



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.300 OF 2024

Hemantkumar Prabhakar Patil,
Age 51 yrs., Occ. Service
as Police Inspector,
at present Control Room, Nandurbar.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Devpur,
Dist. Dhule.
- 2 XYZ, Informant.

... Respondents

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Mr. V.D. Salunke, Advocate h/f Mr. M.V. Salunke, Advocate for applicant

Mr. A.V. Lavte, APP for respondent No.1

Mr. S.A. Kulkarni, Advocate for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

RESERVED ON : 17th DECEMBER, 2024

PRONOUNCED ON : 20th DECEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed invoking the inherent powers of this Court for quashing First Information Report vide Crime No.281/2023 dated 11.11.2023 registered with Devpur Police Station, Dist. Dhule, for the offence punishable under Section 376(1), 354-A, 354-B, 354-D, 509, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 67 and 67(A) of the Information Technology Act, 2000; and also for quashing Charge Sheet No.17/2024 dated 26.02.2024, for the offence punishable under Section 376(1), 354-A, 354-B, 354-D, 509 and 506 of the Indian Penal Code, 1860.

2 Present applicant is serving as a Police Inspector. Presently he is attached to Control Room, Nandurbar.

3 Learned Advocate for the applicant after taking us through the First Information Report and charge sheet submits that the contents of First Information Report are as vague as they are possible. There are no details about the incident, but it is stated to have taken place since 2022. If that is taken as it is, then there is huge delay of two years in lodging the report. At the time of First Information Report there were no allegations about offence under Section 376 of the Indian Penal Code. Those allegations are made for

the first time in her statement under Section 164 of the Code of Criminal Procedure. At the time of First Information Report the Investigating Officer has dropped the offences under Information Technology Act. In fact, the applicant had given hand loan to his superior Mr. Sanjay Barkund, who was the then Superintendent of Police, however, Mr. Barkund had not returned the amount. The applicant has produced on record the WhatsApp chats between himself and Mr. Barkund to show that he had demanded the amount on so many occasions. It appears that Mr. Barkund has then felt annoyed and then managed to lodge the First Information Report with the help of respondent No.2. Even if we consider the case of informant as it is, in fact, informant herself used to give messages on WhatsApp of the applicant. She was consistently inviting the applicant for WhatsApp chats. She had made unnecessary advances towards the applicant by sending objectionable videos/photos to the applicant. The informant had refused to produce her mobile phone for investigation. She had also refused to undergo the medical examination. If she has not co-operated to the investigation, applicant cannot be harassed to face the trial. The WhatsApp chats of the informant would disclose that she was inviting the applicant whenever her husband used to go out of the house. The applicant was avoiding her. The informant used to give threat that she would come to office of the applicant. There is no corroborative evidence to support the contentions of the informant in the

First Information Report.

4 After the learned Advocate for applicant was heard on 07.10.2024, wherein submission was made that certain documents were produced by applicant before the Investigating Officer, we had adjourned the matter and directed the learned APP to take instructions in respect of material which is stated to have been produced by applicant before the Investigating Officer. In the meantime, the additional affidavit was filed by applicant and along with said affidavit he has produced certificate under Section 65-B of the Indian Evidence Act to show that whatever electronic evidence the applicant is possessing has been got audited/checked through an expert, which is in the nature of WhatsApp chats and the videos. Learned Advocate for applicant then submits that when query was raised by this Court as to what is the authenticity regarding the material with the applicant, the applicant in order to show *bona fides* has got the material checked from the expert. The expert has then given the certificate under Section 65-B of the Indian Evidence Act. It would be then unjust to ask the applicant to face the trial, when there is clear evidence that the applicant has been falsely implicated at the behest of the then Superintendent of Police Mr. Sanjay Barkund.

5 Per contra, the learned APP representing State and learned Advocate for respondent No.2 – informant strongly opposed the application and submitted that the evidence with the applicant cannot be considered at this stage. The delay in lodging the First Information Report can be explained and it is in fact tried to be explained by the informant, taking into consideration the fact that the applicant was a high rank Police Officer and he was working in the same district, where respondent No.2 is residing. After he was transferred out of district, she has lodged the report. For every delay she has tried to give explanation at the appropriate stage. The electronic evidence is required to be proved. The informant is accepting that there was talk/chat between herself and applicant, but according to her, it was initiated by the applicant and not by her. The informant cannot be condemned at the initial stage. She has also right to put her case and lead evidence. Now, the charge sheet is filed and, therefore, let there be the trial.

6 At the outset, we would like to say that we are considering the case where the application is filed under Section 482 of the Code of Criminal Procedure and, therefore, the scope of the Section will have to be borne in mind. This Court has limitation and cannot go deep into the appreciation part. Of course, unless it is proved or that much material is produced to show that the applicant has been implicated or the action has been taken

against the applicant with an vindictive attitude as laid down in **State of Haryana and others vs. Chh. Bhajan Lal and others** [AIR 1992 SC 604], this Court will not have jurisdiction or cannot quash and set aside the proceedings including First Information Report under Section 482 of the Code of Criminal Procedure. Perusal of the First Information Report would show that the informant has stated that she does not remember the date, but she is giving the incident. First Information Report is not an encyclopedia and in the present case then there are two supplementary statements of the informant as well as a statement under Section 164 of the Code of Criminal Procedure. If we consider this, there appears to be *prima facie* case.

7 The applicant has prayed for the quashment of the proceedings also on the ground that he is having material to show that he has been falsely implicated and according to him, the present informant has acted as directed by the then Superintendent of Police to whom the applicant is stated to have advanced hand loan. As regards electronic evidence, in which there are stated to be WhatsApp chats and sending of the videos by the informant, that is required to be proved by the applicant. Mere submission of certificate under Section 65-B of the Indian Evidence Act will not be sufficient. Acceptance of such evidence at the stage of application under Section 482 of the Code of Criminal Procedure would amount to accepting evidence of a

party without giving chance to the other party to rebut the same or cross examine the necessary witnesses. In that case it would be beyond the scope of Section 482 of the Code of Criminal Procedure. As regards second reason regarding the hand loan, except the WhatsApp chats there is nothing and according to the applicant, he had given hand loan of Rs.75,00,000/- to the then Superintendent of Police. The details of the persons from whom he had collected that amount has not been stated in any of the chats nor those names have been revealed in the present application. Another fact is that the said Superintendent of Police is not a party before this Court and even that evidence of WhatsApp chats would be required to be proved. The entire defence cannot be considered in the present case.

8 Taking into consideration the contents of the First Information, supplementary statements, statement under Section 164 of the Code of Criminal Procedure and the other evidence on record, no case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. The facts which are disputed cannot be gone into, when it requires proof. Hence, the application stands rejected.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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