



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

948 CRIMINAL APPLICATION NO.2351 OF 2023

Dr. Gunwant Maroti Naske,
Age 69 yrs., Occ. Service,
R/o Indral, Tq. Deoni,
Dist. Latur.
Presently residing at – Flat No.1,
Sai Satyam Heights, 27 B,
Bhavani Peth, Solapur.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through the Officer Incharge,
Latur MIDC Police Station,
Dist. Latur.
- 2 Shantabai d/o Maroti Naske,
Age 62 yrs., Occ. Agri.,
R/o Indral, Tq. Deoni,
Dist. Latur.

... Respondents

...

Mr. K.P. Rodge, Advocate for applicant

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

Mr. Ajinkya Reddy, Advocate (appointed) for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.

DATE : 23rd AUGUST, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing First Information Report vide Crime No.157/2023 dated 03.03.2023 registered with MIDC Latur Police Station and proceedings i.e. Charge Sheet bearing No.137/2023 dated 23.05.2023 pending before learned Chief Judicial Magistrate, Latur, for the offence punishable under Section 294, 504, 506 of the Indian Penal Code, 1860. The said First Information Report came to be lodged at the behest of present respondent No.2.

2 Heard learned Advocate Mr. K.P. Rodge for applicant, learned APP Mr. S.A. Gaikwad for respondent No.1 and learned appointed Advocate Mr. Ajinkya Reddy for respondent No.2. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 Perusal of First Information Report would show that respondent No.2 has given First Information Report in respect of incident alleged to have taken place at 7.00 a.m. on 02.03.2023 with the said police station around 23.04 hours on 03.03.2023. She has stated that she resides with son and two daughters. She has two brothers, but the elder expired an year ago. Her

younger brother Gunwant has placed his property for sale and at that time she gave advice to the brother that instead of sale he should give the said property to the son of another brother. Her younger brother did not listen and sold nine acres of land to another person. Therefore, she has filed a suit in Udgir Court. Brother got annoyed because of this and gave abuses on phone to respondent No.2. In respect of same she has lodged complaint with Police Station on 31.01.2023. Around 7.00 a.m. on 02.03.2023 she and her husband were at home. She was cleaning the space in front of her house. At that time, her younger brother Gunwant i.e. present applicant came in front of her house and started abusing by saying that she is the lady who has told that he should give the land in the name of son of brother. He then abused her in filthy language and asked what concern she has. He then gave threat to her that if she comes to village then she would be killed. When the accused-applicant was rushing towards her person to assault her, at that time, neighbouring witness Salamat Sayyad and other persons came and rescued her.

4 The first and the foremost fact to be noted is that the police had invoked Section 294 of the Indian Penal Code for proving. We would like to reproduce the said section for convenience. We would also 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.”

Coordinate Bench of this Court at Nagpur in **Lalit Nandlal Bais vs. The State of Maharashtra in Criminal Application (APL) No.817 of 2023** decided on 11.10.2023, after taking note of ingredients those are for an offence under Section 294 of the Indian Penal Code, has observed that -

“Section 294 further requires that the obscene act or the obscene song or words must, after being seen or heard, be to the annoyance of others, meaning thereby, a specific complaint should be made by people in the immediate vicinity of either of these acts.”

5 Now, in this case, when the charge sheet is filed, we have seen statements of witnesses, though they are saying that accused has uttered abusive language in filthy way, none of them say that there was annoyance to them. They simply say that after abuses were given, when accused rushed

towards the person of informant, they rescued her. Therefore, one of the most important ingredients of the offence is not transpiring from the material in the charge sheet. Utterance of offences in filthy language is then covered under Section 504 of the Indian Penal Code. If we do not segregate two offences i.e. 294 and 504 of the Indian Penal Code, taking into consideration the utterance of the alleged obscene words, then there will not be a difference at all and for that purpose minute consideration of the further requirement in Section 294 of the Indian Penal Code is *sine qua non*. Such utterance of obscene words should cause annoyance to others when such utterance is stated to be in a public place.

6 For the aforesaid reasons, as the ingredients of Section 504 and 506 of the Indian Penal Code are forthcoming from the material, we partly allow the application. Hence, following order.

ORDER

1 Criminal Application stands partly allowed.

2 First Information Report vide Crime No.157/2023 dated 03.03.2023 registered with MIDC Latur Police Station and proceedings i.e. Charge Sheet bearing No.137/2023 dated 23.05.2023 pending before

learned Chief Judicial Magistrate, Latur are hereby quashed and set aside, as against applicant, to the extent of offence under Section 294 of the Indian Penal Code only.

3 The case may proceed for other offences i.e. Sections 504 and 506 of the Indian Penal Code.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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