



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.2118 OF 2023**

1. Pawan Laxman Peharkar,
Age:25 years, Occu:Private Job,
R/o: Maji Sainik Colony, Padegaon,
Tq. & Dist: Aurangabad.
2. Vaibhav Dilip Bangale
Age:25 years, Occu:Private Job,
R/o: Maji Sainik Colony, Padegaon,
Tq. & Dist: Aurangabad.

..Applicants
(Orig. accused)

Versus

1. The State of Maharashtra,
Through The Police Station Officer,
Khultabad Police Station,
Tq. Khultabad, Dist. Aurangabad.
2. XYZ

..Respondents

...

Mr. A. V. Wadwale, Advocate for the Applicants.

Mr. V. K. Kotecha, APP for Respondent No.1.

Ms. Tanvi V. Jadhav, Advocate for Respondent No.2 (Appointed).

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

DATED : 20th SEPTEMBER, 2024.

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

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code thereby praying to quash and set aside FIR in Crime No.160/2023 dated 20.04.2023 registered with Khultabad Police Station, Dist. Aurangabad for offences punishable under Sections 354-A r/w 34 of the Indian Penal Code as well as charge-sheet / final report bearing no.117/2023 dated 28.07.2023 and consequential criminal proceeding in R.C.C. No.107/2023 pending before Judicial Magistrate First Class, Khultabad, Dist. Aurangabad.

2. The respondent no.2 lodged report dated 19.04.2023 alleging that she had availed finance of Rs.42,000/- from Bharat Finance at Phulambri. She is repaying weekly installments of loan. The employees namely Pawan and Vaibhav collect installments. They used to utter obscene words during their visits to her home for collection of installment. However, she did not disclose aforesaid fact to her husband. On 19.04.2023 at about 12.00 to 12.15 hours while she was alone at home and her husband had been to collect amount from contractor for deposit of loan installment, the employees of Bharat Finance namely Pawan and Vaibhav knocked the door. She told them that her husband had been to the contractor for receiving amount and asked them to visit some time later. At that time both of them asked that she shall satisfy them, they will bear her installment. Thereupon, she objected and asked them to visit later on.

3. In evening at about 05.30 pm again accused persons knocked the door. She handed over cash amount of Rs.10,000/- to accused Vaibhav. At that time two boys aged about 20 to 25 years arrived on the spot and asked her about accused persons. When she informed that they are employees of finance company, those young boys started beating accused persons, snatched bags from their hands and ran away. The accused persons also followed them. She was not acquainted with young boys.

4. Accordingly, she alleges that accused persons made remarks or uttered obscene words and sexually molested her. On the basis of aforesaid information, Crime No.160/2023 has been registered against applicants for offences punishable under Section 354-A r/w 34 of the Indian Penal Code. The investigation progressed. Finally charge-sheet has been filed against applicants for aforesaid offences.

5. Mr. Wadwale, learned Advocate appearing for the applicants submits that applicants are employees of finance company. The respondent no.2 was defaulter in repayment of loan amount. When they persuaded for deposit of loan installments, they have been falsely implicated in aforesaid crime. He would invite attention of this Court to FIR dated 19.04.2023 in Crime No.159/2023 registered against respondent no.2 on complaint of applicant no.1. According to Mr. Wadwale, FIR in present crime is counter blast to earlier FIR lodged by applicant no.1 against respondent no.2. He would submit that allegations in the impugned FIR are palpably false. The delay in lodging FIR is not explained. By inviting our attention to the contents of charge-sheet, he would submit that there is absolutely no corroboration to the allegations in the FIR. The allegations are vague and omnibus and would not be sufficient to constitute offence as alleged. He would, therefore, urge to quash and set aside FIR and consequential criminal proceeding.

6. Per contra, Mr. Kotecha, learned APP appearing for the respondent-State and Ms. Tanvi Jadhav, learned Advocate appearing for respondent no.2 (appointed) vehemently opposes prayers in the application. She would submit that contents of FIR are sufficient to make out ingredients of offence punishable under Section 354-A of the Indian Penal Code. She would submit that after investigation, charge-sheet has been filed. The falsity of allegations in FIR cannot be raised as ground to invoke jurisdiction under Section 482 of the Criminal Procedure Code. There is triable material against the applicants. Hence, no interference is required.

7. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely considered contents of impugned FIR and charge-sheet

alongwith other documents placed into service. Pertinently, there are two FIRs before us. The FIR in Crime No.159/2023 has been registered on 19.04.2023 at about 22.59 hours on the information recorded by applicant no.1-Pawan Peharkar. He has specifically averred that he is employee of finance company. While he was on duty alongwith his colleague namely Mr. Vaibhav Bangale i.e. applicant no.2, their client (respondent no.2) frequently called them and requested to collect installment by visiting her home. Her request was not accepted, but she again called stating that she is fasting during Ramzan, therefore, it would be convenient, if the installment amount is collected from her home. Considering her difficulty, the applicants visited residential house of respondent no.2. When they knocked the door of respondent no.2, young boys wearing T-shirt and Jeans came at the spot. They knocked the door of respondent no.2's house. The respondent no.2 opened the door and informed those two young boys that applicants are employees of finance company. Immediately, those young boys raised assault against applicants. The respondent no.2 also caught hold shirt of applicant no.1. The young boys snatched their bags containing cash and ran away from the spot. On the basis of such information given by applicant no.1, Crime No.159/2023 has been registered against respondent no.2 and two unknown boys. Pertinently, this is version of incident occurred at about 05.30 pm on 19.04.2023 as recorded by applicant-accused. On the next day, on the information of respondent no.2, Crime No.160/2023 has been registered.

8. Apparently, it is discernible that respondent no.2 has lodged complaint later in point of time after registration of FIR at the instance of applicant no.1.

9. From both the FIRs it can be observed that respondent no.2 had obtained loan from finance company. The applicants are employees and responsible for recovery of loan installment from borrowers for the finance company. In this backdrop, if the contents of impugned FIR are considered, it can be observed that allegations constituting offence under Section 354-A of the Indian Penal Code are pertaining to so called first visit of applicants to the house of respondent no.2 at about 12.00 to 12.15 hours. She states that her husband was out of home for receiving amount from the contractor. At that time, obscene words were used by applicants against her. She states that later on at about 05.00 pm applicants had been to her house on second occasion for receiving amount and she had also handed over Rs.10,000/- to them. If that is so and her husband had already came back with amount, she could have disclosed alleged act of applicants to her husband or she could have filed complaint regarding such acts. Further, it is not believable that she would again permit them to visit her home and stay alone at such a point of time.

10. Even otherwise, if allegations in the impugned FIR are appreciated in light of the contents of FIR in Crime No.159/2023 registered against respondent no.2 at the instance of applicant no.1, there is every reason to believe that contents of impugned FIR are palpably false and motivated to counter blast the FIR already lodged by applicant no.1. Even on minute reading of impugned FIR, we are of the considered opinion that sequence of events as narrated by respondent no.2 would depict patent falsity in the allegations designed for constituting offence under Section 354-A of the Indian Penal Code. The allegations are omnibus and against two accused persons regarding common utterance of the same sentence at a time. We are of the view that ingredients constituting offence under Section 354-A of the Indian Penal Code

cannot be made out against both the accused persons, even by applying Section 34 of the Indian Penal Code.

11. In light of the aforesaid observations and applying principles of law espoused by the Supreme Court of India in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***¹, we are of the firm opinion that continuation of criminal proceeding against applicants would amount to sheer abuse of process of law. Hence, we proceed to pass following order:

ORDER

- a. Criminal Application is allowed.
- b. The FIR in Crime No.160/2023 dated 20.04.2023 registered with Khultabad Police Station, Dist. Aurangabad for offences punishable under Sections 354-A r/w 34 of the Indian Penal Code as well as charge-sheet/final report bearing no.117/2023 dated 28.07.2023 and consequential criminal proceeding in R.C.C. No.107 / 2023 pending before Judicial Magistrate First Class, Khultabad, Dist. Aurangabad are hereby quashed and set aside.
- c. Criminal Application is disposed of.
- d. Since Ms. Tanvi Jadhav, learned Advocate is appointed through legal aid to represent respondent no.2, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.2 as per schedule.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE