



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2799 OF 2023

Raees Hanif Sayyed,
Age 32 yrs., Occ. Driver,
R/o Tura, Tq. Pathri,
Dist. Parbhani.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Officer In-charge,
Police Station, Pathri,
Tq. Pathri, Dist. Parbhani.
- 2 X

... Respondents

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Mr. S.J. Salunke, Advocate for applicant

Mrs. Priya R. Bharaswadkar, APP for respondent No.1

Mr. N.U. Telgaonkar, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

RESERVED ON : 02nd DECEMBER, 2024

PRONOUNCED ON : 11th DECEMBER, 2024

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

- 1 Present application has been filed invoking the inherent powers

of this Court initially for quashing First Information Report vide Crime No.63/2023 dated 23.02.2023 registered with Police Station, Pathri, Tq. Pathri, Dist. Parbhani and thereafter by way of amendment for quashing the proceedings i.e. Special Case No.136/2023 pending before learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Parbhani, for the offence punishable under Sections 376(2)(n), 354, 341, 323, 506 of the Indian Penal Code and under Sections 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned Advocate Mr. S.J. Salunke for applicant, learned APP Mrs. Priya R. Bharaswadkar for respondent No.1 and learned Advocate Mr. N.U. Telgaonkar for respondent No.2.

3 It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report would show that the First Information Report is the counterblast to the First Information Report lodged by applicant against the husband of prosecutrix. The applicant had lodged First Information Report vide Crime No.500/2022 with the same Police Station i.e. Police Station, Pathri on 05.11.2022, for the offence punishable under Sections 307, 326, 506 of the Indian Penal Code. The present applicant's father is a Mukadam of sugarcane cutting workers. He undertakes to cut the

sugarcane for Renuka Sugar Factory, Pathri. In 2021 the prosecutrix and her husband had taken advance of Rs.1,20,000/- and agreed to work for the father of applicant as sugarcane cutting workers. However, suddenly they ran over from the work by working which could have been assessed in terms of money to the extent of Rs.40,000/- to Rs.50,000/-. In fact, the informant and her husband were indebted for about Rs.20,000/- to Rs.80,000/- towards father of applicant. The applicant had demanded the said amount many times by contacting the husband of informant on phone and then the husband of informant avoided to return the amount stating that the applicant has illicit relations with informant. Husband of informant had given threat by giving a phone call around 4.00 p.m. on 03.11.2022 to the applicant. Then the informant's husband had tried to commit his murder in between 04.11.2022 and 05.11.2022. The husband of informant was arrested and was in jail in connection with the said offence. He came to be released on bail by order dated 30.01.2023 and thereafter the present First Information Report has been lodged on 23.02.2023 by informant with a concocted story. When the applicant had got knowledge that informant is trying to lodge such report, he had made complaint with the Police Station in writing on 21.02.2023. With some ulterior motive and to take revenge the present First Information Report has been lodged.

4 The learned Advocate for applicant further submits that even if we consider the contents of First Information Report and the contents of charge sheet, it can be seen that no case is made out for trial. As per the First Information Report, in January, 2022 around 8.00 p.m. the applicant had gone near the prosecutrix and expressed that he loves her and she says that with ill intention he had caught hold of her hand. She then told that she would tell the incident to her husband and at that time the applicant gave threat to kill her. She says that thereafter she kept quiet. Thereafter, on 18.01.2022 she says that when she was doing the sugarcane cutting work, at that time the other ladies went ahead and she was restrained by the applicant from going. She was dragged in the nearby jowar crop in the field and the applicant had forcible intercourse with her. He had given threat to kill her at that time. She further states that thereafter on 04.03.2022 around 4.00 a.m. when she was sleeping along with her husband in the tent, the applicant went near her, she was awakened and at that time by giving threat to her she was taken out of the tent forcibly by the applicant and by taking her nearby field the applicant had committed rape on her. Similar incident is stated to have taken place around 2.30 p.m. on 18.03.2022. She then says that the applicant used to give phone call to her and when she was not willing to talk to her, the applicant was insisting that she should talk with him. The husband had then noted the missed calls and the calls and then asked the

informant about the same. She then disclosed all the incidents. After some time she realized that she has become pregnant and then she told the fact to her husband. They both were sure that the said child was not belonging to them, as they used to have secured sex. She says that she became pregnant from the applicant and when she got herself checked from a private Doctor, it was told that there was a cyst and, therefore, it was not proper to keep the fetus. Therefore, she got herself aborted. She says that the husband could not bear the act of the applicant and, therefore, he had gone to ask him about the same. Then there was a dispute. As a result of which, the applicant had lodged First Information Report for the offence under Section 307 of the Indian Penal Code. They feared of defamation and, therefore, had not lodged any First Information Report, but then though that act of the applicant was causing harassment to them, she lodged the First Information Report. These contents are supported by the statement of the husband and her mother-in-law, her own statement under Section 164 of the Code of Criminal Procedure and statement of one Babasaheb Sathe. There is also statement of the Medical Practitioner, who has terminated the pregnancy of the informant, wherein he has stated that the informant had done her sonography on 10.04.2022 in his hospital, it was then revealed that there was a cyst near ovaries. At that time she was pregnant of six weeks. On 11.04.2022 the informant and her husband told that as there is cyst they want to abort the

fetus. The Medical Practitioner says that information was not given to him that the said pregnancy was out of illicit relations, but, at that time, it was told to him that they do not want to have child. Therefore, as the medical termination of pregnancy was permitted, he has done the same. All these events would show that every time either the informant or her husband had the opportunity to lodge a report, but they have not taken any prompt action. The delay has been tried to be explained or stated as due to threat. In fact, the said delay has been caused just to concoct the story. Further, there was no question of invoking the provisions of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act as the recitals do not show that the act was allegedly done only because the informant is belonging to a particular caste. Lastly, the learned Advocate for the applicant also submits that though the Special Judge has framed the charge on 06.05.2024, as the present application is pending since prior to framing of charge, this Court can exercise its powers under Section 482 of the Code of Criminal Procedure for quashing the First Information Report and the proceedings. For that purpose he relies on the decision in **Amit Kapoor vs. Ramesh Chander and another** [(2012) 9 SCC 460], wherein it is stated that -

“Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to

be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.”

4.1 He further relies on the decision in **Narinder Singh and others vs. State of Punjab and another** [(2014) 6 SCC 466] in which the decision of **Gian Singh vs. State of Punjab** [(2012) 10 SCC 303] was considered. Though in the said case it was a compromise that had been stated as a ground for exercise of powers under Section 482 of the Code of Criminal Procedure for quashing; yet, in respect of the said powers it is observed that the inherent powers under Section 482 of the Code of Criminal Procedure are of wide plentitude with no statutory limitation and the guiding factors are : (1) to secure the ends of justice, or (2) to prevent abuse of process of the Court.

4.2 He also relies on the Three Judge Bench decision of the Hon’ble Supreme Court in **Hitesh Verma vs. State of Uttarakhand** [2021 Cri.L.J. 1], wherein it is observed that the offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

5 Here also merely the fact that the applicant might be knowing the caste of the informant that is not the criteria where the offences under the Atrocities Act would get attracted. Learned Advocate for the applicant,

therefore, prays for quashing of the First Information Report as well as proceedings.

6 Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application. Now, the investigation is over and charge sheet is filed, so also the charge has been framed. Taking into consideration the seriousness of the offence and the fact that the competent Court has come to a conclusion that case is made out for proceeding with the matter and, therefore, charge is framed, let the trial be concluded. In the First Information Report all the details have been given by the informant as to why she could not approach the police prior to the date of the present First Information Report. The applicant had the knowledge that the informant is member of Scheduled Caste. By giving threats to kill the applicant has established physical relations with the informant, which was of course not with her consent. The delay can be explained and also the other circumstances. Definitely, the lady would be having fear to get defamed when such incident occurs to her. Therefore, when the informant and the prosecution have the opportunity to explain the delay. It need not be considered at this stage.

7 At the outset, we would like to say that when it was informed to

us that the charge has been framed in the matter, we had called upon the applicant to place photo copy of the charge that has been framed and also the roznama of the case. We wanted to ensure as to whether all the stages in such a trial have been adhered to by the learned Special Judge or not, because when there was a chance to the applicant to show at least to the concerned Special Judge, as to which offence is made out and which is not, then whether an opportunity of hearing was given to the prosecution as well as to the defence or not, which is contemplated under Section 226 of the Code of Criminal Procedure before framing the charge. Section 226 of the Code of Criminal Procedure prescribes that when the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. Therefore, according to this stage, the learned Special Judge should hear the prosecutor. The next stage is Section 227 of the Code of Criminal Procedure for discharge. It prescribes that upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Therefore, the conjoint reading of

Section 226 and 227 of the Code of Criminal Procedure would show that it is in fact mandatory to hear the prosecution as well as accused.

8 So far as Section 227 of the Code of Criminal Procedure is concerned, we would like to place reliance on the decision in **R.S. Mishra vs. State of Orissa and others** [(2011) 2 SCC 689], wherein the Hon'ble Supreme Court has observed in paragraph Nos.18 and 19 as under -

“18. As seen from Section 227 above, while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "If after such consideration". Thus, these words in Section 228 refer to the 'consideration' u/s 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed 'after such consideration' and therefore, that consideration must be reflected in the order.

19. It is also to be noted that a discharge order is passed on an application by the accused on which the accused and the prosecution are heard. At the stage of discharging an accused or framing of the charge, the victim does not participate in the proceeding. While framing the charge, the rights of the victim are also to be taken care of as also that of the accused. That responsibility lies on the shoulders of the Judge. Therefore, on the analogy of a discharge order, the Judge must give his reasons at least in a nutshell, if he is dropping or diluting any charge, particularly a serious one as in the present case. It is also necessary for the reason that the order should inform the prosecution as to what went wrong with the investigation. Besides, if the matter is carried to the higher Court, it will be able to know as to why a charge was dropped or diluted.”

9 We are aware about the scope of Section 482 of the Code of Criminal Procedure, however, as it has been held in **Gian Singh** (supra) and **Narinder Singh** (supra) regarding the scope of Section 482 of the Code of Criminal Procedure that is to secure the ends of justice and/or to prevent the abuse of process of Court this exercise was done. The roznama in this case does not show that such hearing was given either to prosecution or to accused. The accused appeared before the learned Special Judge on 20.01.2024 and sought time for submitting bail. On the same day the draft charge was submitted by prosecution, as it appears, which has been given Exh.7. Along with the same, list of witnesses and notice under Section 294 of the Code of Criminal Procedure was also given. In fact, there is no stage as

per the Code of Criminal Procedure to accept the draft charge. On the next date the bail papers were submitted and the matter was adjourned for framing of charge. Thereafter, on two occasions the accused was absent and the charge could not be framed. On 06.05.2024 the accused appeared and on the same day charge has been framed at Exh.19. Thus, there was absolutely no chance given either to the prosecution or to the accused to make their submissions. This is a dangerous trend that is going on, in which the draft charge is accepted and without any application of mind and changes in the draft charge, which is usually submitted by the prosecution, the Sessions Judges/Additional Sessions Judges are accepting the same. Here, in the present case, the learned Judge at Parbhani, before whom the Special Case No.136/2023 is pending, has not even taken care to see that since it is a special case under the Atrocities Act, which requires that his designation should be 'Special Judge', he should make necessary change in the charge. The charge is framed under the designation 'Additional Sessions Judge'. This Court even at earlier times specifically pointed out that the Judges are not stating their proper designation while dealing with a particular case. For Civil side they should use their designation on the Civil side and on the Criminal side it should be as per the enactment. We expect that the Sessions Judges and Additional Sessions Judges would adhere to the stages as contemplated under Section 226, 227 of the Code of Criminal Procedure and

pay attention to the work of framing proper charge in the matters before them. Once again we are required to observe that attention is not paid to these simple things.

10 After noting down the defect in the stage, we will have to consider the merits/points on which the present application has been filed and the accused states that this Court should exercise its powers under Section 482 of the Code of Criminal Procedure. While exercising the powers under Section 482 of the Code of Criminal Procedure we are guided mainly by the principles laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others** [AIR 1992 SC 604], which are as follows -

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against

the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(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;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11 Thus, when the applicant has come with a case that the First Information Report that is lodged against him is with *mala fide* intention, then certainly we will have to consider all the material that has been tried to be submitted. Here, in this case, the applicant says that as he had lodged the First Information Report for the offence punishable under Section 307 etc. of

the Indian Penal Code against the husband of informant, to give a counterblast to the same the present concocted story has been stated in the First Information Report against him. The present informant in her First Information Report has accepted that such First Information Report was lodged against her husband by the applicant. Copy of the said First Information Report lodged by the present applicant has been produced, which shows that it was registered on 05.11.2022 with the same Police Station vide Crime No.500/2022 for the offence punishable under Section 307, 326, 506 of the Indian Penal Code. After the investigation is over, charge sheet has also been filed i.e. Regular Criminal Case No.1/2023 before the learned Magistrate and it appears that thereafter successive bail application was made by the husband of applicant bearing Criminal Miscellaneous Application (bail) No.70/2023 and by order dated 30.01.2023 the husband of applicant has been released on bail. Thereafter also there was a complaint filed by the applicant with the Police Station on 21.02.2023 that the informant is giving him threat that she would lodge offence against him. He had then requested not to get such First Information Report registered. The First Information Report in the present case has been registered on 23.02.2023 and, therefore, the earlier events are taken note of. As aforesaid, after the husband of informant was released on bail the present First Information Report has been lodged. If we consider the medical

documents regarding abortion, it is to be noted that the abortion was done on 11.04.2022 and at that time, the husband of informant was along with her. Even as per the First Information Report she had disclosed the alleged act by the applicant to her husband on 18.03.2022. The question then arises, as to why there was delay of about a year ? The first act as per the First Information Report alleged to be in January, 2022, thereafter, the second was on 18.01.2022, third was on 04.03.2022 and forth was on 18.03.2022. Instead of the alleged four acts of rape she says that because of the threat to kill given by the applicant she had not even told about the acts of applicant to the husband. Even after knowing the pregnancy of the wife, there was no attempt either by the husband or by the wife i.e. prosecutrix along with the husband to go to Police Station to lodge the report. Another aspect to be noted is that the husband of informant was arrested on 10.12.2022 and came to be released on 30.01.2023. He was in the custody of police for some days. At that time also he could have filed the First Information Report. It was not even disclosed to the Medical Practitioner, who has done the termination of pregnancy as to what was the real reason. The statement of the said medical practitioner would show that the informant and her husband had disclosed that they do not want to have child. The additional fact was that there was a cyst near the ovaries. Therefore, there is substance in the say of the applicant that the First Information Report is an act of concocted story and as a rage to

settle personal score as the applicant had lodged the First Information Report for the offence punishable under Section 307 of the Indian Penal Code against the husband of informant. Therefore, we consider this is to be a fit case in view of principle Nos. (5) and (7) in paragraph No.108 of the decision in **Ch. Bhajan Lal** (supra) for quashing the First Information Report. Hence, we proceed to pass the following order.

ORDER

- i) Criminal Application stands allowed.
- ii) Special Case No.136/2023 pending before learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Parbhani arising out of First Information Report vide Crime No.63/2023 dated 23.02.2023 registered with Police Station, Pathri, Tq. Pathri, Dist. Parbhani, for the offence punishable under Sections 376(2)(n), 354, 341, 323, 506 of the Indian Penal Code and under Sections 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands quashed and set aside as against applicant viz. Raees Hanif Sayyed.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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