



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 CRIMINAL APPLICATION NO.1141 OF 2020

- 1 Vishal Arvind Tokle,
Age 40 yrs., Occ. Teacher,
R/o Ishwar Krupa,
Near Saraswati School,
Khadgaon Road, Latur.
- 2 Vanmala Arvind Tokle,
Age 63 yrs., Occ. Household,
R/o Ishwar Krupa,
Near Saraswati School,
Khadgaon Road, Latur.
- 3 Vaibhav Arvind Tokle,
Age 38 yrs., Occ. Nil,
R/o Ishwar Krupa,
Near Saraswati School,
Khadgaon Road, Latur.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through M.I.D.C. Police Station,
Latur.
- 2 Asha @ Akshara Vishal Tokle,
Age 36 yrs., Occ. Nil,
R/o Harangul (Bk), Latur,
M.I.D.C. Latur, Tq. & Dist. Latur.

... Respondents

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Mr. S.Y. Patil, Advocate for applicants

Mr. S.A. Gaikwad, APP for respondent No.1

Mr. A.E. Madne, Advocate (appointed) for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 03rd SEPTEMBER, 2024

ORDER :

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashing First Information Report vide Crime No.150/2019 dated 23.04.2019 registered with M.I.D.C. Police Station, Latur and later on by way of amendment the charge sheet bearing No.68/2020 dated 02.04.2020 pending before learned Judicial Magistrate First Class, Latur, for the offence punishable under Sections 307, 354, 354-B, 294, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.Y. Patil for applicants, learned AGP Mr. S.A. Gaikwad for respondent No.1 and learned appointed Advocate Mr. A.E. Madne for respondent No.2.

3 What is not in dispute is that applicant No.1 is husband of respondent No.2 and their marriage was solemnized on 02.06.2010. They

have a daughter. It appears that respondent No.2 had filed First Information Report for the offence punishable under Sections 498-A, 406, 506-I read with Section 34 of the Indian Penal Code, 1860 against applicants and others. There was settlement out of Court, but it appears that parties had not come before this Court for quashing First Information Report and Regular Criminal Case No.3969/2016. The matter went for trial and by Judgment and order dated 03.10.2017 learned Judicial Magistrate First Class, Pune (Court No.4) has acquitted all accused persons from the said offences.

4 Now, it is tried to be contended on behalf of applicants that alleged incident appears to have taken place on 03.04.2019, but First Information Report has been lodged on 23.04.2019. As there is considerable delay, it can be seen that it is lodged with ulterior motive to harass applicants and it is based on concocted story. In the First Information Report as well as now in statements of witnesses it can be seen that applicant No.1 was not even present in the house when the alleged incident took place. It is also then stated that applicant No.2 – mother-in-law is stated to have brought kerosene can and poured it on the person of respondent No.2 and threat was given to set respondent No.2 to fire. However, if C.A. report is considered, it says that “results of the tests for detection of kerosene residues on exhibit Nos.1 to 3 are negative.” This shows that applicant No.2 has falsely

implicated. It is also stated that though some property has been given; yet, thereafter demands for the property increased and, therefore, applicant No.1 has not taken the step of taking divorce. It is also pointed out that on the same day of alleged incident a complaint was lodged by applicant No.2 with the police station that respondent No.2 and her father as well as others had barged into the house of applicants and have threatened to implicate. Now, belated First Information Report has been lodged. Therefore, it would be a futile exercise to ask applicants to face the trial.

5 Per contra, learned APP as well as learned Advocate for respondent No.2 submitted that there are allegations against applicant Nos.2 and 3 and role has been attributed, which is then supported by statements of witnesses.

6 Taking into consideration contents of charge sheet, it appears that applicant No.1 and respondent No.2 had entered into compromise. That compromise was also placed on record at Exh.35 in Regular Criminal Case No.3969/2016. It has been 'seen' by the concerned Magistrate. In spite of this, it appears that relationship has taken an ugly turn. The settlement also states that the informant and the husband had agreed to take divorce by mutual consent and such petition would be filed on or before 30.08.2017.

7 Now, we are supposed to consider the material on record and this Court cannot go beyond that. As regards contents of First Information Report and statements of witnesses is concerned, those categorically say that applicant No.1 was not present in the house. Under such circumstance, he ought not to have been made as an accused in this case. However, as regards applicant Nos.2 and 3 are concerned, there are allegations. As against applicant No.2 it is stated that she had brought the kerosene can, poured on the person of respondent No.2 and gave threat. Now, whether there was common intention of applicant No.1 and applicant No.3 will have to be proved by the prosecution and then as regards offence under Section 354, 354-B is concerned, there cannot be a common intention. Those allegations are against applicant No.3 only. Offence is also registered under Section 294 of the Indian Penal Code. However, it can be seen from First Information Report as well as statements of witnesses that incident took place inside the house, whereas for proving an offence under Section 294 of the Indian Penal Code, it will have to be proved that the said offence had taken place in a public place and has caused annoyance to others. We would like to rely upon **Pawan Kumar vs. State of Haryana and another** [(1996) 4 SCC 17], wherein it has been observed that –

“In order to secure a conviction the provision of Section 294 of IPC

requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.”

Therefore, prosecution of applicant Nos.2 and 3 cannot be allowed to sustain for Section 294 of the Indian Penal Code. Other sections are made out.

8 With these observations we allow the application partly. Hence, following order.

ORDER

1 First Information Report vide Crime No.150/2019 dated 23.04.2019 and charge sheet No.68/2020 pending before learned Judicial Magistrate First Class, Latur and if the Sessions Case is committed to the Court of Sessions, then such proceedings before the Sessions Court, for the offence punishable under Section 307, 354, 354-B, 294, 506 read with Section 34 of the Indian Penal Code stand quashed and set aside as against applicant No.1 Vishal Arvind Tokle.

2 The said proceedings and First Information Report stand quashed and set aside in respect of offence under Section 294 of the Indian Penal Code as against applicant Nos.2 and 3. As regards rest of the prayer for quashing the First Information Report and the charge sheet against applicant Nos.2 and 3 in respect of other offences, it stands rejected.

3 Fees of the appointed Advocate Mr. A.E. Madne is quantified at Rs.7,000/- (Rupees Seven Thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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