



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

CRIMINAL APPLN. (APL) NO. 123 OF 2023

Ashish Krushnarao Changole

-Vs.-

State of Maharashtra, thr.PSO, PS Hudkeshwar, Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.S.Raut, Adv. for the applicant.

Mr. A.R.Chutke, APP for non-applicant/State.

Mr. G.I.Agrawal, Adv. (appointed) for non-applicant No.2.

**CORAM: SMT. VIBHA KANKANWADI &
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : 23rd JULY, 2024

The present application has been filed under section 482 of the Code of Criminal Procedure for quashing the First Information Report (FIR) vide Crime No.187/2022, registered with Hudkeshwar Police Station, Nagpur for the offence punishable under sections 354A(1)(iv) and 354D of the Indian Penal Code and section 12 of the Prevention of Children from Sexual Offences Act (POCSO Act).

2. In view of the filing of charge-sheet during the pendency of the present application, amendment has been carried out and the applicant prays for quashing of the charge-sheet bearing No.152 of 2022 dated 10/05/2022, which is now registered as Special Case No.300 of 2022, pending before the Special Court under POCSO Act.

3. Heard the learned Advocates for the respective parties.

4. The learned Advocate appearing for the applicant has vehemently submitted that the applicant is a highly educated person and is now preparing for competitive exams. He has no criminal antecedents, however, the complainant-respondent No.2, who is residing in the same locality where the applicant is residing is harassing the applicant and his family. In fact, the mother of the applicant had lodged the complaint against respondent No.2 and other ten persons on 19/10/2020 alleging offences including under the Atrocities Act and that complaint was filed with the Commissioner of Police, Nagpur City, Nagpur. Respondent No.2 and her family members are lodging various complaints of non-cognizable offences and even cognizable offences against the applicant and his family. The applicant and his mother lodged FIR on 07/03/2022 against one Jumane for the offence punishable under sections 323, 294, 504 and 506 of the Indian Penal Code and section 3(1)(r) and 3(1)(ii) of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act. Thereafter, the impugned FIR has been lodged, just to harass the applicant. It is mentioned that the victim with her friends was playing in open space near Hanuman Temple and the said house is adjoining the house of the applicant. Thereafter, accused/applicant has given obscene gestures and made sexually coloured remarks against the victim. Even if we consider the FIR as it is and the charge-sheet, it will not give rise to the ingredients of the offences and therefore, they deserve to be quashed and set aside.

5. The learned Additional Public Prosecutor and the learned Advocate for respondent No.2 strongly opposed the application. They submitted that the contents of the FIR and the charge-sheet would certainly disclose the offence committed by the applicant. The incident has taken place in the open space where

the complainant, who is victim minor girl was playing with her friends at that time the applicant had made obscene gestures. The informant has stated that even in the past also, the gestures of the applicant towards the complainant/respondent No.2 and her friends were obscene and involving unwelcome and explicit sexually overtures. When the investigation is complete and charge-sheet is filed, the applicant should face the trial.

6. At the outset, we would like to say that filing of various complaints/FIRs against each other cannot be the grounds for quashing the FIR as well as the charge-sheet. The strain relationship and the FIR being the outcome of vengeance will have to be then proved by the applicant. Mere filing of those complaints cannot be inferred to be with *mala fide* intention and then to consider it as one of the parameters enumerated in **State of Haryana v. Bhajan Lal; 1992 AIR 604**. Even the mother of the applicant has filed complaints against respondent No.2 and her family members. They can also then equally say that those complaints are filed with *mala fide* intention. We are therefore, constraining ourselves to go through the contents of the charge-sheet under section 354A(1)(iv) and 354D of the Indian Penal Code and section 12 of the POCSO Act.

7. Perusal of the FIR would show that all the details were given by the complainant, who is aged 13 years. Further she has given the names of the witnesses/her friends with whom she was playing on 20/03/2022. The statements of those witnesses, i.e. friends of respondent No.2 have been recorded under section 161 of the Code of Criminal Procedure. Certainly they have stated that they were playing and the victim complainant went to take ball, which went in front of the house of the applicant and they had

seen the accused making gestures to the victim. As regards the acts prior to 20/03/2022 are concerned, it is in the FIR and even one of the friends of the complainant has stated that how the applicant behaves when they are playing near the house. Therefore, we consider that there is a *prima facie* case for which we cannot exercise our inherent powers under section 482 of the Code of Criminal Procedure in favour of the applicant. Therefore, we reject the application.

8. Pending application, if any, stands disposed of.

(MRS.VRUSHALI V. JOSHI, J)

(SMT. VIBHA KANKANWADI, J)

Khunte/Nair