concerned about the ease with which provisions like Sections 354, 452 and 504 of the IPC are invoked to express displeasure with someone else's behaviour. This trivialises the offence of sexual harassment and raises doubt on the credibility of allegations made by other victims who have actually experienced sexual harassment, hampering the progress of women's

empowerment. As a result, this Court believes it appropriate to use its inherent powers to quash the impugned FIR to prevent misuse of the legal process and ensure justice.

18. As regards the contention of the learned APP that since a charge sheet has been filed, the Applicant has an alternate remedy before the trial Court and that this Court may not exercise its jurisdiction under Section 482 of the Code of Criminal Procedure, is concerned, it is a settled position of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C., even when the discharge application is pending with the trial Court.

19. In *Anand Kumar Mohatta Vs. State (Govt. of NCT of Delhi)*², it was held in para 17 that ;

“There is nothing in words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of Code or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C. even when the discharge application is pending with the trial Court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialised into a charge sheet. On the

² (2019) 11 SCC 706.

contrary, it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any Court.”

20. In view thereof, even if the applicant has the alternate remedy available, he can invoke the powers of this Court under Section 482 of the Cr.P.C.

21. In light of the above and in the peculiar facts and circumstances of the case, we are of the considered view that the continuation of the prosecution against the applicant would be an abuse of the process of law and compelling him to undergo the trial would cause a grave injustice.

22. Based on these observations, this application is allowed. The FIR No.340 of 2019 dated 7.4.2019 registered at Bhadrakali Police Station against the applicant and the charge sheet arising therefrom are quashed and set aside.

23. It is made clear that the observations made in this order shall not be pressed into service in any proceedings between the parties.

24. All concerned to act on the authenticated copy of this order.

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]