



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

CRIMINAL APPLICATION NO. 1710 OF 2022

Dattatraya S/o Pandurang Thombre,
Age-58 years, Occ. Retired,
R/o. Plot No. 05, Survey No. 27,
Amarnath Hsg. Society,
Behind Chhatrapati Hall, Harsul, Aurangabad.

... Applicant

Versus

1. The State of Maharashtra
Through Harsul Police Station,
Aurangabad.
2. Sangita w/o Babasaheb Jawle
Age: 42 years, Occ: Household,
R/o. Plot No. 06, Survey No. 27,
Amarnath Hsg. Society,
Behind Chhatrapati Hall,
Harsul, Aurangabad.

... Respondents

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Mr. Rahul G. Joshi, h/f Mr. S. N. Lale Yelwatkar, Advocate for Applicant.
Mr. G. A. Kulkarni, APP for Respondent No.1 / State.
Mr. P. P. More, Advocate for Respondent No.2.

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

DATE : 24th February, 2025.

Per Court:

. Present application has been filed under Section 482 of
the Code of Criminal Procedure for quashing the proceedings in
R.C.C. No.1829 of 2021, pending before the learned Judicial
Magistrate First Class, Aurangabad, arising out of FIR vide C.R. No.45

of 2021, dated 13th March, 2021, registered with Harsool Police Station, Aurangabad City, for the offence punishable under Sections 354-A, 354-D, 504 and 506 of the Indian Penal Code.

2 Heard the learned counsel for the applicants, the learned APP and the learned counsel for respondent No.2.

3 The learned counsel appearing for the applicant has taken us through the contents of FIR as well as the contents of the charge-sheet. He submits that even if the record is taken as it is, it does not attract the offence under which the FIR has been lodged as well as the charge-sheet is filed. He submits that the statement of the informant allegedly recorded under Section 164 of the Cr.P.C. was not supplied to the applicant. However, when the said statement is made available to him by the learned APP, on the last occasion, and after going through the same, it can be seen that the said statement under Section 164 of the Cr.P.C. recorded on 16th March, 2021 by the learned Magistrate, is full of improvements. The applicant was taking continuous objection in respect of construction activity undertaken by the husband of the informant with the appropriate authorities and as a result of which the inquiry was initiated. The correspondence would show that the applicant was raising objection for the encroachment and ultimately in respect of an incident dated 14th March, 2021, offence

came to be registered with the same police station on 20th January, 2025 vide C.R. No.22 of 2025, for the offence punishable under Sections 452, 323, 504 and 506 read with 34 of the IPC, against one Ankush Daud and PSI Nitin Kame. It was also alleged that the wife of said accused Ankush Daud, had made false complaint against the applicant and she is also the witness, in the present case, whose statement is stated to be recorded on 3rd April, 2021. Therefore, the present FIR is filed with *mala-fide* intention and therefore, it would be unjust to ask the applicant to face the trial.

4 Per contra, the learned APP as well as the learned counsel for respondent No.2 submit that perusal of the FIR and other material on record would also disclose the offence punishable under Section 509 of the IPC. It would be then the learned Magistrate to decide under which provisions the charge will have to be recorded. Therefore, this is not a fit case where the FIR as well as the charge-sheet should be quashed.

5 Here, respondent No.2 had lodged the FIR on 13th March, 2021, stating that the first incident had occurred somewhere in December 2019. At that time, the wife of the present applicant was ill and had gone to her parental home, where she had resided for about a month. The applicant had gone to informant and demanded *Roti*. At

that time, the informant's husband permitted the applicant to take *Roti* as well as *Sabzi* i.e. cooked vegetable and accordingly, it was then supplied by the informant. Thereafter, the applicant started to go to the house of informant in absence of her husband and at that time, she used to give him food to eat. She then states that the applicant with ill intention told her that he would give her rupees 10-20 thousand, but she should not tell the said fact to her husband, otherwise he would defame her and lodge a false case against her husband. The informant then had resisted the same. Thereafter, the applicant had not gone to her house for taking meals. Thus, it is to be noted that from this incident, it cannot be stated that any offence is made out. Mere use of the words that he was looking at her with ill intention, is then not reflected in the action and when she objected, it appears that the applicant had stopped from going to her house for meals.

6 The informant then states that after some days, the applicant had gone to her house in absence of her husband and asked her to stitch his pant. When replied that she is not giving stitching to old clothes, the informant has stated that she is doing the work of sewing blouse from house. But then after she refused, it appears that the same incident had not repeated. The informant then says that the applicant was still visiting her house and used to make gestures with the help of his face and hands, which were obscene. But then she

says that she had not disclosed the said fact to her husband since they are residing in the same *Galli*. It is to be noted that when she had not raised any objection and not even told the said fact to anybody, now she has tried to say everything for which she had no intention in the past to lodge a report. She has not even given the details of the gestures. Now, as regards the incident dated 10th March, 2021 at 08:00 am, she states that the applicant had given obscene gestures when she was watering the construction of her house and then he says that he had also given threat to her. In her statement under Section 164 of the Cr.P.C. she has explained the said act. The FIR is not an encyclopedia and the statement under Section 164 of the Cr.P.C. is recorded three days after the FIR and therefore, the learned counsel for the applicant submits that it is an improvement. Here, unless an opportunity is given to the informant to explain regarding the absence, we cannot directly come to the conclusion that the said contradiction / addition is with some ulterior motive. Here, the base has been given in that FIR and explanation appears to be in her statement under Section 164 of the Cr.P.C. Of course, this is our *prima-facie* opinion. Thus, taking into consideration her FIR as well as the statement under Section 164 of the Cr.P.C., it can be certainly said that the ingredients of offence under Section 354-A of IPC i.e. sexual harassment and punishment for sexual harassment, are not made out. For proving the said offence, it has to be even *prima-facie* shown by

the prosecution that the man committing the said offence i.e. the present applicant either had physical contact and advances involving unwelcome and explicit sexual overtures; or a demand or request for sexual favours; or showing pornography against the will of a woman; or making sexually coloured remarks. Here, there is neither physical contact coupled with the advances involving unwelcome and explicit sexual overtures; nor there is specific demand or request for sexual favours; nor there was showing of any pornography against the will of the informant, nor there were any sexually coloured remarks. Same is the case as regards the offence under Section 354-D of the IPC, which prescribes punishment for stalking. A person is said to have committed stalking when he follows a woman and contacts her, or attempts to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by such woman. Here, there is no such situation. Further, the accused had not monitored the use by the informant of the internet, email or any other form of electronic communication. However, as regards the offence under Section 503 of the IPC i.e. criminal intimidation punishable under Section 506 of the IPC, are certainly made out, when it is stated that she was threatened with dire consequences if she discloses the incident. However, there are no ingredients for the offence punishable under Section 504 of the IPC i.e. intentional insult with intent to provoke breach of the peace.

7 Now, the learned APP submits that the ingredients of Section 509 of the IPC are attracting. Section 509 of the IPC prescribes for the offence where the modesty of a woman is insulted either by word and/or by gesture or act. Here, a person, who intends to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, then such person is said to have committed the offence punishable under Section 509 of the IPC. Taking into consideration the contents of the FIR, *prima-facie*, together with the statement under Section 164 of the Cr.P.C., *prima-facie*, certainly there was exhibiting of the object. Neither the learned Magistrate nor this Court is powerless to consider any other offence, which are transpiring from the FIR as well as the contents of the charge-sheet. The learned Magistrate is also not bound to take cognizance of the offence, which has been stated as per the charge-sheet. It is rather the duty of the Magistrate to consider the entire facts and material and then should take the cognizance of the offence / offences, which are transpiring.

8 The contents of the charge-sheet would show that there is statement of the husband of informant, who was admittedly not present at the time of incident, but he states that the informant had informed

him about the incidences. Then there are statements of three witnesses, including the statement of witness Yogita Daud, who is the wife of accused Ankush Daund from C.R. No.22 of 2025, lodged at the behest of the present applicant. Interestingly, it is stated in the FIR itself that he had made a complaint application dated 22nd March, 2021 and according to him, A.S.I. Ambadas Sonne had made inquiry and had taken his false statement. While making submissions, there is no explanation on behalf of the applicant as to why he had not filed private complaint by adopting the procedure laid down in ***Lalita Kumari Vs. State of Uttar Pradesh and others, [2014 (2) SCC 1]***.

There is a communication dated 14th August, 2024 that has been given to the applicant by ACP, Second Division, Chhatrapati Sambhajnagar, wherein it appears that the applicant had given threat of self immolation on 15th August, 2024 in his application dated 22nd July, 2024 and then after making inquiry, it was assured that within 15 days, the decision would be given and he should therefore, stay away from his decision of self immolation. When legal recourse was available and without adopting that, it appears that the threat was given to the police and then the FIR has been lodged. Any way, even if we keep the statement of Yogita Daud aside, yet there are two other ladies also, who have given statements. They may not be present at the same place, but they say that the informant had informed them about the behaviour of the applicant and they have made statements regarding

the behaviour of the applicant in their statements under Section 161 of the Cr.P.C.

9 Taking into consideration the above discussion, we are of the opinion that the application deserves to be partly allowed only to the extent of the offences of which the ingredients are not made out. Hence, the following order is passed:-

ORDER

- I. The application stands partly allowed.
- II. The proceedings R.C.C. No.1829 of 2021, pending before the learned Judicial Magistrate First Class, Aurangabad, arising out of FIR vide C.R. No.45 of 2021, dated 13th March, 2021, registered with Harsool Police Station, Aurangabad City, stands quashed and set aside as against the applicant, to the extent of Sections 354-A, 354-D and 504 of the Indian Penal Code.
- III. However, taking into consideration the observations above, we direct the learned Judicial Magistrate First Class, Aurangabad, to frame the charge / plea accordingly.

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