



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

27 CRIMINAL APPLICATION NO. 1460 OF 2024

Dipak S/o Laxman Dongre,
Age: 31 years, Occu: Agril.,
R/o Mandeulgaon, Taluka Badnapur,
District Jalna.

... Applicant

Versus

1. The State of Maharashtra,
Through the Investigation Officer,
Badnapur Police Station,
District Jalna.
2. Devidas S/o Tilakchand Kuche,
Age: 54 years, Occu: Agril. & Social Worker,
R/o. Near Agricultural College,
Badnapur, Tal. Badnapur,
District Jalna.

... Respondents
(Ori. Informant)

...

Mr. Vishal V. Udhan, Advocate for Applicant.
Smt. P. R. Bharaswadkar, APP for Respondent No.1 / State.
Mr. Devdatt P. Palodkar, Advocate for Respondent No.2.

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

DATE : 06th August, 2025.

Per Court:

. Present application has been filed initially for quashing the
FIR vide C.R. No.44 of 2024, dated 7th February, 2024, registered with

Badnapur Police Station, District Jalna, for the offence punishable under Sections 294, 506 and 507 of the Indian Penal Code, and later on by way of amendment, for quashment of the charge-sheet and proceedings in R.C.C. No.147 of 2024, pending before the learned Judicial Magistrate First Class, Badnapur, District Jalna, for the offence punishable under Sections 294, 506, 507 and 109 of the Indian Penal Code.

2 Heard the learned counsel for the applicants and the learned APP for respondent No.1 / State as well as the learned counsel for respondent No.2. In order to cut short, it can be stated that all of them have made submissions in support of their respective contentions.

3 Respondent No.2 had filed the FIR on 7th February, 2024 stating that he had received phone calls from unknown numbers and he has given the list of 14 numbers and the unknown person was asking the informant as to who is Devidas Dongre. When the informant told that the said person is from his village, then the unknown person told that said Devidas Dongre has taken loan from him and had given the number of the informant and the informant should now return the loan amount. The informant told the said unknown person that he has no knowledge about the loan, then the

said unknown person abuses the informant in filthy language. Similar incident took place in case of the nephew of the informant, wherein he was told that one Shyam Dongre had taken loan and given his number and when the repayment of the loan was insisted, abuses were given to him also in filthy language. Similar incident occurred with the brother of the informant also, who appears to be then the sitting MLA. Thereupon, FIR was lodged and the investigation appears to have been undertaken. There are statements of witnesses, especially the persons, who had received the phone calls from those unknown numbers. They have stated about receiving such phone calls and the person giving abuses in filthy language to them. It appears to be the case of the prosecution that, all that has been done by original accused No.1. The present applicant is original accused No.2.

4 We are, in fact, confining ourselves as to whether from the contents of the FIR and the charge-sheet the offences are made out or not. Sections 506 and 507 of IPC are the non-cognizable offences and Section 109 of IPC is, according to the offence abetted, may be cognizable or non-cognizable, as the case may be. Now, as against the present applicant (accused No.2), the prosecution has invoked Section 109 of IPC. But for that purpose also, the offence that was stated to have been abetted is under Section 294 of IPC. Even if, for the sake of arguments for a while, it is accepted that original accused

No.1 had made those phone calls and obscene words were used by him, it was on telephone to the informant, his nephew and the brother.

We would like to rely upon the decision in ***Pawan Kumar Vs. State of Haryana and another***, reported in, ***1996 (4) SCC 17***, wherein it has been held as under:-

“In order to secure a conviction the provision requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.”

5 Therefore, taking into consideration this legal position, the FIR and the charge-sheet are not attracting the ingredients of Section 294 of IPC and therefore, it's abetment cannot be said to be even *prima-facie* made out. Even if we consider that there were calls between accused No.1 and accused No.2, yet it will not even *prima-facie* attract Section 109 of IPC, as that is not going to prove the act abetted.

6 There appears to be some statements of witnesses stating that the present applicant had given the numbers of the informant and others, to other persons. Even after taking the note of those statements, still the ingredients of Section 294 of IPC will not get attracted and under such circumstance, when the ingredients are not attracted, the case would fall within the guidelines of ***State of Haryana and others Vs. Ch. Bhajan Lal and others***, reported in, ***[AIR 1992 SC 604]*** and therefore, the case is made out for exercise of powers under Section 482 of the Cr.P.C. Hence, the following order is passed:-

ORDER

- I. The application stands allowed.
- II. The proceedings in R.C.C. No.147 of 2024, pending before the learned Judicial Magistrate First Class, Badnapur, District Jalna, for the offence punishable under Sections 294, 506, 507 and 109 of the Indian Penal Code, arising out of FIR vide C.R. No.44 of 2024, dated 7th February, 2024, registered with Badnapur Police Station, District Jalna, for the offence punishable under Sections 294, 506 and 507 of the Indian Penal Code, stands quashed and set aside as against the present applicant.

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]