



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1092 OF 2024

Jabbarkhan S/o Yasinkhan Pathan,
Age-62 years, Occu:Pensioner,
R/o-Labour Colony, Murud,
Taluka and District-Latur -413510

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through Murud Police Station,
Taluka and District-Latur,

2) X Y Z (Complainant)

...RESPONDENTS

...
Mr. G.R. Syed Advocate for Applicant.
Mr. S.A. Gaikwad, A.P.P. for Respondent No.1.
Mr. R.N. Bhapkar Advocate for Respondent No.2, appointed
through Legal Aid.

**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 20th MARCH, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for quashing the proceedings in Special Case No.40 of 2024 pending before the Special Judge under the Atrocities Act, Latur arising out of the

first Information Report (for short "the FIR") vide Crime No.42 of 2024 registered with Murud Police Station, Taluka and District-Latur on 31st January 2024, for the offence punishable under Sections 354-C, 323, 506 of the Indian Penal Code and Section 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the charge-sheet No.20 of 2024.

2. Heard learned Advocate Ms. Syed for Applicant, learned APP Mr. Gaikwad for respondent No.1 and learned Advocate Mr. Bhapkar appointed through Legal Aid to represent the cause of respondent No.2.

3. Learned Advocate for the applicant submits that even after taking into consideration the contents of the FIR and the statements of the witnesses it can be seen that ingredients of those offences are not attracted. In fact the husband of the informant appears to be behind the FIR. The present applicant had extended hand loan to the husband of the informant and it was to the extent of Rs.38,100/-. Present applicant had filed Regular Civil Suit No.752 of 2021 before the Court of learned 5th Joint Civil Judge Junior Division, Latur, which came to be decreed

on 3rd February 2023. The husband of the informant was directed to pay sum of Rs.27,100/- within a period of three months together with interest at the rate of 6% per annum from 7th May 2019, till actual recovery of the said amount. The applicant had then filed Execution Petition i.e. Regular Darkhast No.21 of 2023 against the husband of the informant. The notice was issued to the Judgment Debtor by order dated 3rd April 2023. For serving the said notice the present applicant had gone along with the Bailiff. The applicant had only identified the location of the house of the Judgment Debtor. However, the informant and her husband had beaten the applicant and abused him in filthy language, for which he had filed Non-cognizable report with the same police station. Now, as per the FIR, the incident is alleged to have taken place on 7th October 2023, but the FIR has been lodged on 31st January 2024. There is no plausible explanation given by the informant. Therefore, there is evidence on record which will show that the FIR has been lodged with ulterior motive, at the instigation of the husband and to avoid the repayment of the loan amount and the decretal amount by the husband.

4. Per contra, learned APP and learned Advocate Mr. Bhapkar

appointed through Legal Aid to represent respondent No.2, have strongly objected the application and submitted that perusal of the charge-sheet would show that the incident is witnessed by the husband and there are other witnesses to whom immediate disclosure is made. The informant by birth, is a member of scheduled caste, however, she has married to a Muslim person but still when a lady member of scheduled caste is sexually harassed, then certainly it would be an offence under the Special Enactment.

5. The contents of the FIR would show that informant got married to Muslim person on 31st August 2007. It appears that she has changed her name also and accordingly Adhaar Card was prepared. The contents of the charge-sheet would show that there was Gazette Publication in respect of the same. However, what is missing, is the details in respect, whether before the marriage the informant had converted to Islam. She has only stated that she had performed love marriage, but she has not disclosed, what was the mode of marriage i.e. whether under Special Marriage Act or by undergoing rites under the Muslim Law. For undergoing the ceremony under the Muslim Personal Law, she ought to have converted herself. Even the Gazette

which she has produced, reflects that it is in respect of change of name, age and conversion to different religion. In the said Gazette Publication, it is not stated whether it was only on account of change of name or even because of change in the religion. The necessary details have not been given. Now, even after the change of name, she has filed the FIR in her old name. Thus, it appears that she wants to use the caste certificate which she had obtained in her name on 6th July 2000. Therefore, there is basically a question-mark as to whether she is really member of scheduled caste on the date of incident.

6. The informant has not given the details as to since when the applicant was knowing her. Knowledge of the accused regarding the caste of the informant is necessary ingredient to attract Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

7. The informant states that her husband is handicapped by hands and legs. What is the percentage of the disability is not stated, neither during the course of investigation the disability certificate of the husband of the informant has been collected. But then respondent No.2 states that the husband had gone

outside around 8.30 a.m. on 7th October 2023. When she was changing clothes after bath around 8.45 a.m., the applicant entered the house and taking disadvantage of the fact that her husband had gone outside the house, he tried to manhandle the informant when she was in semi nude condition. She also stated that even the applicant had tried to commit rape on her. Then it is stated that the applicant told her that her husband owes an amount of Rs.2,00,000/- to him and that should be given back to him and till she does not give that amount, after uttering abuses in the name of the caste, it was told that she should keep physical relations with him. The informant then says that she cried for help and at that time her husband came. The husband was trying to push the applicant but the applicant kicked her husband, as a result of which he fell down. Then her husband gave phone call to Murud Police Station and then the applicant fled away from the place by abusing her in filthy language and giving threats.

8. Here, it is to be noted that at one place the informant says that her husband had given a phone call to Murud Police Station at that moment itself, then the question is, why the Police had not arrived and why she had not lodged any FIR with the Police

Station immediately. Interesting point to be noted is that for explaining the delay of about three months, the informant states that since the applicant was known to her husband, the husband told that he would give advice to the applicant. This reaction is totally indigestible. If there was an attempt to commit rape on the wife, the husband will not keep quiet and would not say that since he knows the accused he would give him understanding. There is absolutely no plausible reason given for lodging the FIR belatedly. The FIR is totally silent on the point of hand loan taken by the husband and decree passed against him by the Civil Court.

9. Now, in his statement under Section 161 of the Code of Criminal Procedure, the husband stated that the applicant was serving as clerk in Collector Office, who was running a typing institute at Murud. The husband had worked for about three years with the applicant and in that period the applicant had given him promise to secure a job for him. Husband then says that his father had given amount of Rs.3,00,000/- for securing job for him from handicapped category in Collector Office. When he could not get the job, he asked the applicant to repay the amount but it was not given. But then he says that some amount

of loan was given with the help of applicant under some schemes by the Social Welfare Department, for which the applicant stood as guarantor. Husband further states that he could not repay the loan and therefore the Bank had deducted an amount of Rs.27,000/- from the salary of the applicant, which the applicant was demanding from him. The husband was not having the amount and therefore, the applicant had lodged the Civil Suit against him. Thus, here the husband discloses about financial transactions between him and the applicant. He then states that the applicant used to give threat that he would sell the house of the husband and would recover the amount and for that purpose he used to give threats to him and the informant for vacating the house. This is the background that has been given, but his statement is also silent on the point, whether the informant had converted to Islam prior to the marriage and how this fact was known to the applicant that informant is originally member of scheduled caste.

10. As regards the delay, the husband gives the same explanation. Though he says that immediately after he had contacted the Police, the applicant started running and abused his wife and thereupon he made inquiry regarding the incident

and asked the wife as to what had happened. At the cost of repetition, we would say that the explanation that in spite of happening such an incident, he had tried to give understanding to the applicant, is not plausible.

11. The FIR is an outcome of vengeance and it is tainted with *mala fides*, lodged belatedly and therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure for quashment of the FIR and the further proceedings. Hence the following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in Special Case No.40 of 2024 pending before the Special Judge under the Atrocities Act, Latur arising out of the first Information Report vide Crime No.42 of 2024 registered with Murud Police Station, Taluka and District-Latur on 31st January 2024, for the offence punishable under Sections 354-C, 323, 506 of the Indian Penal Code and Section 3(1)(w)(ii) of the

Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989 and the
charge-sheet No.20 of 2024, stands quashed and
set aside as against the applicant - Jabbarkhan
S/o Yasinkhan Pathan.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR25