

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

CRIMINAL APPLICATION (APL) NO. 1094/2019

Deepak s/o. Khemchand Sahu,
Aged about 33 years, Occ. Service,
R/o. Qtr. No. F type 75, MCW Colony,
Ambuja Cement Ltd., Post:Upparwahi,
Tah. Korpana, Dist. Chandrapur.

... **APPLICANT**

VERSUS

1. State of Maharashtra through
P.S.O., Gadchandur Police Station,
Tah: Korpana, Dist. Chandrapur.
2. Lata w/o. Suryabhan Kodape,
aged 35 years, Occ. Household,
R/o. Upparwahi, Tah. Korpana,
Dist. Chandrapur, PIN-442908.

... **NON-APPLICANTS**

Mr. Saurabh Singha, Advocate for applicant.
Mr. S.S. Doifode, APP for non-applicant No.1/State.
Mr. U.J. Deshpande, Advocate (appointed) for non-applicant No.2.

CORAM : VINAY JOSHI,
VALMIKI SA MENEZES, JJ

DATED : 12.06.2023

ORAL JUDGMENT (PER: VINAY JOSHI, J)

Heard.

2. This application is seeking quashing of First Information Report ('FIR') vide crime No. 374/2019 registered with Police Station Gadchandur, Tah. Korpana, Dist. Chandrapur for the offence punishable under Sections 354(A) of the Indian Penal Code, Sections 3(1)(i), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('Atrocities Act').

3. The applicant would urge that the allegations levelled in the Police Report are totally false and fabricated. The criminal prosecution is manifestly attended with malafides with a view to pressurize the applicant from withdrawing his earlier prosecution for the offence of theft. Moreover, it is submitted that at the relevant time, the applicant was at his service place and thus, the entire incident is false and imaginary. On the other hand, the learned APP and learned counsel appearing for informant would submit that the informant has specifically narrated the occurrence in her report and

the aspect of alibi is a matter of defence. There is sufficient material to put the applicant on trial.

4. The informant-lady aged 35 years was a maid servant working in the house of applicant. It is her case that on 13.08.2019 as usual she went to the house of the applicant around 11.45 a.m. for household work. At relevant time, wife of applicant was away from the house, therefore, applicant stared her with ill-intention. He has asked her to massage and then suddenly caught hold her hand. Under such allegation, she has lodged report on 10.09.2019. Admittedly, there is no eye-witness to the occurrence rather, we cannot expect the eye-witness to such occurrence also.

5. There is no denial that informant was working as maid servant with the applicant. The applicant has stated that the informant while working as a maid servant, had committed theft of cash amount and gold ornaments from his house for which he has lodged Report against her on 01.09.2019 which was registered by Police vide Crime No. 344/2019 for the offence punishable under Sections 381 of the Indian Penal Code. On the basis of said report,

informant was arrested on 01.09.2019 and was in Police Custody till 03.09.2019. She was released on bail on 05.09.2019. The said factual position has not been denied by the informant. It reveals that after informant's release on bail, she has lodged report on 10.09.2019 pertaining to the incident allegedly occurred on 13.08.2019. We find no justification for such prolonged delay. Already, the applicant has lodged report against the informant on 01.09.2019 and thus, it is improbable that even thereafter she has continued to work at the house of the applicant. The long delay itself postulates that the informant got annoyed by registration of the offence. There is strong possibility of lodging report of pressurize or settle the score.

6. The applicant is serving with a Private Company. He has produced attendance sheet along the punch-card showing that on 13.08.2019, he entered into the Company at 08.00 a.m. and left at 06.38 p.m. The punch-card was prepared under bio-metrics system. Prima facie, the said material falsifies the allegation in-toto. However, prominently the documents tendered on record supports the applicant's case of false implication. On careful examination of entire material, we are of the considered view that the case falls under

criteria (7) of Para 108 of the laid down by the Supreme Court in case of **State of Haryana V. Bhajan Lal, AIR 1992 SC 604**. The Supreme Court has specified that when criminal proceeding is manifestly filed with malafide with an ulterior motive for wreaking vengeance, the FIR needs to be quashed. We are of the considered view that as a counterblast to the case of theft, existing FIR has been lodged that too after gap of several days and therefore, continuation of such proceeding amounts to abuse of the process of the Court. In order to secure the ends of justice, the entire prosecution is liable to be quashed and set aside.

7. In view of above, application is allowed. We hereby quash and set aside FIR vide crime No. 374/2019 registered with Police Station Gadchandur, Tah. Korpana, Dist. Chandrapur for the offence punishable under Sections 354(A) of the Indian Penal Code read with Sections 3(1)(i), 3(1)(w)(i), 3(1)(w)(ii) of the Atrocities Act' along with related charge-sheet No. 82/2022.

8. Application stands disposed of in above terms.
9. Fees for appointed learned counsel for non-applicant No. 2 be paid as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane