



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

CRIMINAL APPLICATION NO. 3583 OF 2024

DR. SURENDRA WASUDEO BHIVGADE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Shri Dixit Sushant V., Advocate for the Applicant.
Shri R.D. Raut, APP for Respondent No.1/State.

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**CORAM : RAVINDRA V. GHUGE
&
NEERAJ P. DHOTE, JJ.**

DATE :- 21st March, 2025

FINAL ORDER (Per Ravindra V. Ghuge, J)

1. The Applicant, Accused in FIR No.121 registered on 23.03.2024, with the Ambajogai City Police Station, District Beed, is before this Court seeking quashing of the FIR by invoking our powers under Section 482 of the Code of Criminal Procedure.

2. Offences alleged to have been committed by the Applicant are set out in the FIR, which are punishable under Sections 354, 354-A, 354-D, 504 and 506, of the Indian Penal Code.

3. The Applicant has contended in this Application that he is a Professor and Head of the Department in the college at Ambajogai. The Complainant/ Informant has falsely implicated him in an offence. It is alleged that on 21.03.2024, the Complainant was going to her home and the Applicant is said to have intercepted her on his motorcycle and told her that if the Complainant agrees to the instructions of the Applicant, they will resolve the land dispute which is pending in the Civil Court. The Complainant questioned him as to why he is following her and why does he speak to her in such language. The Applicant got down from his motorcycle, held her hands and is alleged to have torn her blouse. The Complainant started screaming, to which the Applicant responded by abusing her in foul and filthy language. He is said to have also threatened to kill her.

4. It is also alleged that the Applicant told her that since he belongs to the Scheduled Caste category, he would lodge a complaint against her under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, 'The Prevention of Atrocities Act'). It is further stated in the FIR that since the Informant started screaming, two persons rushed to

rescue her and the Applicant left the spot.

5. It is the contention of the Applicant that no such incident, as alleged, has ever happened. He is the owner of Plot No.18 of Survey No.99 of village Shepwadi, Taluka Ambajogai and had purchased the said land from the father-in-law of the Complainant by a registered sale deed, on 16.07.1996. His name is also recorded in the revenue records.

6. It is his case that after the death of the predecessor-in-title, the Complainant and her husband started creating obstructions in the Applicant's peaceful enjoyment of the plot. When the Applicant started construction on the said plot, they obstructed the same. The Complainant's husband tried to destroy markings on 09.01.2021 and also threatened the Applicant. Hence, the Applicant approached the Ambajogai City Police Station and lodged a complaint. Subsequently, he lodged the FIR bearing No.126 on 24.03.2021 invoking the provisions of the Indian Penal Code and the Prevention of Atrocities Act. The husband of the Complainant was arrested and the trial is presently going on.

7. After release on bail, since the husband of the

Complainant again tried to trouble the Applicant, he lodged the second FIR bearing No.120 on 22.03.2024 with the same Police Station. In the meanwhile, the Complainant's husband filed Regular Civil Suit No.407/2022, seeking declaration of ownership over the suit property. It is, therefore, contended that the Complainant has lodged the FIR against the Applicant only to harass him.

ANALYSIS AND CONCLUSIONS

8. It is settled that if an offence is made out in the FIR, a mini trial should not be conducted by the High Court while dealing with the application under Section 482 of the Code of Criminal Procedure. In a recent judgment delivered by the Honourable Supreme Court on 10.04.2023, in ***Central Bureau of Investigation vs. Aryan Singh, AIR 2023 SC 1987***, it has been specifically laid down that the High Court should not conduct a mini trial while dealing with the application under Section 482.

9. The contention of the Applicant is that the FIR at issue is a vexatious FIR. This submission is completely fallacious as the parameters for deciding whether, the proceedings can be

branded as vexatious proceedings, have completely different contours.

10. The Honourable Supreme Court, in the judgment delivered on 06.08.2024 (unreported) in SLP (Cri.) Nos.1500/2024 and 1660/2024 in ***Dharambeer Kumar Singh vs. The State of Jharkhand and another***, has quashed and set aside the judgment and order of the Jharkhand High Court allowing the petition under Section 482 of the Code of Criminal Procedure, in the light of the following observations :-

“15. *This Court in a series of judgements has held that while exercising inherent jurisdiction under Section 482 of Criminal Procedure Code, 1973, the High Court is not supposed to hold a mini trial. A profitable reference can be made to the judgment in the case of CBI vs Aryan Singh (2023 SCC Online SC 379). Relevant paragraph from the judgment is extracted here under:*

"Para 10...As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not"."

11. In the instant case, the incident narrated by the Complainant in the FIR at issue is dated 21.03.2024 and the Complainant lodged the FIR on 23.03.2024. The first FIR bearing No.126 was lodged by the Applicant on 24.03.2021 as regards interference in his land and by invoking the provisions of the Prevention of Atrocities Act. He has also lodged the second FIR bearing No.120 on 22.03.2024 with reference to the alleged incident of 21st November, 2023.

12. It is also settled that the High Court should not get into the merits of the rival FIRs and try to enter into a roving inquiry and indulge in a fact finding, as to which of the Complainants is telling the truth to the Court. If the FIR indicates an offence which deserves to be tried, the High Court should be extremely slow in causing an interference.

13. In the FIR at issue lodged by the lady, grave and serious allegations have been made to the extent of the Applicant having torn the blouse of the lady. She started screaming which attracted the attention of two passersby who rushed to her rescue. All these allegations are required to be tried. If such allegations

are made, this Court ought not quash the FIR.

14. The Applicant has also taken a ground of alibi. According to him, he was in the college on the date of the incident. The law on alibi has been settled in ***Binay Kumar Singh v. State of Bihar, AIR 1997 SC 322***. It is, therefore, trite that strictest proof is required to establish the plea of alibi and one who claims alibi has to establish the same before the Trial Court. Needless to state, the Applicant can always lead evidence and prove the ground of alibi.

15. Paragraphs 22 and 23 of the decision in ***Binay Kumar Singh (supra)***, read thus:

“22. *We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a Rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:*

The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant.

23. *The Latin word alibi means "elsewhere" and that word is used for convenience when an Accused takes recourse to a defence line that when the occurrence took place he was so far*

*away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the Accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the Accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the Accused has adopted the defence of alibi. The plea of the Accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the Accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the Accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the Accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the Accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the Accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey v. State of U.P.*, (1981) 2 SCC 166; and *State of Maharashtra v. Narsingrao Gangaram Pimple*, (1984) 1 SCC 446)."*

16. In view of the above, this Criminal Application, being devoid of merit is, therefore, dismissed.

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(NEERAJ P. DHOTE, J.)

(RAVINDRA V. GHUGE, J.)