



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1287 OF 2023

Uddhav Sayaji Bochara,
age 39 years, Occ. Service,
R/o Garkheda Parisar,
Aurangabad, Dist. Aurangabad. Applicant

Versus

1. The State of Maharashtra,
through its Police Station
Pundlik Nagar, Aurangabad
Tq. & Dist. Aurangabad.
2. **XYZ.** Respondents

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Advocate for Applicant : Mr. N R Thorat
APP for Respondents: Mr. V K Kotecha
Advocate for Respondent no.2 : Mr. U S Mote
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CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.

Dated : September 10, 2024.

ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The applicant seeks to quash and set aside the FIR in Crime No.53 of 2023 dated 7.2.2023 registered with police station Pundlik Nagar, Aurangabad, District Aurangabad as well as consequential criminal proceeding in pursuance of the charge-sheet no.58 of 2023 for the offence punishable under sections 354, 324, 323, 504, 506, 376 (3) of the Indian Penal code (for short IPC).

2. The respondent no.2 lodged FIR with Pundlik Nagar police station alleging that on 6.2.2023 at about 7 am when she was fetching water and cleaning the Courtyard, her brother-in-law (applicant) arrived on the spot, molested her by tearing her clothes, pressed her chest. When she resisted, he inflicted blow of knife on her right leg. Since the informant raised hue and cry, he ran away by locking the gate. At about 4 pm when her husband returned home, she disclosed the incident to him and approached the police Station. Thereafter, she was referred to the Government Hospital, at Chikalthana. After discharge from hospital, she is recording the statement. On the basis of aforesaid information, crime no.53 of 2023 has been registered for the offences punishable under sections 354, 324, 323, 504, 506 of the IPC against the applicant/accused. Investigation proceeded. Finally, charge-sheet has been filed against applicant for offences punishable under sections 376 (2)(f), 354, 201, 324, 323, 504 and 506 of the IPC.

3. Mr. N.R. Thorat, learned advocate appearing for the applicant submits that husband of informant is the real brother of the applicant. Since 2008 on-wards, husband of the informant has cross-terms with other family members. Informant and her husband have tortured all family members including their father Sayaji Bochare. Several police complaints are lodged by father of the applicant against informant and her husband. The applicant had also filed complaint against informant and her husband on 6.2.2023 regarding incident dated 5.2.2023 informing that on 5.2.2023 at about 6 am informant and her husband damaged electricity

and water supply connections, abused him in filthy language, threatened to lodge false complaint of sexual molestation and also committing suicide. On the basis of said complaint, NCR No.108 of 2023 dated 6.2.2023 has been registered with police station Pundlik Nagar. He would submit that applicant is employed as a teacher and because of persistent disputes the applicant has been falsely implicated in the aforesaid crime.

4. Mr. Thorat took us through various documents annexed with the application which depict that father-in-law of informant has made several complaints regarding misbehavior of the informant and her husband. He would also endeavor to demonstrate that, in fact, informant was not at the spot at the time of alleged incident and CCTV recorded her presence elsewhere.

5. Per contra, Mr. Kotecha, learned APP and Mr. Mote learned advocate appearing for respondent no.2 vehemently opposed the application. They would contend that stipulations in the FIR, medical evidence and statement of the informant recorded under section 164 of the Cr.P.C. is sufficient to make out triable case against the applicant for the charged offences. They would submit that statement of witnesses demonstrate presence of the applicant nearby spot of the incident. Therefore, they urges to reject the application.

6. We have considered the submissions advanced on behalf of the respective parties. We have gone through the FIR and material in the charge-sheet. Apparently, on information of respondent no.2, crime no.53 of 2023 has been registered

against the applicant for the offence punishable u/s 354, 323, 324, 504 and 506 of the IPC, wherein she alleges the incident as stated above. On 15.2.2023 supplementary statement of respondent no.2 has been recorded, wherein she has narrated similar incident, however, introduced two witnesses of incident namely Koushalya Kambale and Ashok Jadhavar. One of them alleges that he has seen the applicant leaving the spot after incident and they helped her to shift for medical assistance. Statements of Koushalya and Ashok Jadhavar appears to have been recorded on 13.2.2022. Both of them gives hear-say versions as regards to main incident. The third supplementary statement of respondent no.2 is recorded on 21.2.2023 wherein she has repeated the incident as stated in the FIR. Statement of her husband appears to have been recorded on 13.2.2022, wherein narration of the incident as stated in the FIR is repeated.

7. Pertinently, on 20.02.2023 statement of respondent no.2 has been recorded before the Magistrate under section 164 (5) of Cr.P.C. when for the first time she gave improved version and made further allegations that the applicant/accused inserted finger in her private part. On the basis of the aforesaid statement, section 376(2)(f) has been added. However, such statement is coming first time after 14 days of the incident. Pertinently, the incident in question is dated 6.2.2023. First informant was referred for medical examination on the same day. Doctors at District Hospital at Aurangabad examined her and noted simple injury like CLW. History was recorded as per narration of respondent no.2 wherein she disclosed incident of

assault resulting into injury on her lower leg. Statement of informants husband, her son and two other witnesses which are made part and parcel of the charge-sheet are in the nature of reproduction of the incident as narrated in the FIR by respondent no.2. The third supplementary statement dated 21.2.2023 recorded by respondent no.2 also reiterates the similar story as mentioned in the FIR. Apparently, except a bare statement appearing in 164 statement dated 20 February, 2023, there are no allegations to constitute offence under section 376 of the IPC.

8. The Supreme Court of India in case of **State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors** reported in **AIR 1992 SC 604** has laid down guidelines for exercise of powers under section 482 of the Cr.P.C. which reads thus :-

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an

investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. Keeping in mind aforesaid guidelines, we observe that glaring facts warrants us to exercise inherent powers to the extent of offence under section 376 of the IPC without disturbing the FIR and proceedings for other offences. Uncontroverted documents on record depicts that since 2008 onwards husband of the informant had dispute with his father and applicant on account of irrational distribution of the

property. On 17.7.2009 applicant had lodged complaint against husband of respondent no.2 with police station Mukundwadi alleging illegal obstruction in the construction. On 15.12.2018 father of applicant had lodged complaint against husband of respondent no.2. Consequently, NC No.1628 of 2018 was registered against husband of respondent no.2 alleging the assault. The applicant has filed a complaint dated 6.2.2023 against respondent no.2 and her husband for the offences punishable under sections 427, 506, 34 of the IPC. Consequently, NC no.108 of 2023 has been registered wherein a specific allegation is made that respondent no.2 and her husband are threatening him to lodge false complaint with allegation of outraging of modesty and to commit suicide.

10. The impugned FIR dated 7.2.2023, medical papers regarding hospitalization dated 6.2.2023, police statements of the witnesses including husband of respondent no.2, supplementary statement dated 15.2.2023 and 21.2.2023 recorded by respondent no.2, medical history recorded immediately after the alleged incident on 6.2.2023 nowhere stipulated averment to constitute offence under section 376 of the IPC.

11. The applicant is in service as a teacher. If aforesaid circumstances are taken together, we are of the considered view that stipulations incorporated in 164 statement dated 20.2.2023 is nothing but an attempt to implicate the applicant in a serious offence to wreaking personal *vengeance*. Such stipulation is palpably false, after thought and tainted with

malafide. We are, therefore, inclined to partly allow the application and proceed to pass the following order.

ORDER

- i. Criminal application is **partly allowed**.
- ii. The Charge-sheet no.58 of 2023 and consequential criminal proceeding against the applicant to the extent of offence punishable under section 376 (2) (f) of the Indian Penal Code is hereby quashed and set aside.
- iii. Criminal application stands **disposed off**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

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