

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

CRIMINAL APPLICATION (APL) NO. 872/2022

1. Smt. Poonam w/o Babluji Jugele,
Aged about 38 yrs., Occ. Housewife,
2. Sunil s/o Dayaramji Jugele,
Aged about 42 yrs., Occ. Business.
**(Deleted as per Court's order
dated 10.03.2023)**
3. Naresh s/o. Premlalji Jugele,
aged about 50 yrs., Occ. Business,
All R/o. Dasra Road, near Kashibai
Temple, Kolya Kumbharyachi Chawl,
Nagpur.

.....**APPLICANTS**

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Kotwali, Dist. Nagpur.
2. X. Y. Z,
Victim in Crime No. 202 of 2020
through its Police Station Officer,
Police Station Kotwali, Dist. Nagpur.

...**NON-APPLICANTS**

Mr. U. P. Dable, Advocate for applicants.
Mr. V. A. Thakare, APP for non-applicant No.1.
Ms. S. T. Godbole, Advocate (appointed) for non-applicant No.2.

CORAM : **VINAY JOSHI AND**
VALMIKI SA MENEZES JJ.

DATE : **14.07.2023**

JUDGMENT : (PER VINAY JOSHI, J.)

Heard the learned counsel appearing for the parties finally
by consent.

2. **Admit.**

3. The applicants who are accused in Crime No. 202/2020 registered with Police Station Kotwali, Dist. Nagpur City for the offence punishable under Sections 354, 427, 323 read with Section 34 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, ('POCSO Act') urged for exercise of inherent powers of this Court to quash the concerned crime along with Special Case No. 609/2020 pending on the file of Additional Sessions Judge, Nagpur.

4. The facts leading to the prosecution can be stated in brief.

The first informant a girl aged 17 years has lodged report. The informant's grand mother namely Rekha was residing near Bante House, Dasra Road, Mangpura, Nagpur. The informant was also residing at nearby place. On 13.08.2020 around 09.30 p.m., informant heard commotion from the side of the house of her grand mother Rekha. The informant rushed to the place to see the matter. At the relevant time, grandmother Rekha and informant's aunt were at their house to whom members of Jugele family (accused) were asking to vacate the premises. The informant started filming the occurrence by her mobile handset. At that time, co-accused Sunil obstructed the filming by pulling her T-shirt. He had also partially pulled the inner garments and touched to her chest in appropriate manner and thus, outraged modesty of first informant.

In the said incident, applicant No.1 Poonam pulled informant's hairs whilst applicant No.3 Naresh snatched mobile from Rekha and broke it by throwing on the ground.

5. Though initially application was filed by total three accused, however, application as regard applicant No.2 Sunil is withdrawn, hence he is deleted. In substance, this application remains to the extent of applicant No.1 Poonam and applicant No.3 Naresh. The learned counsel appearing for the applicants would submit that the filing of First Information Report ('FIR') is nothing, but an abuse of the process of law to pressurize them on account of land dispute. The prosecution is manifestly attended with mala fide that too with ulterior motive. It is submitted that the allegations levelled against the applicants are false and frivolous. There was a land dispute in between the parties. The informant's grandmother had grabbed the piece of land owned by the applicants, and thus, to pressurize, false report has been lodged. The said statement is countered by the learned APP as well as appointed counsel for the informant/non-applicant No.2. It is submitted that the informant as well as eye-witnesses have specifically defined the role of both applicants. The statement of eye-witnesses are consistent and thus, prima facie case is made out against both applicants.

6. The learned counsel appearing for the applicants has stressed on the point that, the law is set into motion by using as a weapon of

harassment or pressurization. To substantiate said contention, applicants have produced several complaints filed by the applicant No. 3 Naresh with the Police prior to the lodgment of FIR. In the light of submissions put-forth, it necessitates to go through the documents. The applicants have produced a copy of application dated 08.08.2020 filed by applicant Naresh to the concerned Police expressing his fear that Rekha and her family members had quarreled, threatened to involve in false case. Applicant Naresh has stated in the application that Rekha and her family members were his tenants. Deceased husband of Rekha was trying to raise construction over tenanted land. Applicant Naresh has specifically stated that Rekha and Nanda had threatened that they would get torn their clothes and would involve the applicants in false case. These contents of the application filed anterior to the FIR assumes significance. Moreover, the copy of N.C. report dated 08.08.2020 lodged by Naresh against Rekha and her family members has been tendered.

7. Applicant Naresh has tendered copy of one other application dated 12.08.2020 filed by him to the Police similarly against Rekha and rest of the family members. It is alleged that Rekha and her family had vacated rented premise, but latter they have encroached and threatened for dire consequences. Similarly, copy of application dated 12.08.2020 sent by Naresh to the Municipal Commissioner has been produced. It is

specifically alleged that deceased husband of Rekha has created false document of tax receipt and they are intended to forcefully raise construction on the premises owned by the applicants. In such background, the matter requires consideration.

8. Pertinent to note that Naresh has filed repeated applications to the Police and the Local Authority on 08.08.2020 and 12.08.2020, whilst alleged incident took place on the very next day i.e. on 13.08.2020, for which the report is lodged after 24 hours. Though there are consistent statements of the eye-witnesses, however all of them are family members of informant girl. Particularly, the witnesses are her grandmother, aunt and other relatives. The Police paper does not contain the statements of independent eye-witness.

9. It is not uncommon that the people used to rope the rival in criminal cases to wreak the vengeance. In exercise of inherent powers, the High Court is entitled to quash proceeding if it comes to the conclusion that allowing the proceeding to continue, would be an abuse of process of Court, or the ends of justice requires that the proceeding ought to be quashed. These powers are designed to achieve salutary public purpose which is that the Court proceeding ought not to be permitted to degenerate weapon of harassment or persecution.

10. The complaint application dated 08.08.2020 filed by Naresh speaks voluminous. He has expressed the fear that that the informant's party had already threatened by saying that they would get torn their clothes, and would involve in a criminal case. In said background, it is worthwhile to note that similarly within four days, report has been lodged somewhat with same contention. The role assigned to the applicants is of intervening the quarrel by pulling hair of informant and causing damage to the mobile handset. It is not pointed out that the Police have seized a pieces of mobile handset from the place of occurrence. Pertinent to note that Naresh has filed second complaint to the Police on 12.08.2020, whilst on the very next day alleged occurrence took place. This Court is well vested with the powers to scrutinize the entire material to see whether proceeding is actuated with mala fide. The possibility of exaggeration and false implication of applicants strongly surfaces on the background of earlier complaints and delay in lodging report.

11. The law regarding quashment of First Information Report is well settled in the landmark decision of the Hon'ble Supreme Court in case of **State of Haryana and others Vs. Bhajan Lal and others**, AIR **1992 SC 604** wherein, the Hon'ble Supreme Court in paragraph No. 108 has held as under :-

"1. Where the allegations made in the First Information

Report of 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 F.I.R. 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 F.I.R. 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 mala fide 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. The ultimate object of justice is to find out the truth and punish the guilty as well as to protect the innocent. The tendency of exaggerating the incident to bent the opponent is not uncommon. The experience reveals that long and protracted criminal trials lead the rancour, acrimony and bitterness in the parties. Careful examination of entire material leads to hold that the case against Poonam and Naresh squarely falls in criteria number 7 as ruled by the Supreme Court in above referred case of Bhajan Lal. In the facts and circumstances of the case in hand, allowing such prosecution amounts to abuse of the process of Court. There is no propriety in continuing the criminal prosecution against the applicants in the above scenario.

13. In the light of above discussion, application needs to be allowed, hence, we do so accordingly. We hereby quash and set aside FIR vide Crime No. 202/2020 registered with Police Station Kotwali, Dist. Nagpur City for the offence punishable under Sections 354, 427, 323 read with Section 34 of the Indian Penal Code and Section 12 of the POCSO Act along with Special Case No. 609/2020 pending on the file of 11th District Judge, Nagpur and charge sheet bearing No.78/2020 as

regards to applicant No.1 Poonam w/o. Babluji Jugele and applicant No. 3 Naresh s/o. Premlalji Jugele only.

14. Application stands disposed of in above terms.

15. Fees of appointed counsel for non-applicant No.2 be paid as per Rule.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane