



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 343 OF 2024

PETITIONERS

- : 1. Ashish Vasantao Varade, Aged about 35 Years, Occu: Service.
2. Vasantao Baburao Varade, Aged about 63 Years, Occu: Retired.
3. Sau. Sandhya Vasantao Varade, Aged about 56 Years, Occupation Household.

All resident of Shree Sai Plot No.7,
Ramkrushna Park, Takali Road,
Dwarka, Nashik – 422 011.

//VERSUS//

RESPONDENTS

- : 1. Sau. Ashwini Aashish Varade, Aged about 31 Years, Occu: Service, R/o. C/o. Dhanraj Laxmanrao Khandre, C/o. Akotkar LIC Agent, Khandve Layout, Aamrai Old Wadgaon, Plot No.33, Yavatmal, Tq. & Dist. Yavatmal.
2. Pankaj Ramesh Shinde, Aged about 35 Years, Occu: Service, Resident of Laxmi Nagar, Balaji Society, Yavatmal, Tq. & District – Yavatmal.
3. State of Maharashtra, through PSO, Wadgaon Raod (Awadhutwadi), District Yavatmal.

Mr. Mahesh I. Dhatrak, Advocate for the Petitioners.
Mr. Harish V. Thakur, Advocate for Respondent Nos.1 & 2.
Mr. Harshal Futane, APP for Respondent No.3.

CORAM : G. A. SANAP, J.
DATED : 9th SEPTEMBER, 2024.

ORAL JUDGMENT

. **Rule.** Rule made returnable forthwith. The petition is heard finally by the consent of the learned advocates for the parties. Perused the record and proceedings.

02] In this petition, the petitioners have questioned the correctness of the order dated 8th August, 2023, passed by the learned Additional Sessions Judge, Yavatmal, whereby the learned Additional Sessions Judge rejected the revision application filed by the petitioners and confirmed the order dated 4th November, 2022, passed by the learned Judicial Magistrate First Class (Court No.3), Yavatmal. The learned Magistrate, by his order dated 4th November, 2022, was pleased to direct the Police Station Officer of Awadhutwadi Police Station to carry out further investigation in the matter as per Section 173(8) of the Code of Criminal Procedure, 1973 (for short, "Cr.PC").

03] I have heard the learned advocates for the parties at length. With their able assistance, I have gone through the record and proceedings.

04] The learned Magistrate passed the order dated 4th November, 2022, on the basis of the application made by respondent No.1 on 25th July, 2022. It is seen that initially, respondent No.1 filed a report at Awadhutwadi Police Station against respondent No.2. The said report is dated 23rd October, 2021. It is the case of respondent No.1 that respondent No.2 took her obscene photographs and videos. Respondent No.2, based on the obscene photographs and videos, tried to blackmail her. Respondent No.2, on the basis of those photographs and videos, extended the threat of transmission of those photographs and videos to the husband and in-laws of respondent No.1. Ultimately, respondent No.2 transmitted those photographs to the husband of respondent No.1, who is petitioner No.1 in this case. Petitioner Nos.2 and 3 are the in-laws of respondent No.1. In the first report lodged against respondent No.2, there is no allegation of any nature against the petitioners. The allegation was against respondent No.2. The allegation made against petitioner Nos.1 and 2 by respondent No.1 is that, on receipt of the photographs

and videos sent by the principal accused i.e. respondent No.2, petitioner No.1 transmitted those photographs to his parents. His parents i.e. petitioner Nos.2 and 3 transmitted those photographs to the parents of respondent No.1 by raising certain questions in a language, which indicated that it was unparliamentary.

05] It is the basic grievance of respondent No.1 that the police, while conducting the investigation against the principal accused i.e. respondent No.2, did not carry out proper investigation. The investigation was halfhearted. Even his seized laptop was not sent to F.S.L. for analysis. It is also stated that the mobile phone of petitioner No.1 was seized, but it was not sent to F.S.L. for analysis.

06] On going through the record, it appears that the learned Magistrate got carried away by the order passed by the Division Bench of this Court in Criminal Writ Petition No.119/2022, dated 11th July, 2022, whereby the liberty was granted to respondent No.1 to approach the concerned authority for carrying out further investigation. It is seen that the learned Additional Sessions Judge has also misinterpreted this order. The learned Judge has presumed that, as per this order, the liberty was

granted to respondent No.1 to apply for further investigation against the petitioners.

07] Perusal of the order passed by the learned Magistrate as well as passed by the learned Additional Sessions Judge would show that, without having any iota of material on record to justify the complicity of petitioner Nos.1 and 2 in the commission of the offence by respondent No.2, further investigation was ordered. The principal allegation against the petitioners is that they have transmitted the obscene or objectionable photographs and videos of respondent No.1 sent to them by the principal accused i.e. respondent No.2. It, therefore, *prima facie* appears that the petitioners are not the authors of the photographs and videos. They were even not aware of the relationship between respondent No.1 and respondent No.2. Petitioner No.1 and respondent No.1 cohabited for a period of two years. They are blessed with a daughter in the wedlock. It appears that the warning bell started ringing for them on receipt of the objectionable photographs of respondent No.1 with respondent No.2. In this factual situation, the conduct and reaction of petitioner No.1 could not be said to be unnatural. The husband was bound to bring the photographs and videos to the notice of his parents. His parents were bound to

apprise the parents of respondent No.1. They were not otherwise responsible for this state of affairs. They have reacted rather violently on being made aware of the affair between respondent No.1 and respondent No.2.

08] It is seen that the learned Magistrate and the learned Additional Sessions Judge, without applying the mind, have passed the orders directing investigation against the petitioners. In my view, at the most, they could have been cited as witnesses. The Police Officer, after conducting the investigation, has filed the charge-sheet. The petitioners cannot be blamed for lackadaisical approach on the part of the police while conducting the investigation against respondent No.2. In my view, therefore, the material on record is not sufficient to warrant investigation against the petitioners.

09] Learned advocate for the petitioners submitted across the bar that the petitioners have no intention to transmit or circulate the photographs and videos received by them to a third party. Similarly, they have no intention to further transmit the photographs and videos, even to their relatives. Learned advocate Mr. Dhattrak submitted that they are ready to submit a written

undertaking to this Court that they will not transmit those photographs and videos to their relatives or a third party henceforth. In my view, as far as respondent No.1 is concerned, this undertaking would take care of her principal grievance.

10] In view of this, I conclude that the order passed by the learned Magistrate and confirmed by the learned Additional Sessions Judge cannot be sustained. The orders show the non-application of mind. The orders are, therefore, liable to be set aside.

11] As far as the grievance of respondent No.1 against the Police Officer is concerned, that can be taken care of by issuing appropriate directions.

12] The in-charge of Awadhutwadi Police Station shall conduct further investigation to address the grievance of respondent No.1 appropriately as against respondent No.2.

13] Respondent No.1 shall make a fresh application before the police and point out the aspects, which have not been properly investigated by the police so far.

14] The in-charge of Awadhutwadi Police Station, on the basis of the said application, shall carry out further investigation in the exercise of powers under Section 173(8) of the Cr.PC.

15] The petitioners, as and when requested by the police for enquiry, shall extend co-operation to the police.

16] The Petition is **allowed**.

17] The order dated 08.08.2023, passed by the Additional Sessions Judge, Yavatmal, in Criminal Revision Application No.38/2022, and the order dated 04.11.2022, passed by the Judicial Magistrate First Class (Court No.3), Yavatmal, in RCC No.442/2022, are quashed and set aside.

18] Rule is made absolute in the above terms. The Petition stands disposed of.

(G. A. SANAP, J.)

Vijay