



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

CRIMINAL WRIT PETITION NO. 1638 OF 2024

Kondiram Manjabapu Guldagad,
Age: 76 years, Occ : Nil,
R/o At post Rahuri (Tanpurewadi Road),
Dist. Ahmednagar.

... **PETITIONER**

V/s.

1. The State of Maharashtra
Through Rahuri Police Station,
Rahuri, Dist. Ahmednagar.
2. Sheetal Karbhari Guldagad,
Age : 32 years, Occ: Household,
R/o Tanpurewadi Road, Rahuri,
Tq. Rahuri, District Ahmednagar.

... **RESPONDENTS**

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Mr. C.K. Shinde & Tushar Shinde, Advocate for the Petitioner
Ms. Chaitali Chaudhari Kutti, APP for the Respondent-State
Mr. D.R. Markad h/f. B.B. Shelke, Advocate for the Respondent No.2.
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 10.02.2025

ORAL JUDGMENT:-

1. At the outset it is submitted that, on 14th December, 2024, both the counsels appearing for the Petitioner and Respondent No.2 jointly submitted about amicable settlement of dispute as both are blood relatives, however,

today they have fairly stated that the parties are not willing to settle the dispute, hence, they wanted to argue the matter on merits.

2. Rule. Rule made returnable forthwith and with the consent of both sides heard finally.

3. Heard Mr. Shinde, the learned counsel appearing for the Petitioner, Mr. Markad h/f. Advocate Mr. B.B. Shelke, the learned counsel appearing for the Respondent No.2 and the learned APP for the Respondent No.1-State.

4. By the present petition under Article 227 of the Constitution of India, the Petitioner seeks challenge to the order dated 30.07.2024 passed by the learned Sessions Judge, Ahmednagar in Criminal Revision Application No.31/2024, whereby the learned Revisional Court affirmed the order passed by the learned JMFC, Rahuri below Exh.9 in RCC No.12/2022, thereby declined to discharge the Petitioner/Accused for the offence punishable under Section 354, 323, 504, 506 of the I.P.C.

5. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. On face of record, it appears that on 22.10.2021, the Respondent No.2/Informant lodged a report with Rahuri Police Station alleging that, on 22.10.2021 at about 10.30 a.m., she with her

husband, brother in law and sister in law visited their field to see erection of electric pole in their field. At that time, the Accused visited there and told as to why they are erecting Electric Pole on bund of his field and asked them to erect such pole by leaving two feet distance from bund of his field. Thereafter, the Accused abused them in filthy language and assaulted her husband with fist and blows, therefore, the Respondent No.2, her sister in law-Vaishali intervened in said quarrel to separate both of them but the Accused caught hold of her hand with an intention to outrage her modesty. It is further alleged that, the Accused issued life threats to Respondent No.2 and her family members. On the basis of the said FIR, Crime No.0887/2021 came to be registered against the present Petitioner/Accused for the offence punishable under Section 354, 323, 504, 506 of the I.P.C.

6. The learned counsel appearing for the Petitioner canvassed that, on 22.10.2021, the Petitioner also lodged a FIR No.0885/2021 with Rahuri Police Station alleging that, on 22.10.2021 when he was doing agricultural operation work at that time, the Accused persons- Devrao Guldagad, Sanjay Guldagad, Karbhari Guldagad, Sheetal Guldagad (Respondent No.2) and Vaishali Guldagad quarreled with him on account of erection of electric pole on bund of his field and assaulted him with iron object, stick, fist and blows, due to which he sustained grievous injuries. Therefore, he was hospitalized with Rural Hospital, Rahuri, District Ahmednagar. According to the Petitioner, he

sustained injuries on head at right side frontal bone, over back and chest. However, the Respondent No.2 (Complainant) lodged a FIR bearing Crime No.887/2021, afterthought subsequent to the lodging of the FIR by him.

7. It is further canvassed that, the Respondent No.2 has not stated in her complaint that, the Petitioner outraged her modesty with an intention to sexual overtures but said incident of caught holding hand allegedly occurred while intervening in quarrel between the Petitioner and Shri Karbhari Guldagad, the husband of the Respondent No.2. Therefore, the FIR lodged against the present Petitioner is concocted and continuation of criminal prosecution on the basis of said FIR would certainly amount to abuse of process of the Court, hence, prayed for quashing and setting aside the FIR.

8. In support of these submissions the learned counsel appearing for the Petitioner placed reliance on the case of *Nitin Upadhyay and Anr. V/s. State of Maharashtra; 2024 All M.R. (Cri) 3164 : 2024 DGLS (Bom.) 3779*, wherein, it is held that, a sudden quarrel took place and it was not a premeditated act. The act of pulling Petitioner No.2's hair and assaulting her with fist blows also appears to be a sudden act and not a premeditated act. So also, the said act of pushing her was accompanied by any utterances or gestures or indecent touch which would underscore sexual overtures. Neither there is any allegation made by the Petitioner No.2 (Informant) that the Accused had

an evil eye or had touched her inappropriately. Thus, even if the prosecution case is taken as it stands, the existence of *mens rea*, a prerequisite to attract Section 354 is amiss in the given facts.

9. It further relied on the judgment dated 19.08.2022 passed by Coordinate Bench of this Court at Principal Seat in Criminal Application No.1269/2017 (**Sudhir Vitthal Medhekar Vs. State of Maharashtra & Ors.**), wherein this Court held in paragraph Nos.16 to 18 as under:

“16. On the aforesaid touchstone, reverting to the facts of the case, on a careful perusal of the allegations in the first information report and the statements of the alleged eye witnesses to the occurrence, the following situation emerges.

(1) Truptesh, the husband of the first informant and his friends Mahendra Pratap Singh and Manjunath Krushnapal were standing in the campus of the society near the water tank. The first informant was little afar and allegedly taking a walk.

(ii) Truptesh claimed that the applicant came thereat and while approaching towards lift, the applicant bumped into him. When Truptesh asked the applicant to be more careful, the applicant returned to the said spot.

(iii) An alternation ensued. The applicant caught hold of the shirt of Truptesh. Despite being asked to leave Truptesh, the applicant allegedly slapped Truptesh.

(iv) At that stage, according to Truptesh, the witnesses Shashikant Shenoy, Mahendra Pratap Singh, Manjunath Krushrapal and the first informant came in the frame. When the first informant tried to rescue her husband Truptesh, the applicant touched her chest and pushed her aside.

17. In the light of the aforesaid sequence of events, the question that crops up for consideration is whether the act of pushing the first informant aside can be said to be attended with intent to outrage, or knowledge that

the applicant would thereby outrage, the modesty of the first informant. The following factors, in my considered view, bear upon the determination.

18. First and foremost, it is pertinent to note that the quarrel was, in a sense, sudden. It does not appear that there was pre-meditation especially qua the role attributed to the applicant of pushing the first informant. Secondly, even altercation between the applicant and Truptesh appeared to have taken place at the spur of the moment. Truptesh and the applicant have different versions as to what caused the applicant to turn back to the place where Truptesh and his friends were standing. However, what is of salience is the fact that something made the applicant to return back to the said place and thereupon altercation ensued. Thirdly, Truptesh was accompanied by two of his friends and it was natural on their part to intervene in the quarrel so as to pacify Truptesh and the applicant, also a resident of the same society. Fourthly, it is the claim of the first informant and witnesses that the first informant came thereat while a scuffle was on between the applicant and Truptesh. Fifthly, at that moment, the applicant allegedly pushed the first informant who claimed to have intervened to rescue Truptesh from the clutches of the applicant. Sixthly, the act of pushing the first informant was in the course of the scuffle, while the applicant was evidently grappling with her husband. Seventhly, the first informant and witnesses do not allege that the said act of pushing the first informant was accompanied by any utterances or gestures which would underscore sexual overtures. Lastly, there is no allegation of any prelude to the occurrence which would indicate that the applicant had either an evil eye or had behaved with the first informant in a manner which would appear to be indecent. If all these factors are considered in conjunction with each other, even if the prosecution case is taken as it stands, the existence of mens rea to outrage the modesty of the first informant can not be inferred.”

10. The learned counsel for the Petitioner further relied on the judgment dated 10.10.2024 passed by the Kerala High Court in CRL MC No.6103 of 2024 (**Dr. P.K. Baby V/s. Vs. State of Kerala**), wherein it is held in paragraph Nos.15 and 16 as under:

“15. As I have already discussed, the most essential ingredient to attract an offence under Section 354 of IPC is assault or use of criminal force to

any woman with intent to outrage or knowing it to be likely that he will thereby outrage her modesty. As per Section 354A(1) of IPC, when a man commits the acts of (i) physical contact and advances involving unwelcome and explicitly sexual overtures; or (ii) a demand or request for sexual favours; or (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment, he is punishable for the offence of sexual harassment. Section 354A(1)(i) provides that an act involving unwelcome and explicit sexual overtures, is an offence. Section 503 of IPC defines criminal intimidation as, whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

16. *Summarising the factual matrix in this case, it is discernible that when the defacto complainant attempted to move towards the auditorium on the pretext of taking an oil lamp, after completion of the programme overstepping the outer time limit fixed as 9.00 pm, as per the guidelines, as part of the strict compliance of the discipline, the petitioner herein objected the same and there was, altercation as part of conductance and resistance. In such a situation, it could not be held, prima facie, that the petitioner herein had any intention to outrage modesty of the defacto complainant in any manner or to harass her sexually. That apart, the physical contact as part of such resistance could not be held as the one which advanced unwelcome and explicit sexual overtures. Failure to lodge a complaint in this regard at least to the University Authorities, soon after the occurrence would show that the allegations in the complaint and in the FIS are afterthought events. Viewing the facts in this case from the above perspective, none of the offences are made out, prima facie. In view of the matter, the FIR registered after 4 months and 6 days after 3 months and 26 days of lodging the complaint before the Vice Chancellor as an afterthought lacks bona fides and the prayer to quash the FIR is liable to succeed.”*

11. Per contra, the learned counsel appearing for Respondent No.2 supported findings recorded by both the Courts below. It is submitted that, the Respondent No.2 and Petitioner both have filed counter FIRs against each other

for one and the same incident. Therefore, if the Petitioner is discharged on the basis of the allegations made in the FIR it would certainly made effect on the trial which has been initiated against the Respondent No.2 and her relatives. Further, the intention to outrage modesty of the Respondent No.2 cannot be ascertained at this preliminary stage without a trial. Therefore, prayed for dismissal of the petition.

12. It is a matter of record that, on the basis of report lodged by Respondent No.2/Informant, a Crime No.887/2021 was registered against the Petitioner/Accused for the offence punishable under Section 354, 323, 504 and 506 of the I.P.C. After the investigation was over, the Investigating Officer filed charge-sheet against the present Petitioner for the offence punishable under Section 354, 323, 504 and 506 of the I.P.C. The said charge-sheet is registered vide RCC No.12/2022.

13. It is an admitted fact that, on the basis of report lodged by the present Petitioner the Crime No.885/2021 was registered against the Respondent No.2, her Husband, brother in law and sister in law for the offences under Section 324, 323, 143, 147, 148, 149, 504, 506 of the I.P.C. It not in dispute that, the Investigating Officer also filed the charge-sheet against Respondent no. 2 and her relatives in Crime No.885/2021, which is registered

as RCC No.132/2022. The trial of both crimes are pending before the learned JMFC, Rahuri.

14. It is well settled principle of law that, if two counter FIRs are registered against each other in that circumstance trials in both the offences are required to be conducted by one and the same Court simultaneously. Needless to say that, intention of the accused to outrage modesty of the Respondent/ Informant can only be gathered after a full-fledged trial. However, in the case in hand, as per the ratio laid down in cases of *Nitin Upadhyay and Anr., Sudhir Vitthal Medhekar and Dr. P.K. Baby cited (supra)*, the Petitioner cannot be discharged only for the offence punishable under Section 354 of the I.P.C., when Crime No. 887/2021 is registered against the present Petitioner/Accused for other offences under Sections 323, 504, 506 of the I.P.C. It is not the case of the Petitioner that, only offence under Section 354 of the I.P.C., is registered against him for outraging of modesty due to allegedly caught holding hand of the victim while separating her husband and the Accused.

15. Needless to say that, on 16.02.2024, the learned JMFC, Rahuri passed an order below Exh.12 and rejected prayer for discharge. On 30.07.2024, the learned Revisional Court passed the impugned order in Criminal Revision Application No.31/2024 holding that, as per report dated 22.10.2021 the dispute arose while erecting electric pole on bund in agriculture

field and when there was resistance on part of the Petitioner and out anger he started abusing and beat the Informant's Husband. Thereafter, when she (Informant) with her sister-in-law and brother-in-law tried to separate her Husband at that time the Petitioner outraged her modesty and gave criminal intimidation to kill. Therefore, I find that, findings recorded by both the Courts below are just, proper and based on material available on record. Therefore, no interference is called at the hands of this Court, hence, the petition is dismissed. Rule is discharged.

[Y.G. KHOBRAGADE, J.]