

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1288 OF 2022**

Balu Anandrao Labade

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Mr.H. V. Subhedar i/by Mr.Neeraj M. Mahajan for Applicant.
Mr. Ajay Patil, APP for Respondent No.1-State.

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**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 31st MARCH, 2023.

P.C.:-

1. By the present Application, Applicant is seeking quashing of FIR No.280 of 2022 dated 22nd July 2022 registered with Paud Police Station, Pune (Rural) under Sections 354 & 509 of Indian Penal Code (*for short* 'IPC').
2. It is an admitted fact that, after completion of investigation, police have submitted charge-sheet in the present case on 2nd December 2022.
3. In view thereof, at the inception, we gave an opportunity to the learned counsel for the Applicant to avail an alternate remedy of filing an Application for discharge before the trial Court as per the provisions of Criminal Procedure Code, which he did not accede and persisted to proceed

with to argue the Application on merits. We therefore heard Mr.Subhedar, learned counsel for Applicant at great length and Mr.Patil, learned A.P.P for Respondent No.1-State. We have perused record produced before us.

4. The FIR in question is lodged by Respondent No.2 on 22nd July 2022.

It is the prosecution case that, Respondent No.2 is working as a teacher in a school at Bhukum, run by Zilla Parishad of Pune. Applicant was not behaving properly with the Respondent No.2. He used to deliberately call Respondent No.2 to his office/cabin and made to sit her in front of him. In the month of May 2021, when there was vacation to the school, Applicant contacted Respondent No.2 and called her for writing her Confidential Report (C.R.). Respondent No.2 realized that, the Applicant is deliberately calling her. Respondent No.2 alongwith her husband visited the office of Applicant. It is alleged that, Applicant deliberately asked Respondent No.2 what is the meaning of 'incinerator'. That, the Applicant was well aware of the fact that, the said word is pertaining to the private aspects of women, despite the said fact Applicant asked the said question three times. Subsequently, Applicant told Respondent No.2 that 'incinerator' means a machine used in the bathroom of women for disposing of sanitary pads and laughed at Respondent No.2. The said act of Applicant amounted to outraging her modesty due to the inappropriate behavior and sexually coloured remarks. Respondent No.2 was subsequently called to the office of the said school on 29th April 2022 at 09:25 am and it is alleged that, in the

presence of other higher Authorities of the said school and Government Authorities, Applicant pressurized Respondent No.2 to write a letter that, she is giving consent with her free will to check the record of Standard 2 for the year 2021-2022 for writing her C.R.. That, Applicant thereafter stared at her and told her that, 'she is yet to complete long service'. It is alleged by Respondent No.2 that, the said words used by Applicant in Marathi vernacular language were having sexually exploitable dual meaning which amounts to causing of outraging of her modesty. In this brief premise, present crime is registered.

5. Learned counsel for Applicant submitted that, though the last incident stated in the FIR is of 29th April 2022, the present crime is belatedly registered on 22nd July 2022. That, Respondent No.2 did not mention the date on which Applicant stared at her and used the said sexually exploitable dual meaning language in Marathi vernacular. He submitted that, Applicant has been falsely implicated in the present crime. He pointed out a letter signed by Gramsevak of Gram Panchayat, Bhukum to the Block Development Officer, Panchayat Samiti, Mulshi, Paud making a complaint against Respondent No.2. It is mentioned therein that, Respondent No.2 is unnecessarily defaming the Applicant, who is the Head Master of the said school. He further submitted that, even perusal of charge-sheet would indicate that, no offence as alleged under Section 354 of IPC has at all been made out and at the most an offence under Section

509 of IPC can be discerned after perusing the record. He therefore prayed that, present FIR be quashed.

6. The facts noted in paragraph No.(4) above are deduced from the FIR of the Respondent No.2.

As far as the contention about the delay in lodging FIR is concerned, the Hon'ble Supreme Court in the case of *Bharwada B. Hirjibhai v/s. State Of Gujarat reported in AIR 1983 SC 753*, has held that, the testimony of a victim of sexual assault cannot be disbelieved at the inception. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. It is held that, why should the evidence of the girl or the woman, who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society. It is further held that, a girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. That, over much importance cannot be attributed or given to minor discrepancies.

In the case of *State of Himachal Pradesh Vs. Shree Kant Shekari reported in 2004 SC 4404*, the Hon'ble Supreme Court has held that, mere delay in lodging the FIR *per se* is not a mitigating circumstance for the accused when there was accusation of rape. That being so, the mere delay

in lodging FIR does in any way render prosecution version brittle.

7. It is the settled position of law by a catena of decisions of the Hon'ble Supreme Court that, for the purpose of exercising its power under Section 482 of Cr.P.C. to quash a F.I.R. or a complaint, the High Court would have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same per se. If the allegations in the complaint taken at their face value disclose a criminal offence, complaint cannot be quashed, merely because it relates to commercial transaction of breach of contract for which civil remedy is available or has been availed. It is further held that, the High Court is not supposed to embark upon the enquiry whether the allegations in the FIR/complaint are reliable or not and thereupon to render a definite finding about the truthfulness or veracity of the allegations. It is also settled that the High Court can exercise such power in exceptional cases and when the defence of the accused can be accepted on the basis of documents as contemplated under the Evidence Act. It is also held that the power under Section 482 of Cr.P.C. should be exercised sparingly and only in exceptional cases only to save the abuse of process of Court or to secure the ends of justice. It is further held by the Supreme Court that, it is of course open to accused at the trial too take whatever defence that is open to him, but High Court need not deal with the merits of the case at the stage of quashing of proceedings.

8. The Hon'ble Supreme Court in the case of *Smt. Chand Dhawan Vs Jawahar Lal And Ors., reported in (1992) 3 SCC 317* while considering the powers and scope of Section 482 of Cr.P.C. has held that, it should not be exercised where allegations *prima facie* constitute the offence alleged in the complaint. That, it should be exercised only to save abuse of process of Court or to secure the ends of justice.

In the case of *CBI Vs. K. M. Sharan, reported in (2008) 4 SCC 471*, the Hon'ble Supreme Court has held that, while exercising powers under Section 482 of Cr.P.C., the High Court should have limited its consideration to "whether allegations made in the FIR and in the charge-sheet taken at their face value and accepted in their entirety would *prima facie* constitute an offence or make out a case against the accused." It is further held that, at this stage, the High Court in its jurisdiction under Section 482 of Cr.P.C. was not called upon to embark upon the enquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations.

9. In the case of *Vinod Raghuvanshi Vs. Ajay Arora and Ors., reported in (2013) 10 SCC 581*, the Hon'ble Supreme Court while considering the powers of High Court for quashment under Section 482 of Cr.P.C. has held that, if the *prima facie* case to proceed against the accused is made out, then complaint should not be quashed.

10. After applying the aforesaid principles of law enunciated by the Hon'ble Supreme Court and after perusing the FIR and other relevant material on record, a safe inference and conclusion can be drawn that, a strong *prima facie* case has been made out by the prosecution against the Applicant. No case for interference by this Court while exercising its jurisdiction under Section 482 of Cr.P.C. is made out.

11. Application is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)