



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4058 OF 2023

Tony S/o. Johnny Francis,
Age : 25 Years, Occu. : Student,
R/o. House No. D/61/11, N-2,
Sangharsh Nagar, Mukundwadi,
Dist. Aurangabad.

.... Applicant

VERSUS

1. The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra in
Home Department,
Mantralaya, Fort, Mumbai.

2. Police Inspector,
Mukundwadi Police Station,
Dist. Aurangabad.

3. Susanna W/o. John Awhad,
Age : 32 Years, Occu. : Housewife,
R/o. C41/3, Sangharsh Nagar,
Mukundwadi, Dist. Aurangabad.

.... Respondents

....
Advocate for Applicant : Mr. Shashikant E. Shekade
APP for Respondent Nos.1 and 2-State : Mr. V.K. Kotecha
Advocate for Respondent No.3 : Mr. Saud N. Deshmukh
....

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

Dated : 08th August 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, "Cr.P.C."), for quashment of the First Information Report (for short, "FIR"), vide C.R. No.0402 of 2023, registered with Mukundwadi Police Station, Aurangabad, Dist. Aurangabad and later on, by way of amendment, for quashment of the proceedings in R.C.C. No.24 of 2025, pending before the learned Judicial Magistrate First Class, Aurangabad, for the offences punishable under Sections 341, 354-A(1)(ii), 354-D, 506 of the Indian Penal Code, 1860 (for short, "IPC").

2. Heard learned Advocate for the applicant and learned Advocate for respondent No.3 as well as learned APP for respondent Nos.1 and 2-State .

3. Learned Advocate appearing for the applicant submits that perusal of the impugned FIR would show that it is in respect of the incident that is alleged to have taken place at 04.00 p.m. on 30.07.2023, in front of Municipal Corporation Hospital, Mukundwadi, Aurangabad. However, the FIR came to be registered on

28th September 2023. The delay has not been explained and there is total suppression of N.C. report lodged by respondent No.3/informant, with the same police station on 31.07.2023. In the said N.C. report, she has stated that the incident took place in front of Aurangabad Municipal Hospital, Mukundwadi, at 16.00 Hrs. on 30.07.2023. The alleged abuses or alleged utterances, which she states, were amounting to outraging her modesty and after this N.C. report, a permission under Section 155(2) of Cr.P.C. was not taken. He relies on the decision in the case of ***Frank Augustin Lopes Vs. State of Maharashtra and Another, [2018 SCC Online Bom 6851]***, wherein the impact of investigation carried out without necessary permission in terms of Section 155(2) of Cr.P.C., as held in ***Shri Mukesh Laxman Das Talreja Vs. The Inspector of Police, [(2006) 2 Bom CR (Cri) 76]***, was considered.

4. Learned Advocate for the applicant further takes us to the point that there was a property dispute between the applicant and husband of respondent No.3. The husband of respondent No.3 is the cousin brother of the applicant. There was proceeding bearing Civil M.A. No.970 of 2018, before the learned Civil Judge Senior Division, Aurangabad, which was filed by the mother of the present applicant and others against the husband of respondent No.3 and others. The

husband of respondent No.3 had taken a letter of administration from the Court. However, on 23.02.2022, by this Civil M.A. No.970 of 2018, it was revoked. The property, which was left by the aunt of the present applicant in the form of a gift deed to the applicant, is with the applicant and respondent No.3 and her husband are making efforts to grab the said property. The mother of the applicant had then lodged the FIR vide C.R. No.0325 of 2022, with the same police station on 22.09.2022, for the offences punishable under Sections 448, 427, 504, 506 read with 34 of IPC. The present FIR is nothing but an act of wreaking vengeance and therefore, it deserves to be quashed and set-aside.

5. Learned APP and learned Advocate for respondent No.3 strongly opposes the application and submit that the second FIR is maintainable and in fact, the earlier complaint, dated 31.07.2023, lodged by respondent No.3, ought not to have been treated as a N.C. complaint. It is then submitted that the statement of an eyewitness has also been recorded by way of further investigation and there is now eyewitness to the incident in the form of Leena David Kamble, who had seen the incident. Under such circumstance, this is not a fit case where the Court should exercise its powers under Section 482 of Cr.P.C.

6. Here, first of all, we are required to consider as to whether the contents of the FIR and charge-sheet are attracting the ingredients of Sections 341, 354-A(1)(ii), 354-D, 506 of IPC. There is relationship between respondent No.3 and the present applicant. The present applicant is stated to be a cousin brother-in-law of respondent No.3. Respondent No.3 has stated that when she was proceeding from the road around 04.00 p.m. on 30.07.2023, in front of Municipal Corporation Hospital, Mukundwadi, the present applicant came on a two wheeler and blocked the road and thereafter, by catching hold of her right hand, he uttered the words which according to the informant were amounting to outraging her modesty.

7. Now, while stating these facts, respondent No.3 has not stated whether the applicant was still sitting on the two wheeler when he allegedly blocked the road or her way or he had parked his two wheeler and thereafter, had obstructed her way. In order to prove the ingredients of Section 341 of IPC, it should be shown that the road or way had been blocked in such a manner that she was prevented from proceeding further in the direction in which she has right to proceed. Mere use of the words "blocking of road" (रस्ता अडवून), we cannot even consider that the ingredients of the offence under Section 341 of IPC are made out.

8. One more aspect that is required to be considered is that respondent No.3 had already filed N.C. report bearing No.1170 of 2023, in respect of the same incident. In that report, she has stated that due to old dispute, the present applicant abused her in filthy language and by abusing her and her husband, he went away. But, in the present FIR, which she lodged on 20.09.2023, she has not even whispered about the said N.C. report. Suppression of the N.C. report is, therefore, fatal for respondent No.3, as it can be seen that she has improved the version. If the incident is same as narrated by her on 31.07.2023 and then, the police had recorded N.C. complaint, it appears that neither she made any agitation against the same nor she went before a Magistrate either for grant of permission for investigation under Section 155(2) of Cr.P.C. or direction thereof or in view of Section 156(3) of Cr.P.C., to register an FIR.

9. In said N.C. report, it appears that the husband of respondent No.3 was along with her at the time of incident, whereas in the FIR, he is conspicuously absent. Her husband's statement has been recorded. In the statement, he has stated that he and his wife i.e. the informant, were proceeding towards the home, but he had some important work, therefore, he left his wife near Municipal

Hospital at Mukundwadi and he went. Respondent No.3 had then narrated the incident to him at a later point time.

10. It can be seen from the other documents, which are public documents, in the nature of judgment in Civil M.A. No.970 of 2018 and FIR vide C.R. No.0325 of 2022, dated 22.09.2022 that, already there are disputes between the applicant and the husband of respondent No.3. The present applicant had also filed N.C. report on 31.07.2023, bearing No.1168 of 2023, wherein he has stated that he was threatened and abused by the husband of respondent No.3. Certainly, there is inordinate delay in lodging the report in the present matter i.e. in respect of the FIR lodged by respondent No.3.

11. In the FIR itself, it is stated that, after the incident, the applicant went from the spot and then respondent No.3's brother Julius Hiwale and sister-in-law Malta Hiwale, came to the said place and as respondent No.3 was frightened, they gave her courage. If we consider the statement of Malta and Julius, it can be seen that they had not witnessed the incident when they allegedly found respondent No.3 crying. While proceeding from the road, they stopped their vehicle and asked her as to what had happened and then she told about the incident to them. When the incident is stated to have been

allegedly taken place in a public place like vegetable market and that too in the evening, certainly that incident would have been witnessed by public. But no such statements have been taken by the Investigating Officer.

12. Now, the respondents are relying on the statement of one Leena David Kamble. Admittedly, the statement of said Leena Kamble is recorded after filing of the charge-sheet. Rather, the charge-sheet was filed on 23.12.2024 and her statement has been recorded on 29.07.2025. There is absolutely no reason in the same as to why she had not gone to the police station and disclosed that she has witnessed the incident. Her presence has not been stated by respondent No.3. Witness Leena Kamble has also not stated that, after witnessing the incident at that place itself, she had tried to have dialogue with respondent No.3. She appears to be out of witness. Therefore, we are of the opinion that her statement is inadmissible.

13. Considering the reasons stated above, there is a reason to believe that the FIR has been lodged with mala fide intention for wreaking vengeance and therefore, the case is within guideline No.7, as provided in *State of Haryana Vs. Ch. Bhajanlal and Ors., [AIR 1992 SC 604]*, 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, the court can exercise its powers under Section 482 of the Code of Criminal Procedure. A case is made out for exercising our powers under Section 482 of Cr.P.C., as it would be unjust to ask the applicant to face the trial. Hence, we proceed to pass the following order.

ORDER

- I) The application stands allowed.
- II) The First Information Report, vide C.R. No.0402 of 2023, registered with Mukundwadi Police Station, Aurangabad, Dist. Aurangabad and the proceedings in R.C.C. No.24 of 2025, pending before the learned Judicial Magistrate First Class, Aurangabad, for the offences punishable under Sections 341, 354-A(1)(ii), 354-D, 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