



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

CRIMINAL APPLICATION (APL) NO.1068 OF 2022

- APPLICANTS** : 1 Dnyaneshwar S/o Ramdas Tarale,
Aged about 41 years, Occupation :
Doctor,
- 2 Monika W/o Dnyaneshwar Tarale,
aged about 39 years, Occ. Doctor
- Both R/o. Bhokar, Tah. Telhara,
District Akola.
- 3 Aparna W/o Nilesh Bhatkar, Aged
about 36 years, Occ. Housewife, R/o.
Nandarag Niwas, Sarnobat Wadi,
Karveer, District Kolhapur

..VERSUS..

- NON-APPLICANTS** : 1 The State of Maharashtra
Through Police Station Officer, Police
Station, Durgapur, District
Chandrapur
- 2 Nilesh S/o Ramesh Bhatkar, aged
about 35 years, R/o Rajeshri
Apartment, Major Gate, Durgapur,
District Chandrapur.

Mr R. D. Karode, Advocate for Applicants.
Mr S. S. Doifode, APP for Non-Applicant No.1/State.
Mr A. R. Wagh, Advocate for Non-Applicant No.2.

CORAM : NITIN W. SAMBRE AND
VALMIKI SA MENEZES, JJ.

DATE : **14th SEPTEMBER, 2023.**

ORAL JUDGMENT : (PER : NITIN W. SAMBRE, J.)

. Heard.

2. The prayer is for quashing of the First Information Report (FIR) in Crime No.135 of 2022 registered on 29th July, 2022 for an offence punishable under Sections 294, 504, 506 and 34 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”).

3. The genesis of the offence alleged against the Applicants is, the Applicant Nos.2 and 3 are the sisters. Applicant No.1 is the husband of Applicant No.2. The Applicant No.3 was married to Non-Applicant No.2 - Complainant on 6th May, 2018. The couple is blessed with a son.

4. Out of matrimonial discord, the Non-Applicant No.2 has initiated the proceedings under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights, which is informed to be pending adjudication. The

Applicant No.3 - wife has also initiated the divorce proceedings.

5. In the aforesaid background, the genesis of the offence is, the Applicant Nos.1 and 2 visited the house of the Non-Applicant No.2 - Complainant and Applicant No.3 - Wife of Non-Applicant No.2, abused him. As such, it is alleged that all have committed an offence punishable under Sections 294, 504, 506 and 34 of the IPC. A specific instance is narrated in the FIR mentioning the conduct of the Applicant No.1 of holding collar and abusing the Non-Applicant No.2 on a public road. Similarly, the allegations against all the three Applicants in general are of criminal intimidation with common object and causing insult.

6. Mr Karode, Counsel for the Applicants would urge that the perusal of the FIR does not depict that the necessary ingredients of the offence punishable under Sections 294, 504, 506 and 34 of the IPC could be said to be satisfied. Apart from above, his contentions are, the

offence claimed to have occurred on 23rd June, 2021, whereas the complaint was lodged on 29.07.2022 i.e. almost after a period of one year. According to him, there is no convincing explanation for lodging the FIR at such belated stage. He would as such urge that delayed lodging of FIR vitiates the very proceedings. Apart from above, he has drawn support from the judgment of the Hon'ble Apex Court in the matter of *N. S. Madhanagopal and Anr. v. K. Lalitha*, reported in *2022 LiveLaw (SC) 844*, so as to substantiate his claim that the satisfaction of the ingredients of the offence punishable under Section 294 of the IPC cannot be inferred.

7. While countering the aforesaid submissions, the learned APP would urge that based on the contents in the FIR since a cognizable offence was disclosed, the same came to be registered and investigated into. According to Mr Doifode, learned APP, the investigation has reached an advance stage.

8. Mr Wagh, learned Counsel appearing for Non-Applicant No.2 - Complainant would urge that because of constant interference of the Applicant Nos.1 and 2, married life of the Non-Applicant No.2 with the Applicant No.3 has been disturbed. According to him, the explanation is tendered in the complaint for registration of offence at belated stage. Mr Wagh would urge that since the ingredients of the offence could be said to be satisfied from the very contents of the complaint, this Court should be slow in causing interference in exercise of inherent powers. So as to substantiate his contentions, he has relied on the judgment of the Hon'ble Apex Court in the matter of *Mahendra K.C. v. State of Karnataka and Anr.*, reported in *(2022) 2 SCC page 129 paragraph 22.*

9. We have appreciated the rival submissions.

10. The Applicant No.3 got married with the Non-Applicant No.2 on 6th May, 2018. It is alleged in the FIR that as suggested by Applicant No.3 – wife of complainant,

hand loan of Rs.5,00,000/- was given to the brother of the Applicant No.3 way back in 2018. Said hand loan was never refunded. Rather it is claimed that there was a demand for additional amount by the Applicant No.3 – Wife.

11. It is also claimed that the Applicant No.3 was of quarrelsome nature and there was constant interference of the Applicant Nos.1 and 2 in the married life of the Non-Applicant No.2.

12. If we appreciate the very submission of lodging belated FIR, it has to be noticed that the incident of the offence punishable under Sections 294, 504, 506 and 34 of the IPC claimed to have occurred sometime on 23rd June, 2021 or subsequent there being on 30th June, 2021.

The complaint came to be lodged almost after a period of more than one year i.e. on 29th July, 2022 i.e. almost after a period of one year.

13. As far as, belated lodging of complaint is concerned, the only explanation furnished by the Non-Applicant No.2 is, he was not keeping well and was under treatment.

14. It is brought to our notice by the learned Counsel for Applicants that the aforesaid explanation furnished by the Non-Applicant No.2 is far away from the truth, as marriage petition came to be initiated by the Non-Applicant No.2 on 5th January, 2022 on the file of Civil Judge Senior Division, Chandrapur. The online extract of the proceedings referred above *viz.* marriage petition is produced at Annexure - B to the application. As such, it has to be inferred that the Non-Applicant No.2 - Complainant cannot be said to be indisposed to the extent that he was unable to file FIR within the reasonable time. The fact that the Non-Applicant No.2 was pursuing the matrimonial proceedings before the Civil Court sufficiently establishes that the statement made by the Non-Applicant No.2 in the FIR explaining lodging of belated FIR is far away from

truth.

15. Apart from above, the delayed lodging of FIR (in the present case of more than one year) gives rise to a strong suspicion of involving the Applicants in false criminal case. It corrodes the credibility of the prosecution case. The incident in the case in hand claimed to have occurred on 23rd June, 2021 and the complaint was lodged on 29th July, 2022. Sufficient time was available at the disposal of Non-Applicant No.2 to give second thought and prepare a concocted story against the Applicants so as to make them involve in a false offence, as the delay is unreasonable which has given rise to suspicion regarding prosecution's story.

16. In support of aforesaid observations, reliance can be placed on the judgment of the Hon'ble Apex Court in the matter of *Hasmukhlal D. Vora vs. State of Tamil Nadu*, reported in *2022 LiveLaw (SC) 1033*.

17. Apart from above, the fact remains that the Applicant Nos.1 and 2, who are husband and wife, are educated persons (Doctor by profession). The claimed allegations in the complaint if appreciated, the specific allegations are made against the Applicant No.1, whereas against the Applicant Nos.2 and 3, there are general, non specific and vague allegations.

18. The fact remains that such allegations as against even Applicant No.1 are taken to be true at its face value, same does not satisfy the very ingredients of the offence under Section 294 of the IPC.

19. The offence under Section 34 of the IPC cannot be termed as an independent offence and same has to be considered alongwith the offences punishable under the other provisions of the IPC.

20. In the aforesaid background, not only the FIR is lodged at much belated stage but even the satisfaction of

necessary ingredients of the offence alleged against the Applicants cannot be inferred. That being so, in the light of law laid down by the Hon'ble Apex Court in the matter of *State of Haryana v. Ch. Bhajan Lal and Ors.*, reported in *AIR 1992 SC 604*, particularly observations made in para 102, we deem it appropriate to allow the present proceedings. As such, the offence being Crime No.135 of 2022 punishable under Sections 294, 504, 506 and 34 of the IPC registered against the Applicants based on the complaint of Non-Applicant No.2, referred to in Para 2 hereinabove is hereby quashed and set aside.

(VALMIKI SA MENEZES, J.) (NITIN W. SAMBRE, J.)