

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 64/2023

(Dr. Varun S/o. Vinod Deshpande Vs. State of Maharashtra & anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. G. Deshpande, Advocate for applicant.
Mr. N. R. Rode, APP for non-applicant No.1.

CORAM: VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATED : 10/03/2023.

Heard.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure seeking to quash First Information Report ('FIR') No. 619/2022 for the offence punishable under Sections 376(1), 506 read with Section 34 of the Indian Penal Code registered with Police Station Hinganghat, District Wardha. Though informant lady was served, she chooses to remain absent.

3. The informant has lodged report against her father and brother (applicant) alleging that they have raped on her on 27.07.2021 and 28.07.2021 respectively. In-short, the real sister of the applicant who is 24 years age.

4. The report was lodged against applicant (brother) and Vinod father of the informant. The learned counsel for the applicant would submit that initially, co-accused

Vinod (father) has filed Criminal Application (APL) No. 934/2022 seeking to quash the same FIR. In the said proceeding, the informant through her Advocate also contested the application. After hearing both side and on consideration of the same material, this Court concluded that the entire allegations are untrue, absurd and improbable. The material findings of this Court at para 12 of the judgment reads as below:-

“12. The above said facts, which are not disputed, when are read together, falsify the entire story of the prosecutrix of the alleged incident of rape either on 27.07.2021 or 28.07.2021. The prosecutrix, who happened to be in police station just after the incident and even thereafter many times, did not whisper anything about the incident; she used to beat her father i.e. the applicant and her mother; she threatened the applicant of false implication; and then she lodged the complaint alleging rape by the applicant (father) on 27.07.2021 and by her brother on 28.07.2021. In these state of affairs, the only conclusion which possibly can be made is that the allegations are totally untrue and even absurd and improbable. Thus, I do find force in the argument of the learned Counsel for the applicant that the present case is nothing but an abuse of process of law by the prosecutrix which in fact has been made by the legislature to protect the weaker section of the society i.e. women and not to serve as weapon for undeserving women to harass the innocent.”

5. We have independently examined the applicant's role vis-a-vis the allegations against father. This Court has considered all aspects and virtually also came to the conclusion that the entire allegations made in FIR including against present applicant are false. This Court has assigned reasons in para 11 of the decision, to highlight few of them, the report was lodged after ten

months from the alleged occurrence, during interregnum period the informant had visited police station but did not ventilate the incident. There were estranged relation between informant and her family including the applicant. She was taking treatment of psychiatrist, etc.

6. In view of above and the finding recorded by this Court, we have re-examined the papers and found same reasons exist as regards to the case of applicant. The case is well covered by the guideline Nos. 5 and 7 of the decision of the Supreme Court in case of ***State of Haryana and others Vs. Bhajan Lal and others, AIR 1992 SC 604***. We are of the considered opinion that continuation of such prosecution would be abuse of the process of Court. In view of that, we allow this application and hereby quash and set aside FIR No. 619/2022 for the offence punishable under Sections 376(1), 506 read with Section 34 of the Indian Penal Code registered with Police Station Hinganghat, District Wardha and related charge-sheet culminated in RCC No. 246/2022.

7. Application stands disposed of in above terms.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane

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