

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

CRIMINAL APPLICATION (APL) NO. 1082 OF 2022

APPLICANT : Janardhan Mahadeo Bipate,
Age about 40 years,
Occupation : Service,
R/o Sukali (Ubhad), Post : Pawnur,
Tq. Arvi, Dist. : Washim.

VERSUS

RESPONDENTS :

1. The State of Maharashtra
through Police Station Officer,
Kharangana, Dist. : Wardha.
2. Sau Sarala W/o Sheshrao Kharwade
Aged about 41 years,
Occupation : Business,
R/o Sukali (Ubhad), post : Pawnur,
Tq. Arvi, Dist. : Wardha.

Mrs. Sonali Saware/Gadhawe, Advocate (Appointed) for applicant.
Shri A. M. Kadukar, Additional Public Prosecutor for respondent No.1.
Ms. Gayatri Dive, Advocate (Appointed) for respondent No.2.

CORAM: VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.
DATE : 21/04/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Admit.** Heard finally with the consent of learned
counsel appearing for the parties.

2. This is an application seeking to quash First
Information Report in Crime No.0891/2021 registered for the
offence punishable under Sections 294, 509 and 506 of the Indian
Penal Code.

3. After investigation, police have added the provisions of Section 354-A of the Indian Penal Code (IPC) against the applicant.

4. The applicant's learned counsel seeks for quashing of First Information Report on account of inconsistencies in the statement of witnesses, improbability of the occurrence, non-applicability of Section 354-A of the IPC and old rivalry between the parties. The other side resisted the application by contending that the contents of First Information Report and material collected during investigation disclose commission of cognizable offence and therefore, it is not a case of quashing.

5. The informant lady lodged a report on 11/12/2021 regarding the occurrence took place in the evening. The parties are neighbouring residents. The informant stated that, earlier she has filed police report against the applicant in the year 2015 in which the applicant was acquitted and therefore, he has filed a case for defamation. On this background, she stated that on 11/12/2021 in the evening, the applicant gave a push and uttered obscene words touching to the chastity of a woman which are specified in the report. The police have recorded supplementary statement of the informant on 16/12/2021 in which she is consistent about the incident of abuses, however, there is variation on account whether

she was pushed or the applicant caught hold and then pushed him. The police have recorded the statements of some eye-witnesses to the occurrence. To name the few, the statement of one Kavita and Vaishali has been recorded who have equally stated that on the date of occurrence, applicant has abused informant lady in filthy language as stated by informant.

6. It is the applicant's contention that the contents of FIR are false as there was enmity between the parties. It is argued that since earlier, informant remained unsuccessful therefore, the false report has been filed. As a matter of fact, when the material regarding commission of cognizable offence prima facie makes out from police papers, we cannot prejudge or jump to the conclusion that the FIR is false on account of old rivalry. Obviously, it is a matter of trial. The informant's statement is to be tested on the anvil of cross-examination.

7. So far as the applicability of provisions of Section 354-A of the IPC are concerned, sub-clause 1(iv) of Section 354-A of the IPC says that if any one makes sexually coloured remarks, then he would be guilty of the said offence. Prima facie material to that effect emerges from the police papers.

8. Time and again, Hon'ble Supreme Court has expressed that while invoking inherent jurisdiction under Section 482 of the

Code of Criminal Procedure, the Court shall not embark into the enquiry of acceptability of evidence since it is a matter of trial. There are no circumstances to prima facie hold that proceeding is manifestly attended with malafide. The quashing shall be in tune with the guidelines laid down by Hon'ble Supreme Court in the case of **State of Haryana and others Vrs. Bhajan Lal and others, 1992 Supp (1) SCC 335**. The case does not fall in either of the categories enumerated in Clauses 1 to 7 of said decision. A reading of police paper makes out prima facie triable case. Therefore, we are not inclined to accept the contention of quashing. The Trial Court has already framed charges. In view of that, application does not carry any merit, hence, rejected. We make it clear that the above observations are made only for deciding this application which has no impact on the merit of the case.

9. The application is disposed of accordingly.

10. The fees of Mrs. Sonali Saware/Gadhawe, Advocate (Appointed) for applicant and Ms. Gayatri Dive, Advocate (Appointed) for respondent No.2 be quantified and paid, as per the Rules.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

Choulwar