



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1274 OF 2021

- 1) Pankaj S/o Prakash Shrotre,
Age-30 years, Occu:Service,
R/o-Gut No.126/2, Yeshwant Nagar,
Beed Bypass Road, Aurangabad,
- 2) Prakash S/o Dattatraya Shrotre,
Age-68 years, Occu:Retired,
R/o-Gut No.126/2, Yeshwant Nagar,
Beed Bypass Road, Aurangabad,
- 3) Jyoti W/o Prakash Shrotre,
Age-59 years, Occu:Retired,
R/o-Gut No.126/2, Yeshwant Nagar,
Beed Bypass Road, Aurangabad.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station,
Pundliknagar, Aurangabad,
- 2) Mina Suresh Ravale,
Age-56 years, Occu:Household,
R/o-Row House No.04,
Kasliwal Bhagyodaya,
Beed Bypass Road, Aurangabad.

...RESPONDENTS

...
Mr. J.V. Deshpande Advocate and Mr. S.N. Dudhate Advocate
for Applicants.

Mr. A.D. Wange, A.P.P. for Respondent No.1 -State.
Mr. S.R. Sapkal Advocate for Respondent No.2.

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

DATE OF RESERVING ORDER : 21st OCTOBER 2024

DATE OF PRONOUNCING ORDER : 25th OCTOBER 2024

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

1. 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.236 of 2021 registered with Pundlik Nagar Police Station, Aurangabad and by way of amendment, for quashing the proceedings in R.C.C. No.2004 of 2021 pending before the learned Judicial Magistrate First Class, Aurangabad for the offence punishable under Sections 354, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Deshpande for applicants, learned APP Mr. Wange, for Respondent No.1 -State and learned Advocate Mr. S.R. Sapkal for Respondent No.2.

3. Learned Advocate for the applicants has taken us through

the contents of the FIR and the contents of the charge-sheet. He submits that except the family members and two neighbouring persons there is no other evidence that has been collected in the charge-sheet. There was dispute between the applicants and respondent No.2 when it was alleged that the applicants had dug the road belonging to the society for drainage line. In fact an application was made by respondent No.2 to the president of the society informing that she is depositing the necessary fees for the drainage line to Gram Panchayat, Satara. Copy of the receipt to that effect has also been produced. Still, for no reason respondent No.2 raised objection. There was a N.C. Complaint lodged by applicant No.3 regarding the incident dated 10th June 2021. Only in retaliation, a concocted story has been created. There was no question of outraging the modesty of respondent No.2 by applicant No.1 taking into consideration the age difference. In the circumstance, it would be unjust to ask the applicants to face the trial. In fact applicant No.1 is in service at Bangalore but due to Covid-19 Pandemic situation as he was granted liberty to work from home, he had come to Aurangabad during that period.

4. Learned Advocate for the applicants relies on the

observations by the learned Single Judge of this Court on in *Sudhir Vitthal Medhekar vs. State of Maharashtra and others, decided on 19th August 2022 (Criminal Application No.1269 of 2017)*, wherein the decisions in *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill and another, 1995 (6) SCC 194*, *Raju Pandurang Mahale vs. State of Maharashtra and another, AIR 2004 SC 1677*, were considered and it was observed that an assault or use of criminal force to a woman simpliciter unaccompanied by such a state of mind qua the accused, may not fall within the dragnet of the offence punishable under Section 354 of the Indian Penal Code, though the accused may be liable for having committed the offence punishable under Section 352 of the Indian Penal Code and/or having caused hurt.

5. Per contra, learned Advocate for respondent No.2 relies on the decision of this Court in *Rajendra Sopanrao Jagtap vs. the State of Maharashtra and another decided on 17th October 2024 (Criminal Application No.66 of 2019)*, wherein also after taking note of the decision in *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill and another* (supra) and other cases, this Court observed that "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." It was also observed, taking into consideration the decision in ***Rupan Deol Bajaj vs. Kanwar Pal Singh Gill and another*** (supra) 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.

6. According to learned Advocate for respondent No.2, even neighbours have seen that applicant No.1 had caught hold of the hand of respondent No.2 and uttered the words:-

"तुझ्यासारख्या लाख बघितल्या. तु काय धंदे करते मला
माहीत आहे."

7. Learned Advocate for respondent No.2 submits that, therefore, from the abovesaid sentence, the intention of applicant No.1 can be gathered. The case requires trial. He further submits that, this Court in ***Rajendra Sopanrao Jagtap vs.***

the State of Maharashtra and another (supra) observed that when there is evidence requiring trial then the FIR and the charge-sheet need not be quashed and set aside by using inherent powers under Section 482 of the Code of Criminal Procedure.

8. The first and foremost fact that is required to be noted is that when the applicants also contend and produce on record that applicant No.3 had filed N.C. Complaint of the same date which states that there was abuse and assault; then certainly they are accepting that incident had taken place. Whether the applicants had taken prior permission of the competent authority to dig the road for drainage pipeline appears to be not in question, but as per respondent No.2, in the FIR it is said that water from drainage got clogged in the court yard and bore of neighbour Anant Kotekar. There was dispute between applicant No.2 with Anant Kotekar. At that time, neighbours i.e. one Sandeep Joshi and husband of respondent No.2 went to the spot i.e. in front of Kotekar's house. Applicant Nos.2 and 3 started abusing the husband of the informant and then applicant No.2 was trying to assault informant's husband by means of spade. At that time the informant went to the spot and she was pushing her husband. Applicant No.1 went there and assaulted on the

right arm of the husband of the informant causing injury to him and then applicant No.1 caught hold of the hand of the informant and uttered the aforesaid words. Informant specifically says that she felt that her modesty is outraged due to said act and utterance. The FIR is supported by the statement under Section 161 of the Code of Criminal Procedure by one Nirmala Anand Kothekar, Anand Laxmikant Kothekar, Sandeep Joshi, who are the neighbours. Statement of the husband of the informant is also taken, namely, Suresh Baliram Ravale. Statement of the informant is also taken under Section 164 of the Code of Criminal Procedure. She had taken treatment from a private hospital and certificate to that effect has also been submitted to Police and then forming part of the charge-sheet.

9. Learned Single Bench of this Court in ***Sudhir Vitthal Medhekar vs. State of Maharashtra and others*** (supra) has also relied on the decision in ***Rupan Deol Bajaj vs. Kanwar Pal Singh Gill and another*** (supra) and as aforesaid, it has been opined that even though under certain circumstances ingredients of offence punishable under Section 354 of the Indian Penal Code may not be made out, then offence punishable under Section 352 of the Indian Penal Code would be made. Then the FIR was quashed and set aside in that proceedings, for the offence

punishable under Section 354 of the Indian Penal Code only and prosecution was given liberty to prosecute the accused persons qua rest of the offences. Therefore, this decision may not be fully supporting the applicants before this Court. Further what was challenged in that case, was the action of framing of charge.

10. Herein this case, the observations of this Court in ***Rajendra Sopanrao Jagtap vs. the State of Maharashtra and another*** (supra) would be applicable, wherein it is observed that:-

“..... 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.”

11. Here, as against applicant No.1 it is not the case of only catching hold of the hand but it is alleged that he had uttered certain words and therefore the attending circumstances definitely required to be taken into consideration as is the law laid down in ***Rupan Deol (Supra)***. When there is evidence of the

eye witnesses then this Court would be slow in exercising powers under Section 482 of the Code of Criminal Procedure. Certainly, the concerned Court while framing the charge will have to consider the role attributed to each of the accused. There are statements to the effect that accused Nos.2 and 3 had abused the husband of the informant, which is the role attributed to them and therefore, when the matter requires evidence, we do not take this to be a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Hence, we pass following order :-

ORDER

The Application stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE