

Sudhakar Waman More and another	...	Applicants
Versus		
State of Maharashtra and another	...	Respondents

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DATED : 5 FEBRUARY 2024

1. Heard finally, with consent of the parties.
2. The Applicants herein seek to quash the First Information Report No.I-859 of 2021 registered with Manmad City Police Station, District Nashik for offences under Sections 452, 384, 497, 323, 504, 506 r/w. 34 of Indian Penal Code and R.C.C. No.35 of 2022 arising therefrom, pending on the file of J.M.F.C., Manmad.
3. Heard the learned Counsel for the Applicants, Respondent No.2 and the learned APP for the State.

4. Perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the First Information Report lodged by Respondent No.2. Respondent No.2 has alleged that his wife and the Applicant No.1 herein were having illicit relationship. On 24 May 2021 at about 11.30 a.m. he went to his house and saw his wife and Applicant No.1 in compromising position. He claims that he assaulted the Applicant No.1 by kicks and blows. Respondent No.2 thereafter called the other Applicants to his house and informed them about the incident. He claims that the family members of Applicant No.1 advised him to settle the matter amicably and/or threatened to cause his death. He further states that Applicant Nos.2 to 4 forcibly took away the Applicant No.1 from his residence.

6. Respondent No.2 further claims that Applicant No.1 had given a mobile to his wife. He claims that he had seen an obscene video of his wife and Applicant No.1 on the said mobile phone. Respondent No.2 claims that the Applicant No.1 took the phone with SIM Card No. 9822904963 and refused to handover the same.

The Applicant No.1 allegedly demanded sum of Rs.10 lakhs, to delete the video clips and obscene photographs. On the basis of these allegations the abovesaid crime has been registered.

7. In the case of ***State of Haryana & ors vs. Bhajan Lal & ors., 1992 Supp(1) SCC 335***, the Apex Court has considered several decisions with regard to quashing of FIR and criminal proceedings. In paragraph 102 of the said decision, the Court has provided categories of cases by way of illustration wherein powers under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code could be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. The categories reads 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 FIR 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 cognisable 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.”

8. In the instant case, Respondent No.2 claims that on the relevant date, he had seen the Applicant No.1 in his house, in compromising position with his wife. The First Information Report

further reveals that the first informant had himself called the other Applicants to his house. Hence, the allegation in the First Information Report even if accepted on face value does not disclose the essential ingredients of Section 452, IPC.

9. As far as the offence of adultery is concerned, in the case of *Joseph Shine versus Union of India, 2019(3) SCC 39*, Hon'ble Supreme Court has struck down the said provision as unconstitutional, being violative of Article 14, 15 and 21 of Indian Penal Code.

10. The Applicants are also alleged to have committed an offence of extortion. Respondent No.2 claims that the Applicant No.1 had refused to handover the mobile phone with SIM No. 9822904963, which was in his possession and further had demanded Rs.10 Lakhs to delete obscene pictures and/or videos on the said mobile phone. The First Information Report records that the mobile phone is owned by the Applicant No.1. Moreover, the statement of the wife of the Respondent No.2 does not indicate that the Applicant No.1 had taken any obscene pictures or videos. On the contrary, the wife of the Respondent No.2 has made a

categorical statement that her husband i.e. Respondent No.2 has been suspecting her character and levelling several allegations against her. In such circumstances, the allegations of extortion or destroying of evidence are also not borne from the records.

11. Considering the above facts and circumstances, First Information Report and other material on record do not disclose any cognizable offence. In such circumstances, compelling the Applicants to face the trial will be an abuse of process of law. Hence, the order :

- (i) Criminal Application is allowed.
- (ii) First Information Report No.I-859 of 2021 registered with Manmad City Police Station, District Nashik and R.C.C. No.35 of 2022 arising therefrom, pending on the file of J.M.F.C., Manmad stand quashed.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)