



CORRECTED COPY

This order is corrected as per court's order dated 12.01.2024

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1595 OF 2023
DR. ANANT MAHADEV WAYBASE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
CRIMINAL APPLICATION NO. 1596 OF 2023

1. DR. ANANT MAHADEV WAYBASE
2. DR. PRACHI ANANT WAYBASE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. P.M. Nagargoje
h/f Mrs. Snehal P. Kulkarni (Mahajan)
APP for Respondent No. 1 : Mr. V. S. Badakh
Advocate for Respondent No. 2 : Mrs. Yugandhara A. Namde

...

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

DATE : 12th JANUARY, 2024

PER COURT (Per : SHAILESH P. BRAHME, J.) :

1. Heard learned counsel for both the sides finally.
2. The applicant is seeking quashment of First Information Report bearing Crime No. 77 of 2023 registered with Kej Police Station, District Beed, for offences punishable under Sections 354, 354 - A, 323,

327, 504, 506 read with Section 34 of Indian Penal Code. Simultaneously, the applicant has also sought quashment of offence bearing Crime No. 0029 of 2023 registered with the self-same police station by preferring Criminal Application No. 1595 of 2023. Both the petitions have been heard together. When we express our disinclination to grant any relief, Criminal Application No. 1595 of 2023 has been withdrawn by the applicant.

3. The Respondent No. 2, brother's wife of the applicant, is the informant of complaint registered on 11.02.2023. It is alleged that she is a practicing lawyer. On 11.02.2023 at 11.30 a.m when she was in the Court at Kej. co-accused Ramhari (brother of the applicant) and his wife Sakhubai man-handled her, abused her and beaten her. The golden Mangalsutra was snatched by them. Then the present applicant and his wife Prachi arrived at the spot. They abused and threatened her.

4. It is relevant to notice that as recorded earlier, informant's husband lodged a complaint alleging that when he had been to his field at Kasari, co-accused Ramhari, Sakhubai and others assaulted him on account of Court proceedings and tried to set him ablaze by pouring petrol and diesel. One Baban also assaulted him. During the course of assault, the applicant is alleged to have called Ramhari on mobile phone and instigated to kill informant's husband.

5. It is a matter of record that the applicant, co-accused and the informants are close relatives. They have disputes over landed properties and the proceedings are pending. The applicant and his wife who are medical practitioners are at the loggers head with the informant and her husband.

6. One more offence has been registered on 12.02.2023 at the instance of Ramhari Waybase alleging an assault on 12.02.2023 by informant and her husband at about 11.00 a.m at Court premises of Kej. It was registered as Crime No. 80 of 2023 for offences punishable under Sections 143, 147, 148, 149, 326, 323, 341 of IPC.

7. It is a case of the applicant that he and his wife were at the relevant time at Thane, 500 kms from Kej. At the relevant time, they were not present at Kej. They have placed on record the certificates issued by Vedant Multi-specialty Hospital, Male Hospital, Veer Hospital, Sahir Hospital, Yog Multi-specialty Hospital and Samarth Hospital. The extracts of attendance registers are also placed on record. Normally, plea of *alibi* cannot be considered as a ground to quash the complaint. However, we have examined this plea in view of uncontroverted facts.

8. The complaint lodged by informant's husband Santosh refers to an incidence on 11.02.2023 at about 10.00 a.m. He is alleged to

have been assaulted by Ramhari, Sakhubai and Baban. By telephonic conversation at the relevant time, the applicant is alleged to have incited Ramhari to kill the informant. Simultaneously, the complaint under challenge lodged by the Respondent No. 2 discloses that she has been man-handled at about 11:30 a.m on 11.02.2023 by Ramhari, Sakhubai, applicant and his wife at Kej. A cross complaint of Ramhari discloses an assault on him at 11.00 a.m on 11.02.2023 at Kej within Court premises by respondent no. 2, her husband and others. The sequence of the complaints and the civil proceedings indicate rivalry between the parties. The possibility of false implication cannot be ruled out.

9. The applicant has produced on record the documents to show that at the relevant time he and his wife were rendering services at Thane. Certificate and attendance register issued by Vedant Hospital shows that applicant's wife Dr. Prachi was present in the hospital. Anesthesia notes drawn by her shows that on 11.02.2023 at 09.20 a.m. she was engaged in the hospital. There are further documents issued by Male Hospital, Dr. Veer Hospital and Sahil Hospital showing presence of applicant's wife at Thane. The certificate issued by Yog Multi-speciality Hospital shows presence of the applicant in the hospital at Thane on 11.02.2023. The certificate issued by Samarth Hospital also shows his presence on the self-same date. Extracts of attendance register

corroborates his presence. These documents have not been controverted by the respondents.

10. During the course of the investigation, CDR of the applicant has been collected. His location on 11.02.2023 at 10:55:55 appears to be at Thane. With the assistance of learned APP, we have gone through the papers of the investigation. The statements of Kannal Sitaram Maurya and Chandrakant Anant More discloses that on 11.02.2023, the applicant is stated to have been present in the Yog Multi-speciality Hospital and have attended the patients. CCTV footage of one of the hospitals at Thane in the form of pen-drive is collected along with certificate under Section 65 (b) of Indian Evidence Act. We are of the considered view that there is clinching material on record to show that the applicant was at Thane at the relevant time and could not have been at Kej, within the Court premises where alleged incident occurred.

11. The Investigating Officer has collected material during the course of investigation to indicate presence of the applicant at Thane. The learned counsel for the respondents have not controverted it. There is nothing to disbelieve the material. We find that the applicant has made out a case within parameters laid down by Supreme Court in the matter of *State of Haryana Versus Bhajan Lal*, reported in **1992 SCC (Cri) 426**, in paragraph no. 102 (5), which reads as under :

“102.

(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.”

12. We therefore pass following order.

ORDER

- i) Criminal Application is allowed.
- ii) Offence bearing Crime No. 77 of 2023 of Kej Police Station, Kej, District Beed, is quashed and set-aside.
- iii) Ms. Namde was appointed to represent the respondent No. 2, we quantify her fees at Rs. 5,000/- (Rs. Five thousands only).

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]