

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

CRIMINAL APPLICATION NO. 766 OF 2022

1. Babanrao s/o Rustamrao Sangale,
aged 55 years, Occupation : Service.
2. Sau. Meena w/o Babanrao Sangale,
Aged – 43 years, Occupation :
Household,

Nos. 1 and 2 Both R/o Plot No. 20, Tulsi
Naar, Rajgure Layut, Buldhana, Tahsil
and District Buldana.

... APPLICANTS

VERSUS

1. State of Maharashtra, through
Police Station Officer, Police Station,
Buldana, Tahsil and District Buldana.
2. XYZ Crime No. 295/2022 P.S.
Buldana, Buldana, Tahsil and District
Buldana.

... NON-APPLICANTS.

Shri Sunil Kulkarni, Advocate for the applicant.
Shri N.R. Rode, A.P.P for the non-applicant/State.
Smt. Mohini Sharma, Advocate for the non-applicant no.2
(appointed.)

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 07.07.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard.

2. **ADMIT.** The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. This is an application under Section 482 of the Code of Criminal Procedure seeking to quash the First Information Report (FIR) in Crime No.295 of 2022 registered with the Buldana City Police Station, District Buldana for the offence punishable under Sections 354, 354-B, 294, 452, 376, 511, 504, 506, 509 read with Section 34 of the Indian Penal Code, Sections 110 and 117 of the Maharashtra Police Act, 1951 and related Criminal Case bearing R.C.C. No.794 of 2022 pending on the file of the Judicial Magistrate First Class, Buldana.

4. The applicants are the husband and wife against whom the aforesaid crime is registered at the instance of the report dated 25.04.2022 lodged by non-applicant no.2. It is the informant's case that applicants are her nearby resident. Since 7 to 8 years preceding to the lodgment of FIR, applicant no.1 was harassing the informant by his

indecent behavior. It is alleged that once prior to 8 years, applicant no.1 made indecent gestures while proceeding from the house of the informant and at relevant time, he was wearing underwear and banyan only. It is her case that, in the month of November, 2018 applicant no.1 once barged at her house and tried to outrage her modesty, however somehow she got escaped from his clutches. The informant stated that again in the month of December, 2020, applicant no. 1 entered into her house in the afternoon, embraced her and made a sexual demand however she got escaped.

5. It is the informant's case that her husband was serving in armed forces. In the year 2021, her husband got retired and came back to reside with the informant. At that time, she has disclosed the indecent behavior of the applicant no. 1 to her husband. On 06.04.2022, the informant's husband questioned the applicant no.1 about his behavior however applicant no.1 quarreled, gave threats, therefore, the report.

6. It is the applicant's case that no specific role has been assigned to the applicant no. 2 lady. Secondly, though the Police have registered FIR under Section 376 of the IPC, reading of entire FIR does not make out a slightest reference regarding the ingredients to

constitute the offence punishable under Sections 376 of the IPC. It is the applicants' contention that at the instance of applicant no. 1, crime was registered against the informant and her husband. In said proceedings criminal case was going on and thus, to pressurize the applicant party false report has been filed.

7. We have examined the entire available material. Learned Counsel for the applicants has placed on record the complaint made by the applicant no.2 Meena against the informant long back in the year 2015 pertaining to the quarrel in between neighbors. Thus, it is apparent that there was trite dispute in between the neighboring residents. The applicants have produced a copy of the FIR dated 05.02.2021 (Crime No.72 of 2021) registered against the informant and her husband for the offence punishable under Section 294 and 506 of the IPC. The applicants have produced a case status report of S.C.C. No.455 of 2021 pertaining to said FIR, which was pending in the Court of the Chief Judicial Magistrate, Buldana and for recording evidence. The applicants would submit that, in order to pressurize the applicants for not giving evidence, the false report has been filed. In such a background, we have scrutinized the material.

8. Learned Counsel (appointed) appearing for the informant

would submit that on 05.02.2021 itself, the informant has lodged the non-cognizable report against the unknown persons alleging damage to her car. In response, the applicants have produced an inquiry report stating that in said incident, there was no role of applicant no.1.

9. Learned Counsel for the applicants has produced a copy of statement dated 27.02.2021 of the informant's husband recorded during NC inquiry. In said statement though the informant's husband stated about the dispute between neighbors however he never disclosed about the alleged past occurrences attracting the offence punishable under Section 354 of the IPC. Moreover learned Counsel for the applicants has attracted our attention to the statement of the informant's husband dated 28.04.2022 wherein, he stated that on 01.01.2021 itself, the informant has disclosed alleged sexual activities, however there is no disclosure for next four months.

10. Learned Counsel for the informant submitted that the informant has supplied Pendrive containing video recording regarding indecent behavior of the applicant no.1 of moving from his house by wearing indecent cloths. The said Pendrive was produced today by the Investigating Officer containing the recording of barely three minutes. We have seen the video recording wherein we are unable to find

anything on the part of the applicant no.1, which could be construed as indecent behavior or the act which would outrage the modesty of a woman. In said recording, we have noticed that the person (applicant no.1) was seen walking on public road by wearing Banyan and half pant (Barmoda) and was taking dog for stroll. The said video nowhere conveys anything which could support the informant's allegations. The learned Counsel for the informant has produced a paper cutting to show that applicant no.1 was facing the offence of cheating filed by his Department. As a matter of fact, the said material has no nexus with the existing crime.

11. On perusal of entire material, it reveals that vague and general allegations are levelled by the informant against the applicants. Though the informant stated that first incident occurred in the year 2018 followed by second in the year 2020, however no report was lodged. It is difficult to digest that the informant has keep mum despite applicant no.1 barging in her house, embracing her and raising sexual demand. Besides that though the informant conveyed the things to her husband on 01.01.2021 however no such report was lodged for the next one and half year. Moreover, the allegations are vague without any specification. The parties were at loggerhead already criminal case was pending against the informant and her husband when the existing

crime was registered. The possibility of exaggeration cannot be ruled out on the background of old rivalry. The material adduced on record fell short to make out the levelled charges. The case squarely falls in the category No.7 as set out in paragraph 108 by the Supreme Court in case of ***State of Haryana vs. Bhajan Lal AIR 1992 SC 604***. This Court has invested inherent powers to secure the ends of justice. Inordinate delay in lodgment of report also assumes significance.

12 The ultimate object of justice is to find out the truth and punish the guilty and protect innocent. The tendency of implicating the people in retaliation is not uncommon. We may profitably refer the observations made by the Supreme Court in case of ***Zandu Pharmaceutical Works Ltd. and ors. vs. Mohd. Sharaful Haque and anr. (2005) 1 SCC 122*** which reads as below :

“8. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to

look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

13 Experience reveals that long and protracted criminal trials lead to acrimony and deep bitterness. The prosecution appears to have been instituted with ulterior motive of wreaking of vengeance, therefore, continuation of the same amounts to abuse of the process of court.

14. In view of the above, we deem it appropriate to invoke our inherent jurisdiction, hence the following order :

(a) The application is allowed and disposed of.

(b) We hereby quash and set aside the First Information Report (FIR) in Crime No.295 of 2022 registered with the Buldana City Police Station, District Buldana for the offence punishable under Sections 354, 354-B, 294, 452, 376, 511, 504, 506, 509 read with Section 34 of the Indian Penal Code, Sections 110 and 117 of the Maharashtra Police Act, 1951 and related Criminal Case bearing R.C.C. No.794 of 2022 pending on the file of the Judicial Magistrate First

Class, Buldana.

15. Fees of the appointed Counsel be paid as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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