



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

CRIMINAL APPLICATION (APL) NO. 725 OF 2024

1. Karishma Pavan Gajbhiye,
Aged about 24 years,
Occupation : Housewife,
R/o. Parsodi, Tq. & District Bhandara.
[As per Court Order Dated 29.04.2024
transpose the applicant No.1 as
non-applicant No.2.]
2. Pavan Nagsen Gajbhiye,
Aged about 32 years,
Occupation : Labour work,
R/o. Parsodi, Ambedkar Ward,
(Jawahar Nagar), Tq. & District Bhandara. ... **APPLICANTS**

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
P. S. Kardha, Tq. & District Bhandara.
2. Karishma Pavan Gajbhiye,
Aged about 24 years,
Occupation : Housewife,
R/o. Parsodi, Tq. & District Bhandara. ...**NON-APPLICANTS**

Mr. A. M. Chandekar, Advocate for Applicants.
Ms. Kalyani Marpakwar, A.P.P. for Non-applicant/State.

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

DATED :- **26.07.2024**

ORAL JUDGMENT (PER : SMT. VIBHA KANKANWADI, J.):-

1. Heard.

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

3. The present application has been filed under Section 482 read with Section 320 of the Criminal Procedure Code, 1973 for quashing the First Information Report vide Crime No.5/2020 registered with Police Station Kardha, Taluka and District Bhandara and the charge-sheet No.23/2020 and Sessions Trial No.88/2020 pending before the learned Additional Sessions Judge, Bhandara.

4. The applicant is the original accused, who is facing the said trial. The present non-applicant No.2, who is the wife of the applicant is the informant. It is now stated that the non-applicant No.2 has settled her dispute with the applicant and they are residing happily. Though the charge was framed, evidence was recorded and the matter was closed for judgment, the non-applicant No.2 states that she does not want to proceed with the matter. In reply filed by her she has stated that there was dispute between the husband and the wife and then to change the atmosphere and surrounding, the father of the non-applicant No.2 had dropped her at the place of her relative. When the applicant came to know about the same, he went on the flyover situated in front of the house of the said relative on 23.10.2019 and threatened her that if she does not start to cohabit with him, he would jump from the flyover. That

matter was also reported to the Police Station. Then there was an attempt by the applicant to meet her around 4.15 p.m. on 11.01.2020. For which also, she had lodged report with the police. But thereafter, during the pendency of the trial, the applicant and the non-applicant No.2 with the help of their relatives and friends sorted out their differences and started cohabiting with each other from 02.09.2021. Now there are no disputes between them and they are residing happily. She, therefore, says that the First Information Report as well as the charge-sheet and the trial be quashed and set aside.

5. Non-applicant No.2 remained present before this Court and the matter was heard.

6. Learned Advocate for the applicant submits that since the matrimonial dispute has been resolved, the prayer be granted. He also submits that the wife is giving consent for compounding of the offence under Section 498-A of the Indian Penal Code. She was the victim against whom the alleged act of causing injury with pistol is stated to be committed to attract Section 307 of the Indian Penal Code and she is not willing to go ahead with the First Information Report. He also points out that for the offence under Section 3 of the Arms Act, 1959, the sanction was necessary as per Section 39 of the Arms Act and there was no such sanction produced along with the charge-sheet. He further submits that

for Section 7 of the Arms Act, taking into consideration the punishment, it is compoundable.

7. Per contra, the learned A.P.P. strongly opposes the application and submits that entire evidence was led and the matter was closed for judgment. If the documents are taken into consideration, though PW-1 that is present non-applicant No.2 had turned hostile, yet the informant PW-2 Megha Nagdeve, who is the eye witness to the incident has supported the prosecution. She was the informant in the matter. Further it is the prosecution story that the applicant has used country made pistol and its discovery has been made. Since it is a country made pistol, it was tried to be investigated from where he had procured. It was stated that it is from a Panupuriwala. The medical evidence supports the prosecution story and therefore, this is not a case where the powers under Section 482 of the Criminal Procedure Code are required to be exercised.

8. The first and foremost fact to be noted is that as regards Section 498-A of the Indian Penal Code is concerned though it is non-compoundable in the State of Maharashtra under Section 320 of the Criminal Procedure Code, yet since it arises out of matrimonial dispute, the course is always taken by this Court to give weightage to the wish of the parties and if the wife takes a decision not to go ahead with such

complaint/First Information Report then as per the compromise, the complaint and/or the charge-sheet for the said offence can be quashed and set aside.

9. Now as regards the offence under Section 307 of the Indian Penal Code is concerned, certainly, it depends upon the facts of the case and the stage of the trial or proceedings when the power under Section 482 of the Criminal Procedure Code can be exercised. Here when almost entire evidence is adduced and only the fact was left regarding appreciation of the evidence then at that stage, this application has been filed and even by the first order of this Court i.e. on 29.04.2024 direction was given to concerned Court not to take further proceedings i.e. not to deliver the judgment. We cannot go into the aspect of appreciation of evidence at the stage but certainly, hostility of one witness cannot decide the fate of the trial. There will be reasons as to why witness/witnesses turn hostile. Further taking into consideration the fact that though the dispute was between husband and the wife but a country made pistol has been introduced, we do not find this to be a fit case where we should exercise our inherent powers under Section 482 of the Criminal Procedure Code to quash and set aside the proceedings for the offence punishable under Section 307 of the Indian Penal Code.

10. As regards Section 3 of the Arms Act, 1959 is concerned,

which is made punishable under Section 25 of the said Act, definitely it is in respect of prohibiting a person from possessing an arm/fire-arm without having a licence. But then Section 39 of the said Act prescribes that no prosecution shall be instituted against any person in respect of any offence under Section 3 without the previous sanction of the District Magistrate. If there was no sanction to prosecute the applicant for the offence under Section 3 of the Arms Act then the learned Trial Judge ought not to have framed charge for the said offence. In fact, we would say that even the cognizance ought not to have been taken of the said offence. Perusal of the charge-sheet does not show that such sanction was ever obtained from the District Magistrate. Further, the copies of the evidence have been produced, which does not show that the then District Magistrate was examined. Under such circumstance, it would be unjust to ask the applicant to face the trial, even at the stage of judgment, for the offence under Section 3 of the Arms Act. The case is made out for exercise of our powers under Section 482 of the Criminal Procedure Code.

11. Section 7 of the Arms Act, 1959 deals with prohibition of acquisition of 'prohibited arms' or 'prohibited ammunition'. They are defined in Sections 2(1)(i) and (h) of the Arms Act, 1959, which runs thus :

“2. (1) (i) “prohibited arms” means—

(i) fire-arms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or

(ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing, and includes artillery, anti-aircraft and anti-tank fire-arms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms;

(h) “prohibited ammunition” means any ammunition, containing, or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, [missiles,] articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition;”

12. Again we would like to say that the learned Additional Sessions Judge, who framed the charge had not considered the definition of ‘prohibited arms’ given as above when the weapon that was seized is

stated to be a country made pistol. Definitely, Section 7 of the Arms Act is not attracted at all.

13. In view of the aforesaid circumstances, we party allow the Criminal Application. The First Information Report vide Crime No.5/2020 dated 11.01.2020 registered with Police Station Kardha, Taluka and District Bhandara and the charge-sheet as well as Sessions Trial No.88/2020 pending before the learned Additional Sessions Judge, Bhandara stands quashed and set aside to the extent of Section 498-A of the Indian Penal Code, Section 3 punishable under Section 25 of the Indian Arms Act and Section 7 punishable under Section 27(2) of the Indian Arms Act.

14. We clarify that the matter to proceed for Section 307 of the Indian Penal Code and the learned Judge may go ahead with further stages of the said Sessions Trial.

(MRS. VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)