



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

CRIMINAL APPLICATION NO.123 OF 2022

Prabhakar Pundlik Kale, aged 55 years,
Occu : Service, Police Vasahat Wani, Tah.
Wani, Dist. Yavatmal.

... APPLICANT

VERSUS

1. State of Maharashtra, Through its
P.S.O. Police Station, Wani, District
Yavatmal.
2. Rupali Bhaskarrao Badkhal, Aged 44
years, Occu : Service, R/o Wasekar
Layout, Wani, Tq. Wani, Dist.
Yavatmal.

... NON-APPLICANTS.

Mrs.S.V. Dhawas, Advocate for the applicant.
Mrs. Kolhe, Addl.PP for the State.
Shri N.B. Rathod, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 05.02.2024.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. This is an application seeking to quash the Charge-sheet arising out of First Information Report in Crime No.50 of 2021 registered with the Wani Police Station, District Yavatmal for the offence punishable under Sections 354, 354A(1)(i) of the Indian Penal Code.

4. Learned Counsel appearing for the applicant would submit that the contents of the FIR and the material collected during the course of investigation does not make out a case to constitute the offences charged. It is submitted that the informant though being a Police Constable did not lodge the report for long period of three months, and thus, the said very fact itself put dent on the entire prosecution case. According to the applicant, the informant has not disclosed the things on the very day, which creates suspicion. In order to impress those submissions, we have been taken through the some statements recorded by the Police during the course of investigation.

5. Learned Counsel Shri Rathod appearing for the informant and learned Addl.PP appearing for the State have resisted this

application by submitting that the material collected during the investigation is sufficient to make out a case to put the applicant on trial. According to the informant, there is ample material on record in the form of report of the informant, statement of witnesses and printouts of what's app communication. Moreover, it is submitted that this is not a stage to marshal the evidence or decide the worth of the evidence to be laid during the course of trial.

6. The applicant as well as the informant both are serving in the Police Department. During pandemic period, both got affected by corona virus, therefore were admitted in one room at quarantine center. During that period on 11.09.2020 in the midnight around 12.20 a.m., the applicant came to her bed and asked as to why she could not sleep. The informant replied that she in thinking of her children. The applicant said that we both are corona positive hence he shall be allowed to sleep with her. The informant pushed him aside and communicated the happenings by what's app message to her one of the colleague Jaya Roge on which in the morning at her instance room was changed.

7. The informant stated that she has informed the things to the Police Inspector, who assured her to make arrangement of home quarantine. It is informant's contention that after one week while she

was working in the Police Station, the applicant purposely expressed in her presence that nobody would bother him, and thus, mentally harassed her, therefore the report.

8. The first ground of attack is about delay in lodgment of report. Undisputedly, alleged incident occurred on 11.09.2020 whilst police report has been lodged on 23.01.2021 i.e. after three months. Certainly, law expects quick lodgment of FIR however always it depends upon the facts and circumstances of each case and particularly, nature of accusation. One has to see that both are serving in the same department and the issue pertains to the chastity of a woman. Since we are at the stage of quashing of the proceeding, we refrained ourselves from expressing more on this point however suffice to say that mere delay cannot be a reason for throwing the prosecution case out rightly. It is a subject of trial whether delay is properly explained or otherwise. Always delay is one of the factor for consideration while deciding worth of the statement made by the informant.

9. The informant experienced the occurrence in the late midnight on 11.09.2020 on which she immediately communicated the things to her colleague Jaya Roge. The Police have recorded the statement of Jaya Roge, who has equally stated about the happenings and in particular she received the message on the same night about the

occurrence. Not only that charge-sheet contains printout of what's app communication made on the fateful night by which the informant has communicated the atrocities to her colleague Jaya Roge. Besides that statement of Dr. Vivek Gophane corroborates the receipt of intimation about the occurrence through Jaya Roge. On the anvil of such evidence it is difficult atleast at this stage to doubt the prosecution case merely on the basis of delay in lodgment of FIR.

10. The inherent powers invested with this Court are to be sparingly invoked in appropriate cases. Certainly, a meritorious prosecution cannot be stifled by uncalled interference of this Court. At this juncture, neither we can evaluate the material nor decide the worth of the statement of the witnesses. The material collected during the investigation makes out a triable case which does not fall in either of the criteria nos. 1 to 7 as laid down by the Supreme Court in case of *State of Haryana vs. Bhajan Lal. AIR 1992 SC 604*

11. In view of the above, this is not a fit case to invoke our inherent powers. Hence, the application being devoid of merits stands rejected.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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