



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1687 OF 2024

1. Sainath Vilasrao Auti
2. Suvarna Vilas Auti
3. Bhagyashree Vilas Auti

.. Applicants

Versus

1. The State of Maharashtra
Through Pathari Police Station,
Tq. Parner, Dist. Ahmednagar.

2. Shubhangi Sainath Auti

.. Respondents

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Mr. G. R. Syed, Advocate for the applicants.
Mr. G. A. Kulkarni, APP for respondent No.1/State.
Ms. Krutika Daskhedkar h/f Mr. V. P. Narwade, Advocate for
respondent No.2.

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

DATE : 07 MARCH 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed for quashment of the FIR vide Crime No.1105 of 2023 dated 23.11.2023 registered with Parner Police Station, District Ahmednagar for the offences punishable under Sections 109, 323, 327, 504 read with Section 34 of Indian Penal Code, Section 3 of the Maharashtra Prevention of Eradication of Human Sacrifice and Other Inhuman, Evil and

Aghori Practices and Black Magic Act, 2013 (hereinafter referred to as the “Black Magic Act”).

2. Heard learned Advocate Mr. G. R. Syed for the applicants, learned APP Mr. G. A. Kulkarni for respondent No.1/State and learned Advocate Ms. Krutika Daskhedkar holding for learned Advocate Mr. V. P. Narwade for respondent No.2.

3. Learned Advocate for the applicants submits that the FIR came to be lodged on 23.11.2023 in respect of the incident occurred between 01.04.2023 to 11.10.2023, however, prior to that the applicant had approached by way of private complaint to learned Judicial Magistrate First Class, Parner by filing Criminal Miscellaneous Application No.328 of 2023 against eight persons. That application was filed on 06.11.2023 stating that the eight persons had committed offence under Sections 323, 324, 504, 506, 379 read with Section 34 of Indian Penal Code and under Section 3 of the Black Magic Act. The date of offence is stated to be on 11.10.2023, however, in the said matter on 03.01.2024 a pursis was filed by the informant/complainant stating that there is compromise between the accused persons and herself out of Court and, therefore, she has no desire to proceed with the

matter. After filing the said application, learned Magistrate proceeded to pass order below Exhibit-01 and then in view of the said pursis, the application came to be disposed of. Under the said circumstance, the present FIR cannot be allowed to proceed further. Further, it is to be noted that respondent No.2 is the wife of applicant No.1. Applicant No.2 is her mother-in-law and applicant No.3 is the sister-in-law. She has made allegations that certain acts which were prohibited under the Black Magic Act were forced to be done on her with the help of one Usha Kalamkar. Various proceedings were instituted by her against the applicants. Proceedings under Section 125(1) of the Code of Criminal Procedure and under Domestic Violence Act were initiated, so also separate FIR vide Crime No.129 of 2024 came to be registered with Supa Police Station, District Ahmednagar for the offences punishable under Sections 498-A, 323, 504 read with Section 34 of Indian Penal Code. The present FIR vide Crime No.1105 of 2023 with Parner Police Station is nothing but an act of harassment and lodged with *mala fide* intention. Those allegations could have been certainly made when FIR vide Crime No.129 of 2024 was registered on 03.03.2024 itself. The delay has not been explained at all in the present matter.

4. Learned Advocate for respondent No.2 submitted that the contents of the FIR would certainly show that such activities were tried to be got done from the informant only due to the superstitions. Those activities were going on since November 2022. The informant has stated that she was resisting that such acts to be done, yet she was forced to do that. Let the investigation be completed and charge-sheet be filed. There is no necessity for quashing the FIR.

5. At the outset, it is required to be considered what is the effect of withdrawal of the private complaint by respondent No.2 i.e. Miscellaneous Criminal Application No.328 of 2023 on 03.01.2024. The said private complaint was against eight persons, whereas the present FIR is lodged only against four persons. Perusal of the pursis that was filed on 03.01.2024 would show that there was compromise between the accused and the informant/complainant outside the Court. The said pursis has been signed by respondent No.2 and it was so verified by the learned Magistrate. The wordings used in pursis are that she has no desire to proceed in the matter. When it is a private complaint, we will have to take that the said pursis was under Section 257 of the Code of Criminal Procedure i.e. withdrawal of complaint.

Said Section provides that if a complainant at any time before a final order is passed satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, then the Magistrate may permit him to withdraw the complaint. Accordingly, in the present matter, it appears that the Magistrate has satisfied with the reason given by the complainant for withdrawal of the complaint (though not specifically mentioned the word withdrawal, but when she says that she has no desire to proceed further, then it amounts to withdrawal). However, when such withdrawal is allowed, the effect of Section 257 of the Code of Criminal Procedure will have to be considered and it says that the Magistrate shall thereupon acquit the accused against whom the complaint is so withdrawn. Therefore, proper and legal order that can be passed in such situation is to allow the withdrawal of the complaint and in the same order to state that the accused stands acquitted of the offences in the complaint. In the present case, it appears that the learned Magistrate, Parner has failed to specify the effect of the withdrawal of the complaint, but had allowed the withdrawal of the complaint itself against all the accused. It is to be noted from

the contents of the complaint that the offence was committed on 11.10.2023 as it is stated, however, the further contents would show that the similar incident was happened since long and the complainant was forced by accused Nos.1 and 2 to go to said Usha Kalamkar who was doing the acts of superstitions. There is statement that she was harassed, assaulted, abused and instigated. Therefore, the said private complaint was complying with the ingredients of those Sections which are in the FIR i.e. Crime No.1105 of 2023. Now, when the private complaint was withdrawn under Section 257 of the Code of Criminal Procedure, of which the result is acquittal, then allowing respondent No.2 to file the impugned Crime No.1105 of 2023 and investigation to be carried forward as well as then filing of charge-sheet would amount to double jeopardy, which is prohibited under Section 300 of the Code of Criminal Procedure. Further, it can be certainly said taking into consideration the various other FIRs and applications that the present FIR is belated and filed with *mala fide* intention and, therefore, cannot be allowed to proceed further. Therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The FIR vide Crime No.1105 of 2023 dated 23.11.2023 registered with Parner Police Station, District Ahmednagar for the offences punishable under Sections 109, 323, 327, 504 read with Section 34 of Indian Penal Code, Section 3 of Black Magic Act, stands quashed and set aside as against the present applicants.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm