



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2967 OF 2023

Nitin s/o Dattatray Kokane
Age: 35 years, Occu.: Agri.,
R/o. Chikhali, Tq. Ashti,
District Beed.

.. Applicant

Versus

1. The State of Maharashtra
Through Investigation Officer,
Ashti Police Station, Tq. Ashti,
District Beed.

2. X. Y. Z.

.. Respondents

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Mr. N. B. Narwade, Advocate for the applicant.
Mrs. P. R. Bharaswadkar, APP for respondent No.1-State.
X.Y.Z. - Party-in-person, for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
R. W. JOSHI, JJ.**

DATE : 25 NOVEMBER 2024

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed under Section 482 of the Code of Criminal Procedure initially for quashing the FIR bearing Crime No.269 of 2023 dated 19.06.2023 registered with Ashti Police Station, District Beed and by way of amendment, to quash the proceedings in Sessions Case No.169 of 2023 pending before the learned Sessions Judge, Beed for the offences punishable

under Sections 376, 376(2)(n), 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. N. B. Narwade for the applicant, learned APP Mrs. P. R. Bharaswadkar for respondent No.1 and respondent No.2 – in person.

3. It has been submitted on behalf of the applicant that the applicant is the paternal uncle of the main accused Tushar. The allegations in respect of offence under Section 376, 376(2)(n) of Indian Penal Code are against accused No.1 Tushar and perusal of the FIR would show that the present applicant is stated to have gone to the house of respondent No.2 on 25.04.2023 and gave her threat. There is no scope for invoking Section 34 of Indian Penal Code in the present matter. Except the statement of respondent No.2 in the FIR, there is nothing against the present applicant. The other relatives of respondent No.2 were not even aware about the relationship between accused No.1 and respondent No.2 including her sister with whom she states that she was residing when she came in contact with accused No.1 Under the said circumstance, it would be unjust to ask the applicant to face the trial.

4. Learned APP as well as respondent No.2 in-person strongly opposed the application. It will not be out of place to mention here that respondent No.2 has reiterated what she has told in the FIR and also tried to submit as to how she believed in the words of accused No.1 and now, how her life has been ruined by him. Now, accused No.1 is absconding. Every time accused No.1, by giving promise to marry, had established physical relationship.

5. Here, in this case before us, we are only concerned with the applicant i.e. original accused No.2, who is the paternal uncle of accused No.1 and, therefore, we would restrict ourselves to the allegations made against the applicant. It is stated in the FIR that the applicant had gone to her house on 25.04.2023 and threatened by saying that “आमच्या पोराचा नाद सोड नाहीतर वाईट परिणाम होतील व तुझ्या बहीणीला आश्टीला राहून देणार नाही” (Leave our son, otherwise there will be bad consequences and your sister will not be allowed to stay in Ashti). Important point to be noted is that at what time he had come has not been stated and further, if we consider the earlier part, though against accused No.1, she has stated that the last physical involvement was on 31.12.2021. On that day, she had asked him about their marriage and then accused No.1 had told her that his father is no more, but then he

would ask his paternal uncle after some days. She again asked him about the marriage, but accused No.1 started to avoid her and since April 2022, he has blocked her mobile number. If since April 2022, there was no contact between respondent No.2 and accused No.1, then why the present applicant would try to meet her on 25.04.2023 i.e. after a year after her mobile number was blocked by accused No.1.

6. As regards the statements of witnesses under Section 161 of the Code of Criminal Procedure is concerned, those statements are based on the information supplied by respondent No.2.

7. As regards the FIR is concerned, it is to be noted that it has been lodged on 19.06.2023, when according to her the present applicant had threatened her on 25.04.2023. Therefore, definitely, there is delay in lodging the FIR. Even as regards the incident on the said date by the applicant is concerned, she has not stated where she was on that day. She says the applicant had come to her house, but if we consider her entire FIR, then her parents are residing at a different place in District Ahmednagar, whereas when respondent No.2 had come in contact with accused No.1 as per her FIR, she was residing with her sister as a care taker for

her niece in Beed district. Therefore, when the place is also not stated properly in the FIR, with such material, it would be unjust to ask the applicant to face the trial and, therefore, case is made out to exercise the powers under Section 482 of the Code of Criminal Procedure, as the case squarely comes within the parameters laid down in ***State of Haryana vs. Ch. Bhajan Lal and others, [AIR 1992 SC 604]***. We, therefore, proceed to pass the following order :-

ORDER

1. Criminal Application stands allowed.
2. The FIR bearing Crime No.269 of 2023 dated 19.06.2023 registered with Ashti Police Station, District Beed and the proceedings in Sessions Case No.169 of 2023 pending before the learned Sessions Judge, Beed for the offences punishable under Sections 376, 376(2)(n), 506 read with Section 34 of Indian Penal Code, stand quashed and set aside as against the present applicant.

[R. W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm