



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

CRIMINAL APPLICATION (APL) NO.1265/2023

Santosh S/o Ramdas Pardeshi,
age 49 Yrs., Occ. Service in
Government Technical High
School, Paithan, District
Aurangabad.

... Applicant

- Versus -

1. The State of Maharashtra,
through the Superintendent of
Police, Akola.

2. The Senior Police Inspector,
Murtizapur Police Station,
Murtizapur, District Akola.

3. Mrs. Kavita W/o Nitin Pardeshi,
age 35 Yrs., Occ. Freelancer,
residing at C/o Jagdish Kisanlal
Kumbhekar, Rohidas Nagar,
Mochipura, Murtizapur,
Taluka Murtizapur, Dist. Akola.

... Non-applicants

Mr. Kshitij Surve, Advocate for the Applicant (online).
Mr. A.M. Chutke, A.P.P. for non-applicant Nos.1 and 2/State.
Mr. D.N. Mudgale, Advocate for non-applicant No.3.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 22.7.2024.

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. Present application has been filed invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the F.I.R. The F.I.R. has been lodged at the behest of non-applicant No.3 with Murtijapur Police Station, District Akola for the offence punishable under Sections 323, 498-A, 504 and 506 read with Section 34 of Indian Penal Code.

3. The applicant is the cousin father-in-law (maternal uncle of the husband of non-applicant No.3 original informant).

4. Learned Advocate for the applicant vehemently submits that perusal of the F.I.R. would show that the ingredients of the offence under which the F.I.R. is lodged are not attracted. There are only two to three lines when she has stated that she was

residing at Aurangabad, the present applicant who resides at Aurangabad, used to keep an evil eye on her and when she informed the said fact to her husband, he did not pay any attention but she had even filed a case in Aurangabad Court. Learned Advocate also points out that in R.C.C. No.1975/2014 which was before learned J.M.F.C. Court No.10 Aurangabad for the offence punishable under Sections 452, 354A, 323 and 506 which was decided on 7.9.2017, the husband of non-applicant No.3 was convicted and the case arose due to F.I.R. that was lodged by the wife of the applicant. The husband of the informant had then approached Sessions Court Aurangabad by filing Criminal Appeal No.170/2017. It was decided by the learned Additional Sessions Judge Aurangabad on 5.9.2022 and the conviction awarded to the appellant therein that is original accused/husband of the present informant came to be dismissed thereby maintaining the sentence and conviction. The husband of non-applicant No.3 has then approached this Court, bench at Aurangabad challenging both the decisions and it is pending. He

also points out that the present applicant had approached Sessions Court by filing Criminal Bail Application No.1891/2022 under Section 438 of Code of Criminal Procedure which was on the basis of F.I.R. lodged by the present non-applicant No.3, however, since offence was not registered it was held that there is no apprehension and, therefore, that application was disposed of. Under the said circumstance, there is nothing against the applicant. The F.I.R. is nothing but an act of vengeance and, therefore, F.I.R. needs to be quashed and set aside.

5. Learned A.P.P. for non-applicant Nos.1 and 2 and learned Advocate for non-applicant No.3 strongly opposed the application. They submit that the present applicant has harassed non-applicant No.3 mentally and physically which is along with the husband and the other relatives and, therefore, the applicant should face the trial.

6. At the outset, it appears that husband of non-applicant No.3 is resident of Ambajogai, district Beed. In F.I.R the informant says that when she was residing at Aurangabad some act was stated to have been committed by the present applicant but she has not given approximate period with year to quote the said alleged incident. Even if those statements against the applicant are accepted as it is, it may give rise to the individual liability and cannot be termed as an act of cruelty as contemplated under Explanation “(a)” or “(b)” of Section 498-A of Indian Penal Code. Further, at this stage, the police have not added the Section 354 of I.P.C. to this F.I.R. i.e. F.I.R. No.0149/2023. Further if already she had filed a case/F.I.R. in respect of that incident, with Aurangabad Court then second F.I.R. for that purpose cannot be allowed to sustain.

7. It appears from the record that the husband of non-applicant No.3 has been convicted in respect of the F.I.R. which was alleged to have been lodged by the wife of the present

applicant and that conviction has been confirmed by learned Additional Sessions Judge. However, we may not draw an inference that the present F.I.R. amounts to counterblast and that fact will have to be then proved by the concerned person who takes such defence. However, a question would certainly arise taking into consideration those judgment that the alleged incident in the said case had taken place on 15.8.2014. Learned Additional Sessions Judge has decided the appeal on 5.9.2022. Present F.I.R. has been lodged on 25.4.2023 and the revision/further proceeding by the husband of the informant is still pending before this Court bench at Aurangabad. This indicates the strained relationship and under such circumstance whether the husband of the informant would have allowed the applicant to come in his house at Aurangabad is a question, if not, then no such incidence regarding keeping an ill eye on her arise. That statement i.e. keeping an ill eye is also a vague statement.

8. Taking into consideration all these facts the present case is squarely covered under the parameters laid down in State

of Haryana V/s. Bhajan Lal reported in **AIR 1992 SC 604**

specially parameter No.7 and, therefore, case is made out for exercise of power of this Court under Section 482 of Cr.P.C.

Hence we pass the following order:-

- (a) The application stands allowed and disposed of.
- (b) The F.I.R. No.0149/2023 dated 25.3.2023 lodged by non-applicant No.3 with Murtijapur Police Station, District Akola for the offence punishable under Sections 323, 498-A, 504 and 506 read with Section 34 of Indian Penal Code stands quashed and set aside.

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI,J.)