



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

26 CRIMINAL APPLICATION NO. 3461 OF 2023

Sushil S/o. Sudhakar Rao Pagare,
Age : 32 Years, Occu. : Govt. Service,
R/o. Audit Nagar, Parbhani.

.... Applicant

VERSUS

1. The State of Maharashtra.
2. XYZ

.... Respondents

....
Advocate for Applicant : Mr. Datta Kale h/f Mr. Sachin S. Shinde
APP for Respondent No.1-State : Mr. V.K. Kotecha

....

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

Dated : 23rd July 2025

PER COURT :-

1. The present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), for quashing the proceedings in R.C.C. No.1123 of 2022, pending before the learned 19th Judicial Magistrate First Class, Aurangabad, arising out of the First Information Report (for short "the FIR"), vide C.R. No.0565 of 2021, registered with Satara Police Station, Tq. & Dist. Aurangabad,

for the offences punishable under Sections 452, 354, 323, 504, 506 of the Indian Penal Code, 1860 (for short "the IPC").

2. Heard learned Advocate Mr. Datta Kale holding for learned Advocate Mr. Sachin S. Shinde, for the applicant and learned APP Mr. V.K. Kotecha, for respondent No.1-State. Respondent No.2, though served, failed to appear in the matter.

3. Learned Advocate appearing for the applicant has taken us through the contents of the charge-sheet including the FIR and submits that in that itself, the informant has disclosed that there was some dispute on account of money between her son viz. Mayur and the present applicant and then, she makes the allegation that when the applicant had unauthorizedly gone to the house of the informant around 11.30 a.m. on 11.11.2021, he made inquiry regarding Mayur. Even the informant had managed to have dialogue on a phone call between the applicant and Mayur, who had gone for his work. But, then, she suddenly states that the applicant started abusing her and when she questioned, the applicant caught hold of her hand, dragged her outside the house and twisted her hand. People gathered there and while abusing, the applicant had torn her blouse and also tried to disrobe her. When she started crying, at that time, the applicant left her hand and threatened her that if an FIR is lodged, then she would

suffer dire consequences. Thus, though the incident is stated to have occurred around 11.30 a.m. on 11.11.2021, the FIR has been lodged on 31.12.2021. The delay has not been explained. The police station is hardly one kilometer away from the house of the informant.

4. Learned Advocate for the applicant further submits that, perusal of the entire charge-sheet would show that there is no eyewitness to the incident. Some witnesses have stated that they had heard some dispute in the house of the informant, however, they had not come out to see what is going on. Some have stated only the fact that there was dispute, but no further details in respect of alleged act amounting to outraging of modesty have not been stated by them and also not narrated. The present applicant's cousin brother on 16.12.2021, appears to have lodged an FIR against Mayur and one Damodar Waman Gawai. A proceeding in R.C.C. No.2181 of 2022 is pending against them for the offences punishable under Sections 408, 417, 420, 465, 468, 471, 477-A, 120-B, 201 read with Section 34 of IPC and Sections 43-A, 66-D of the Information Technology Act, 2000. In the said case, a charge-sheet was filed on 20.10.2022. In that matter, the present applicant is a witness. Therefore, it appears that in order to take revenge and protect the son, a false and fabricated FIR has been lodged by the informant.

5. Per contra, learned APP strongly opposed the application and submitted that, it appears that the informant had tried to lodge an FIR, but it was not taken by the police and therefore, she was required to approach various authorities including Maharashtra State Commission for Women, Mumbai, Branch at Aurangabad and thereafter, the FIR came to be lodged. The delay can be explained at the time of trial. The statements of witnesses have been taken. Though there are statements of those witnesses who had not seen the incident, but some neighbours including Archana Solunke, whose statement would show that she had heard a heated exchange of words between the present applicant and the informant. The statements of the informant and her family members have been taken under Section 164 of Cr.P.C. also and they have reiterated the same story. Merely because there is FIR against Mayur, it cannot be stated that the present FIR is in retaliation or if any mala fide intention. This cannot be a fit case where the Court should exercise its powers under Section 482 of Cr.P.C.

6. We are aware about the guidelines those have been given by the Hon'ble Supreme Court in ***State of Haryana Vs. Ch. Bhajanlal and Ors., [AIR 1992 SC 604]***, while dealing with an application under Section 482 of Cr.P.C. Therefore, we will have to scrutinize the facts.

However, at the same time, in view of guideline No.7 i.e. where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, then it is a duty of this Court to consider all the facts minutely.

7. Perusal of the FIR would show that the informant's son Mayur was serving with a shop i.e. Lenskart.com at Nirala Bazar, Aurangabad. Then, she states that there was dispute between Mayur and the present applicant on account of money. Her FIR is totally silent as to how she was knowing the applicant and what was the dispute, though it might be regarding money. The statement of Archana Solunke would show that she had seen an altercation between the present applicant and the informant in front of the house of the informant around 11.30 a.m. on 11.11.2021. After that, the present applicant left that place. She made inquiry with the informant as to what had happened. The informant had then said that her son Mayur was employed with Lenskart shop and there was some misappropriation of amount at the shop. She described the applicant as the person who is looking after the shop and stated that the applicant had come for inquiry in respect of Mayur. Now, the said

witness is giving more information than the informant herself. Even while narrating the incident to Archana, it is stated that the informant had stated that her son was employed (..... दुकानात नोकरीस होता). The question, therefore, is whether on the said day of incident, whether Mayur was still in employment or not. But, then, while giving the FIR, the informant states that Mayur had gone for work.

8. The FIR, further, states that after the informant facilitated the conversation between the applicant and Mayur, the applicant started abusing the informant. Now, the question is when the dispute was between Mayur and the present applicant, why the applicant should abuse Mayur's mother i.e. the informant. She, then, states that she was dragged by the applicant by catching hold her hands outside the house, then the act amounting to outraging her modesty was done. The said narration appears to be improbable for the reason that if the applicant could have been believed to do any such act inside the house, why he should drag the informant outside the house, thereby facilitating the witnesses to witness the incident.

9. Here, it is also to be noted that while describing the applicant to witness Archana Solunke, the informant has stated that the applicant is looking after the shop. But the fact is that the present

applicant is employed with Zilla Parishad, Parbhani. Even in the charge-sheet, his residential place is stated to be Audit Nagar, Old Pedgaon Road, Parbhani, Dist. Parbhani. But, then, it is stated that the occupation is Lenskart Chashma Dukan, Nirala Bazar, Aurangabad. The charge-sheet in the present case has been filed on 06.05.2022 and the charge-sheet in the offence against Mayur as aforesaid was filed on 20.10.2022 i.e. R.C.C. No.2181 of 2022, wherein the occupation of the present applicant, which has been shown as witness No.7, as *Shaskiya Naukri*. That means, the Investigating Officer Mr. S.A. Shirsat, Police Sub-Inspector attached to Satara Police Station, Aurangabad has not been made proper investigation in respect of what is the occupation of the applicant and when he is resident of Parbhani, why he was in Aurangabad on 11.11.2021.

10. The statements of the relatives of the informant are hearsay and the other witnesses in the neighborhood have stated that though they had seen some quarrel, they had not come out to see what is going on. Therefore, except the informant, there was no person who had witnessed the incident though in the FIR it is stated that people had gathered.

11. Another fact to be noted is that the delay has not been properly explained in the FIR. Though the document regarding the complaint made to the Women's Commission has been given, the application to the said office was given by the informant on 27.12.2021. A copy of the said application has been collected, wherein it is stated that the informant had gone to Satara Police Station to lodge an FIR on 25.12.2021 and 26.12.2021. Why she had not gone to lodge an FIR prior to those dates is a question and this is with the background of one Mr. Shirish Prataprao Pagare, whose statement was taken in the present matter also. He is the owner of said shop of Lenskart, Nirala Bazar, Aurangabad, who had lodged the FIR on 16.12.2021, against the informant's son Mayur. Therefore, taking into consideration the proximity of the said FIR against Mayur, wherein it is stated that the misappropriation which was committed is to the tune of Rs.93,00,144/-; in order to save Mayur, the present FIR appears to have been lodged with mala fide intention. Therefore, the case is within guideline No.7, as provided in **State of Haryana (Supra)**, that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. A case is made out for exercising our powers under Section 482 of Cr.P.C. Therefore,

the application deserves to be allowed. Hence, we pass following order.

ORDER

- I) The application stands allowed.
- II) The proceedings in R.C.C. No.1123 of 2022, pending before the learned 19th Judicial Magistrate First Class, Aurangabad, arising out of the First Information Report, vide C.R. No.0565 of 2021, registered with Satara Police Station, Tq. & Dist. Aurangabad, for the offences punishable under Sections 452, 354, 323, 504, 506 of the Indian Penal Code, 1860 stands quashed and set-aside as against the present applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asd