



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.66 OF 2019

Rajendra S/o Sopanrao Jagtap,
Age-45 years, Occu:Service,
R/o-Shirdi, Taluka-Rahata,
District-Ahmednagar.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through: The Police Inspector,
Shirdi Police Station, Shirdi,
Taluka-Rahata, District-Ahmednagar,
- 2) Smt. Sumantai Rajendra Wabhale,
Age-47 years, Occu:Social Worker,
R/o-Babhale Market, Rahata,
Taluka-Rahata, District-Ahmednagar.

...RESPONDENTS

...
Mr. V.D. Sapkal Senior Counsel i/by Mr. S.R. Sapkal Advocate
for Applicant.
Ms. R.P. Gour, A.P.P. for Respondent No.1 – State.
Mr. S.S. Thombre Advocate h/f. Mr. A.S. Gandhi Advocate
for Respondent No.2.

...
**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE OF RESERVING JUDGMENT : 3rd SEPTEMBER 2024

DATE OF PRONOUNCING JUDGMENT : 17th OCTOBER 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Heard finally with the consent of the learned Advocates for the rival parties.

2. Present Application has been filed under Section 482 of the Code of Criminal Procedure, initially, for quashing the First Information Report (for short "the FIR") vide Crime No.249 of 2018, dated 16th November 2018 registered with Shirdi Police Station, Shirdi, Taluka-Rahata, District-Ahmednagar and later on, by way of amendment for quashing the the proceedings/charge-sheet arising out of the said FIR i.e. R.C.C. No.308 of 2022 pending before the learned Judicial Magistrate, First Class, Rahata, for the offence punishable under Sections 354, 323, 504, 506 of the Indian Penal Code.

3. Heard learned Senior Counsel Mr. V.D. Sapkal instructed by Mr. S.R. Sapkal Advocate for applicant, learned APP Ms. R.P. Gour, for respondent No.1 – State and learned Advocate Mr. S.S. Thombre holding for Mr. A.S. Gandhi Advocate for respondent No.2.

4. Learned Senior Counsel Mr. V.D. Sapkal instructed by Mr. S.R. Sapkal Advocate for the applicant vehemently submits that the perusal of the FIR and now the contents of the charge-sheet would show that the FIR has been lodged with some ulterior motive and there was absolutely no intention on the part of the applicant to commit any such offence as alleged. The applicant is working as employee of Shri Saibaba Sansthan, Shirdi and in fact Shri Saibaba Sansthan Act, 2004 makes a provision that all the employees of Sansthan are public servants within the meaning of Section 21 of the Indian Penal Code. By order dated 1st December 2015, the administrative officer of Shri Saibaba Sansthan had allocated the work to various employees of Sansthan and present applicant, who was head of water supply department, was also given the charge of Superintendent of Temple Department and therefore, he was concerned with the work inside the temple also. Respondent No.2, who lodged the FIR on 16th November 2018 in respect of incident dated 15th November 2018, states that around 8.00 p.m. she along with the relatives came to temple for Darshan. Her relatives met her on gate No.3 and thereafter they all entered the inner circle of the temple. Another employee of the Sansthan, Mr. Balu Jejurkar was giving instructions to the devotees who were coming for

Darshan. He asked respondent No.2 to stand aside for a while. The informant - respondent No.2 says that the applicant came near her at that time and asked her to go out of the temple. He then caught hold the hand of respondent No.2 and took her along with her relative, out of the temple. It is then stated that respondent No.2 and her relative were threatened and insulted by the applicant. In fact there are CCTV cameras installed inside and outside the temple. If CCTV Footage of the particular time and date is perused, it can be seen that no such incident as alleged by respondent No.2 had taken place. It appears that the story that has been given by respondent No.2 is false and concocted and the FIR has been lodged to wreak personal vengeance and out of political rivalry. There could not have been any intention of the applicant to outrage the modesty of respondent No.2 and her relative, as she has not stated that at any earlier point of time there was any such incident between the applicant and informant which would have then led for such incident. The CCTV Footage was seized by drawing panchnama on 22nd November 2018. Now the report has also been received from the Forensic Science Laboratory (for short "the F.S.L.") that no such incident has taken place and in view of order dated 28th September 2022, this Court had directed the learned Judicial

Magistrate First Class, Rahata (Court No.2) to prepare the transcript and send it to this Court, which would have been received by this Court. Since it is confidential, the applicant had no occasion to go through the same but the F.S.L. report would be then sufficient. Learned Senior Counsel also submitted that the CCTV Footage was seen by the Hon'ble Single Bench of this Court at the time when anticipatory bail application of this applicant was decided and there are observations to that effect that no such incident could be seen.

5. Learned Senior Counsel Mr. Sapkal relies on the decision in *Suryalakshmi Cotton Mills Ltd. vs. Rajvir Industries Ltd. and others, 2008(13) SCC 2008*, wherein it has been observed that the powers under Section 482 of the Code of Criminal Procedure have to be dealt with caution and application of well known legal principles. It should be borne in mind that the criminal proceedings should not be encouraged when found *mala fide* or otherwise amount to abuse of the process of court. Ordinarily, a defence though, a plausible one, should not be considered at this stage, nor the High Court could enter into disputed questions of fact, but documents of unimpeachable character can be considered to find out whether continuance of criminal proceedings would amount to an abuse of the process of court or

that the complaint is merely filed to harass the accused. He further relies on the decision in *Prashant Bharti vs. State of NCT of Delhi, 2013 AIR (SC) 2753*, wherein reliance has been placed on Paragraph Nos. 22 and 23 of *Rajiv Thapar and others vs. Madan Lal Kapoor, AIR 2013 (SC) (Cri) 659*, which reads thus:-

" 22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to herein above, would have far reaching consequences, in as much as, it would negate the prosecution's/ complainant's case without allowing the prosecution/ complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and

overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions

contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

6. Learned Senior Counsel therefore, submits that it would be unjust to ask the applicant to face the trial and hence not only the FIR but also the entire charge-sheet is to be quashed and set aside.

7. Learned APP submits that the investigating officer API Sambhaji Gopal Patil has filed affidavit-in-reply wherein he has stated that initially the investigation was carried out by PSI Vandana Sonune of Shirdi Police Station and she has seized the CCTV Footage and taken it on DVD. It took time to send the DVD to Forensic Laboratory, Nashik due to administrative constraints in view of the fact that the investigating officer was required to get permission from Superintendent of Police, Ahmednagar for purchase of blank hard disks. At the time of sending the DVD containing CCTV Footage, there appears that no transcript was prepared. There is also an affidavit on record of Assistant Director, Regional Forensic Science Laboratory, Nashik, Mr. Vishal Subhash Pawade, who had given the details of pendency of cases with them, in respect of Cyber Crime Division and Tape Authentication and Speaker Identification (TASI) Division. He submits that final analysis report in the present case was handed over to Shirdi Police Station on 21st September 2022. There is also affidavit of then Superintendent of Police, Ahmednagar, Mr. Manoj Govind Patil regarding issuance of directions / circular in view of the decision in Criminal Appeal Nos. 549 of 2019 and 385 of 2019 regarding how the CCTV Footage should be sent for forensic analysis. The circular especially includes direction to

prepare transcript of the footage as well as the recorded material. Learned APP submits that every effort has been made to place the evidence on record. There are statements supporting the FIR and therefore, let the applicant to face the trial.

8. Learned Advocate Mr. Thombre holding for Advocate Mr. Gandhi for respondent No.2 submits that when it is specifically stated in the FIR that without any reason the applicant had caught hold of the hands of respondent No.2 and her sister-in-law and dragged them out of the temple, it is for those ladies to say that what was their feelings when such act was being done with them. He relies on the decision in *Rupan Deol Bajaj (Mrs) and another vs. Kanwar Pal Singh Gill and others, (1995) 6 SCC 194*, wherein it has been observed that the word 'modesty' has not been defined in the Indian Penal Code. From the dictionary meaning of 'modesty' and interpretation given to that word by the Supreme Court in *State of Punjab vs. Major Singh, AIR 1967 SC 63*, it appears that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. Therefore, learned Advocate for respondent No.2 submits that when there is direct evidence in

the form of statement under Section 161 of the Code of Criminal Procedure of the informant as well as the other witnesses who were in the queue, then interference in the form of powers under Section 482 of the Code of Criminal Procedure may not be justified.

9. Learned Advocate for respondent No.2 also relies on the decision in *Kaluram Chaudhary vs. Union of India and others, 2016 DGLS (Bom.) 1346, S.P.S. Rathore vs. Central Bureau of Investigation and another, 2017 (5) SCC 817, State of Maharashtra and others vs. Arun Gulab Gawali and others, 2010 (9) SCC 701* and *Tarkeshwar Sahu vs. State of Bihar, (2006) 8 SCC 560*, in support of his submissions. All these cases are in fact the Appeals those have been decided after appreciation of the entire evidence upon merits.

10. Learned Advocate for respondent No.2 submits that F.S.L. report cannot be said to be against respondent No.2 as it is stated that as there was rush, it is not possible to identify the exact act. However, the said CCTV Footage definitely points out the presence of respondent No.2 as well as the applicant at the said place. Therefore, when there is material against the applicant, this may not be the fit case where this Court should

exercise powers under Section 482 of the Code of Criminal Procedure.

11. Before we consider the material in the charge-sheet, we are certainly taking note of the decision in ***Rajiv Thapar and others vs. Madan Lal Kapoor*** (supra), ***Prashant Bharti vs. State of NCT of Delhi*** (supra), ***Suryalakshmi Cotton Mills Ltd. vs. Rajvir Industries Ltd. and others*** (supra) and ***Rupan Deol Bajaj (Mrs) and another vs. Kanwar Pal Singh Gill and others*** (supra). Here, independently the accused has not produced any documentary evidence. He submits that the CCTV Footage does not reveal the activity as alleged in the FIR. Though the incident is stated to have taken place on 15th November 2018, the F.S.L. report appears to have been given after 20th September 2022. One report shows that the analysis of the same has started on 15th February 2021 and completed on 9th March 2021 and the said report is dated 10th March 2021. However, it appears that there is another report of F.S.L. dated 12th September 2022, which appears to be in respect of 2 HDD's of size 4 TB and it is said that in those HDD's, CCTV Footage for date 15th November 2018 was not found. The said CCTV Footage or electronic evidence is of course subject to proof that can be adduced or required to be adduced at the time of trial. From the panchnama

of extraction of CCTV, it appears that one Ashok Baban Dabhade, claiming to be the person as CCTV operator of Shri Sai Baba Sansthan has produced it and there is certificate under Section 65-B(4) of the Indian Evidence Act, 1872. In respect of the said CCTV Footage which was produced in DVD on 22nd November 2018, no transcript appears to have been prepared by the investigating officer. The circular, which the Superintendent of Police, Ahmednagar was referring, is dated 26th September 2022. That means as on 22nd November 2018 the said circular was neither in existence nor there is any other document produced to show that the investigating officer was under obligation and knowledge to prepare the transcript on that day. In fact it is the common sense that only DVD need not be seized under the pretext that it contains some material. Unless the material is seen by the panchas, it is not required to be seized and it need not even be sent for forensic analysis. The investigating officer must ensure that there is some material in the said electronic evidence which can lead to establishing connection between the crime and the criminal, then only it should be sent to the forensic laboratory. We are constrained to observe, on the basis of our experience, that the investigating officers are rampantly, without preparing transcripts or ensuring that there is some

connection between the crime and the electronic evidence, are sending the devices / material to F.S.L. leading to huge pendency. Due to the huge pendency and of course the other problems, it appears that there is delay in the reports. The data regarding pendency is given in the affidavit of the employee working in F.S.L., Nashik, as aforesaid.

12. No doubt, the said F.S.L. report which is at present on record shows that, "after the video analysis and subsequent frame by frame visual analysis of video recordings marked as Ex-1 revealed that the male and female person were observed in a video recordings but due to the crowd the case related activity could not be observed clearly and the details are given below." At this stage, it will not be out of place to mention here that in view of our order dated 28th September 2022, the learned Judicial Magistrate First Class, Rahata, was directed to prepare transcript and make it available for the perusal of this Court. The report has been submitted on 7th October 2022. He has observed the video clips and in the nutshell the report says as to what were the activities of the informant at different places within the temple. It is stated that one security guard by moving the railing, allowed the informant to come inside the *Darshan Mandap*. Thereafter two men and two women also seen coming with the informant. However, in

video clip No.16, it is stated that informant comes from the front side of *Palakhi* to the other side and stands in the crowd. Then accused is seen nearby. Suddenly the movement of accused is seen to be increased, like speaking with someone and then physical movement of accused is seen to be increased. Learned Magistrate also states that due to crowd it is not able to ascertain with whom the accused was talking. But then he says that something is seen to be happened there and then the accused leaves ahead. Thereafter the informant is also seen going for *Darshan*. Thereafter also in video clip No.17, it is stated that informant was seen smiling with two ladies and she takes *Darshan*. Thus, the prima facie evidence shows that it is in favour of the accused.

13. In the FIR the informant says that the applicant – accused enters into quarrel with devotees many times for petty reasons. Then she states about the incident around 8.00 p.m. of 15th November 2018. She says that she went along with her sister-in-law (brother-in-law's wife) and nephew for *Darshan*. Then she met to her friends from Shirdi and all of them then went from Gate No.3. One Balu Jejurkar, the employee of the Sansthan asked them to go to aside and therefore, they were standing there. At that time the applicant came there and asked them,

why they are asked to stand there but they should be driven out. Then the applicant caught hold of the hands of the informant and her sister-in-law and dragged them out. They were asking him to wait but the applicant did not listen. Then informant and her sister-in-law were driven out of *Darshan Mandap* (*Gabhara* of the temple) and then applicant abused them by saying that:-

“तुम्ही थर्ड क्लास आहात तुमची मंदिरात यायचे काहीएक कारण नाही मंदिरात आला तर मार खाताना”

. English translation of the same reads as under:-

“You third grade [people] . You have no reason to enter the Temple. If you ever enter the Temple [again] you will be beaten”

(Translated by Senior Translator and Interpreter,
High Court of Bombay, Bench at Aurangabad)

14. Supplementary statement of the informant has been recorded on 22nd November 2018, wherein she has stated that the accused told them that:-

“तुम्ही थर्डक्लास आहात तुमचे मंदिरात यायचे काहीएक कारण नाही. परत मंदिरात आलात तर मार खाणार. ह्या चक्रम बोगस बायका आहेत, पुरुषांमध्ये घुसल्या तुम्हाला अक्कल नाही, या सात

आठ बायका यांची जिरवतो, नालायक बायका येतात कशाला
मंदीरात”

. English translation of the said supplementary statement
reads as under:-

“You third grade [people]. You have no reason to enter
the Temple. If you come again in the Temple, you will be
beaten. These women are insane and bogus. These
women, out of their minds, have broke into the queue
for men. I will teach them a lesson. Why these worthless
women come to the Temple?”

(Translated by Senior Translator and Interpreter,
High Court of Bombay, Bench at Aurangabad)

15. Thus, it can be seen that there is no earlier dialogue
between the informant and accused. If we consider the
statements of other witnesses i.e. sister-in-law of the informant
and two of the friends, they have already stated which in the
supplementary statement the informant had stated at a later
point of time. Rest is almost copy-paste. Interestingly, statement
of nephew of informant appears to have not been recorded.
There are statements of one Rahul Mukundrao Sadaphal and
Anwar Yunus Tamboli, which are supportive of the informant and
other ladies, however, the timings are not supportive. Statement

of Balu Jejurkar, the employee of Sansthan has also been recorded, however he states that after he had asked the ladies to be on one side, they listened to him and thereafter he went ahead in the temple.

16. The spot panchnama shows that there is distance of about 50 to 60 ft. covering *Mandap* i.e. *Gabhara*. However, the spot has been shown outside that Hall / *Gabhara*.

17. After taking into consideration all these evidence, we could see that there are disputed facts and the evidence will have to be adduced even for proving the CCTV Footage i.e. electronic evidence. Certainly, when the word 'modesty' has not been defined in the Indian Penal Code and it depends upon the feelings of the lady and also on the fact that there was no necessity to catch hold of the hands of a lady, then it will depend upon the evidence as to how the act, if proved, to be interpreted. Catching hold of the hands and dragging would definitely be covered under the words "..... assaults or uses criminal force.....", used in Section 354 of the Code of Criminal Procedure.

18. In *Rupan Deol Bajaj (Mrs) and another vs. Kanwar Pal Singh Gill and others* (supra), it has been observed that the culpable intention in the said offence under Section 354 of the Indian Penal Code has to be proved like other ingredients but in absence of direct evidence, can be inferred from attending circumstances. When there is evidence requiring trial, we do not find this to be a fit case where the FIR and the charge-sheet needs to be quashed and set aside by using inherent powers of this Court under Section 482 of the Code of Criminal Procedure and therefore the Application deserves to be rejected.

19. Accordingly, the Application stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE