



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.568 OF 2024**

Sanjay Pandurang Singhan ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

Mr. Viral Rathod with Ms. Shivani Shinde, for Applicant.
Mrs. R.S.Tendulkar, APP for State.
Mr. Sahil Choudhari, for Respondent No.2.
Mr. Devidas Pokale, Kasturba Marg Police Station present.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 27 NOVEMBER 2025
PRONOUNCED ON : 16 DECEMBER 2025**

JUDGMENT :

1. By this application under Section 482 of the Code of Criminal Procedure, 1973 ('the Code'), the Applicant seeks quashing of the Criminal Proceedings being CC No.1171/PW/2024, arising out of C.R.No.213 of 2024 registered at Kasturba Marg Police Station, and the order of cognizance dated 5 March 2025 passed by the learned Magistrate, 68th Court, Borivali, Mumbai, thereby issuing the process against the Applicant for an offence punishable under Section 354 of the Indian Penal Code, 1860 ('the Penal Code').

2. Shorn of unnecessary details, the background facts leading to this application can be stated as under :

2.1 The Applicant is a social worker and husband of a former Corporator affiliated to a police party. The first informant (R2) was also holding the office

of the Deputy Chief of a local unit of the said political party. On 12 March 2023, a meeting of the workers of the said local unit was organized at Garden Hall, Near Phulpakharu Ground, Devipada, Borivali. After the meeting was over, the first informant (R2) was discussing the issues with Mrs. Madhuri Khanvilkar, a Coordinator of the local Unit of the said political party, in the presence of other workers. The first informant made a grievance that some office-bearers of the political party were calling the ladies for meetings, though their presence was not required, and, thereby sabotaging the meeting convened for the redevelopment of Rehman Chawl and Ganesh Compound SRA projects.

2.2 The first informant alleged, the applicant, whom she had known from before, overheard the said conversation between the first informant and Mrs. Khanvilkar, and charged on the person of the first informant, proclaimed that he had not taken any bribe from anybody and pushed the first informant back by touching her chest. The applicant allegedly exhorted that the first informant was required to be taught a lesson. The first informant felt that her modesty was outraged. Hence, the first informant lodged a report leading to the registration of C.R.No.213 of 2024 at Kasturba Marg Police Station.

2.3 Post completion of investigation, during the course of which the Investigation Officer recorded statements of as many as 59 witnesses, who were allegedly present in the said meeting, chargesheet came to be lodged

against the applicant for an offence punishable under Section 354 of the Penal Code.

3. The Applicant has preferred this application asserting, inter alia, that the first informant had lodged a report with a view to wreck vengeance. The continuation of the prosecution constitutes abuse of the process of the Court as in the initial non-cognizable report lodged by the first informant, there was no whisper about the alleged act of outraging the modesty of the first informant (R2), attributed to the applicant. As a non-cognizable case for the offences punishable under Sections 506, 323 of the Penal Code was registered on 12 March 2024, the IO could not have registered FIR and proceeded with the investigation without obtaining the orders of the Magistrate under Section 155(2) of the Code, 1973. The initiation of the prosecution was clearly malafide, and, thus, resultant proceeding deserves to be quashed and set aside.

4. I have heard Mr. Rathod, learned Counsel for the Applicant, Mrs. Tendulkar, learned APP for the State, and Mr. Sahil Choudhary, learned Counsel for the first informant (R2), at some length. With the assistance of the learned Counsel for the parties, I have also perused the report under Section 173 of the Code and the documents annexed thereto, including the statements of the first informant and the witnesses.

5. Mr. Rathod, learned Counsel for the Applicant, would urge that, the

prosecution of the Applicant is a classic case of abuse of the process of Court. Laying emphasis on the fact that, in the NC complaint, which was lodged almost instantaneously, there was no reference at all to the alleged acts of outraging the modesty of the first informant, it was urged that, once a NC complaint, on the basis of the statement made by the first informant (R2) before the Police was registered, if the Police intended to further investigate into the matter, permission of the Magistrate under Section 155(2) of the Code, 1973, was indispensable. The IO could not have circumvented the mandatory procedure by registering the FIR on the next day on the basis of motivated and trumped up allegations. To lend support to this submission, Mr. Rathod placed reliance on a Division Bench judgment of this Court in the case of **Asif Khan Pathan V/s. State through PP and Ors.**¹.

6. As a second limb of the submission, Mr. Rathod would urge that, even if the report filed by the IO under Section 173 of the Code and the documents annexed with it, is taken at its face value, no offence under Section 354 of the Code, can be said to have been made out, as many as 58 out of 59 witnesses have completely disowned the prosecution version. Even Mrs. Khanvilkar, who was stated to be the prime witness, did not support the prosecution version. Therefore, continuation of the criminal proceeding, which is ex-facie initiated with an ulterior motive for wrecking vengeance, would defeat the

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ends of justice.

7. Per contra, Mrs. Tendulkar, learned APP for the State, submitted that, the statement of Mrs. Soni, one of the witnesses examined by the IO, lends support to the claim of the first informant. Moreover, in her statement recorded under Section 164 of the Code, before the learned Magistrate, the first informant has reiterated the allegations against the Applicant. Therefore, the veracity of the allegations must be left to be determined at the trial, though no other eye witness has supported the version of the first informant (R2).

8. Mr. Choudhary, learned Counsel for Respondent No.2, supplemented the submissions of Mrs. Tendulkar. It was submitted that, what the Applicant wants this Court to do is, to evaluate the veracity of the statements of the majority of the witnesses, who have not supported the first informant, and the sole witness, who has supported the first informant's version. At this stage, the said exercise is legally impermissible, submitted Mr. Choudhary. Since in her examination under Section 164 of the Code, before the learned Magistrate, the first informant (R2) has stood by her allegations, the issue must await adjudication at the trial. Therefore, the application does not deserve countenance, at this stage.

9. At the outset, it is necessary to note that there is not much controversy over the circumstances in which the offence was allegedly committed by the applicant. The first informant was allegedly enraged on account of the

conduct of the office bearers of the political party including the applicant. The presence of the applicant, Respondent No.2 and other office bearers, including Mrs. Khanvilkar, at the time and place of the occurrence, appears rather incontestable. At the heart of the matter is the events which allegedly unfolded after the meeting of the political party was over. What the first informant reported at the first instance, assumes critical salience.

10. On 12 March 2024, under two hours of the alleged occurrence, the first informant approached Kasturba Marg Police Station and reported that, while the first informant was relating grievance to Mrs. Khanvilkar, the Applicant approached her; manhandled and assaulted her and threatened her with dire consequences.

11. Evidently, the first informant did not report about the assault or use of criminal force by the applicant with intention or knowledge of outraging her modesty. It was not reported that the Applicant had pushed the first informant back by touching her chest. Thus, the Police recorded NC report for the offences punishable under Sections 506 and 323 of the Penal Code. The omission to make the allegations in relation to outraging the modesty of the first informant on the day of occurrence, especially when the matter was reported to the Police under two hours thereof, cannot be said to be inconsequential or immaterial. The act attributed to the applicant in the FIR was such a notorious fact that the first informant could not have missed to

state the same at the first possible opportunity. The omission to make the allegations of outraging the modesty in the report lodged immediately after the occurrence, renders the subsequent act by lodging report susceptible to attack on the ground that those allegations were creature of after-thought and malafide.

12. The registration of NC report for the offences punishable under Sections 506 and 323 of the Penal Code, has legal implications. In view of the provisions contained in Section 155(2) of the Code, 1973, the IO cannot enter upon investigation without obtaining the permission from the jurisdictional Magistrate. The use of the word 'shall' in sub-section (2) of Section 155 emphasises the negative import that the police officer shall not investigate the non-cognizable case without obtaining orders from the Magistrate having power to try such case.

13. A profitable reference in this context can be made to a Division Bench judgment of this Court in the case of **Shoeb Arif Memon and Ors. V/s. The State of Maharashtra and Anr.**², wherein in somewhat identical fact-situation, wherein initially non-cognizable case was registered for the offences punishable under Sections 323, 504, 506 of the Penal Code, and, after 28 days, the first informant alleged commission of the offence punishable under Section 354 also, the Division Bench of this Court was persuaded to quash

² 2021 ALL MR (Cri) 1864

the proceedings opining that the mandate contained in Section 155(2) of the Code, 1973, was not adhered to. The observations of the Division Bench in paragraph Nos.12 to 14 are material and, hence, extracted below :

“12. We find it difficult to accept the said submission for the reason that any reasonable person, in the position of the husband of respondent No.2 or respondent No.2 herself, would have given details of the alleged actions of the applicants in the incident that occurred on 13th August, 2020 when such person approached the police for the first time to raise a grievance. Not having done so and then approaching the police after 28 days to allege that the applicant had committed offences punishable under Sections 354, 509, 323, 504, 506 read with Section 34 of the IPC demonstrates that respondent No.2 was seeking to give a different colour to the very same incident.

13. It is significant that there is indeed a grudge between the parties for the reason that the applicants have been alleging that husband of respondent No.2, their former employee, had indulged in some misappropriation for which they had sought to confront him. In this backdrop, it becomes clear that the manner in which respondent No.2 chose to approach the police after about 28 days of the incident, when already cross complaints pertaining to non-cognizable offences had been registered by the applicants and her husband against each other, we are of the opinion that there is substance in the contentions raised on behalf of the applicants.

14. Section 155 (2) of the Cr.P.C. provides that a police officer can investigate a non-cognizable case only upon an

order of Magistrate having power to try such a case or commit such a case for trial, thereby indicating that in absence of such an order, the police officer could not have initiated investigation. In a present case, the said mandate does not appear to have been followed.”

14. In the case of **Asif Khan Pathan (supra)**, on which reliance was placed by Mr. Rathod, another Division Bench, again in somewhat similar fact-situation, enunciated the law as under :

39. In **Tulsidas Gopal Naik vs. State of Goa**³, this Court while dealing with a similar contention and on considering provisions of Section 155 of Cr.P.C., observed in paras 25 and 29 which reads thus :-

“25. Perusal of the above provision clearly goes to show that when the officer in-charge of a police station considers any complaint as non-cognizable and enters or cause to be entered the substance of information in a book to be kept by such officer in such form as the State Government may prescribe and refer the informant to the Magistrate, he is not entitled to investigate into such matter without the order of a Magistrate.

29. It is not an empty formality but certain rights accrue in favour of the said party against whom complaint or allegations are made. The word “shall” used in Sub-section (2) of Section 155 of Cr.P.C. clearly shows the intention of the Legislature and mandate that the police officer shall not investigate a non-cognizable case without orders of the Magistrate having power to try such case. Therefore, once an opinion is formed in writing and conveyed to the informant that

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his case is non-cognizable case, the in-charge of the police station is certainly precluded from carrying out any further investigation in such non-cognizable case/complaint without the order of the jurisdictional Magistrate. There is a specific purpose for which Sub-section (2) of Section 155 is introduced. Such purpose cannot be taken away only by saying that the officer incharge did not record substance of information of non-cognizable case in the book maintained in the police station."

40. In *Tulsidas Gopal Naik (supra)*, it was contended that initially the Police registered a non-cognizable case on receiving the information and directed the informant to approach the Magistrate, but due to some pressure on the police officer from higher authorities, he registered it as a cognizable offence. The facts in the matter in hand are quite similar. The wife of Respondent No.3 went to the Police Station on the day of incident itself and lodged her complaint, which is already reproduced in para 26. This information was considered as non-cognizable case and the informant was advised to approach the proper Court of law under Section 155 of Cr.P.C. On the next date, i.e. on 20.03.2023, Respondent No.3 filed another complaint in connection with the same incident and by giving some additional information, which Police considered as containing ingredients for registration of cognizable offence.

41. At this stage, it is necessary to note that Respondent No.3 went to the Police Station on the next day even though he very well knew that his wife lodged the complaint on the previous day and that it was registered as a non-cognizable case. The question remains as to whether the wife of Respondent No.3 failed to disclose all the facts to the Police and/or on the other side, the Police failed to record all the facts disclosed by the

wife of Respondent No.3 while registering NC complaint. On both counts, the law provides a specific procedure. If the informant was not satisfied with the recording of her complaint by the Police, which is not at all the case put forth in this matter except claiming orally while arguing the matter, the said informant failed to approach the Superintendent of Police under Section 154(3) of Cr.P.C. The only inference is that whatever was disclosed by the wife of Respondent No.3 on 19.03.2023 and considered as non-cognizable case was properly recorded by the Police. The said informant on showing dissatisfaction on recording the information correctly by the Police, ought to have approached the Superintendent of Police with all the details. No such procedure was adopted. Thus, it shows that the Police recorded the information correctly as disclosed by the informant on 19.03.2023, as non-cognizable case.

42. Secondly, when the Police on the next day i.e. on 20.03.2023, received some additional information about the same incident which was provided to them by Respondent No.3, were very well aware that NC complaint is registered in connection with the same incident and thus, was duty-bound to approach the concerned Magistrate under Section 155(2) of Cr.P.C. for permission to investigate. There was no impediment on the investigating agency to approach the concerned Magistrate.”

15. The aforesaid pronouncements appear to be on all four with the facts of the case at hand. In the light of the registration of a non-cognizable case on the day of occurrence for the offences punishable under Sections 323 and 506 of the Penal Code, if at all the Investigating Officer intended to proceed

with the investigation, on the basis of the further/supplementary statement of the first informant recorded on 13 March 2024, it was incumbent upon the IO to obtain permission of the jurisdictional Magistrate under Section 155(2) of the Code, 1973. Neither the said course was followed, nor was it a case of the first informant (R2) that on 12 March 2024, she had narrated the incident of outraging her modesty as well, and, yet, the Police did not record the same, and, therefore, she had approached the superior police officer.

16. The endeavour of the learned APP and the learned Counsel for Respondent No.2 to salvage the position by canvassing a submission that, at this stage, the veracity of the statements of the witnesses cannot be decided, especially when the first informant has stood by her allegations in her statement recorded under Section 164 of the Code, now warrants consideration.

17. First and foremost, it is pertinent to note that, pursuant to the statement of the first informant recorded on 13 March 2024, a crime has been registered for the offence punishable under Section 354 only. An indictment of outraging the modesty of the first informant was, thus, sought to be made. Before appreciating as to whether the prosecution was actuated by malice or with a view to wreck vengeance, it may be apposite to keep in view the essential ingredients of the offence punishable under Section 354 of the Penal Code.

18. From the text of Section 354, it becomes abundantly clear that the

linchpin of the offence is, assault or use of criminal force to any woman with intent to outrage the modesty or knowledge that by the said act, the modesty of the woman would be outraged. Evidently, the intention is not the sole element of *mens rea*. Knowledge that modesty is likely to be outraged is sufficient to constitute the offence, sans intention to outrage the modesty.

19. A profitable reference in this context can be made to a three Judge Bench Judgment of the Supreme Court in the case of **State of Punjab v/s. Major Singh**⁴, wherein the majority enunciated the ingredients of the offence punishable under Section 354 of IPC, as under :

“15. Section 10 of the Indian Penal Code explains that "woman" denotes a female human being of any age. The expression "woman" is used in s. 354 in conformity with this explanation, see s. 7. The offence punishable under s. 354 is an assault on or use of criminal force to a woman with the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define "modesty". What then is a woman's modesty ?

16. I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman Possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under s. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not

4 AIR 1967 SC 63

always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section.” (emphasis supplied)

20. In the case of **Vidyadharan V/s. State of Kerala**⁵, after following the aforesaid pronouncement in the case of **State of Punjab V/s. Major Singh (supra)**, the ingredients of the offence punishable under section 354 were spelled out as under :

“9. In order to constitute the offence under Section 354 mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outraged alone for its object. There is no abstract conception of modesty that can apply to all cases. (See State of Punjab v. Major Singh (AIR 1967 SC 63). A careful approach has to be adopted by the Court while dealing with a case alleging outraged of modesty. The essential ingredients of the offence under Section 354 IPC are as under :

- (i) that the person assaulted must be a woman;
- (ii) that the accused must have used criminal force on her, and
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.”

(emphasis supplied)

21. On the aforesaid touchstone, reverting to the facts of the case, the

⁵ (2004) 1 SCC 215

entire setting of the matter deserves to be kept in mind. Evidently, the incident occurred in a hall where a number of workers of the political party had assembled. The first informant was allegedly discussing the issue of redevelopment of the buildings under SRA scheme and made an insinuation that few office bearers of the political party were instrumental in sabotaging the said redevelopment. The overt act attributed to the applicant was that of pushing the first informant back by touching her chest.

22. In a situation of the present nature, even if the version of the first informant is taken at par, ex-facie, it would be rather hazardous to draw an inference that the alleged act was accompanied with the intention or knowledge to outrage the modesty of the first informant.

23. Indeed, out of 59 witnesses whose statements have been recorded, 58 witnesses have not supported the first informant and have given a counter version. It is true, at this stage, the Court is not supposed to embark upon an exercise of testing the veracity of the witnesses, in the sense that the reliability of the statement of one witness is weighed against another witness. However, in the totality of the circumstances, if viewed in the context of omission to state the most notorious fact, when the report was lodged under two hours of the occurrence, the statements of more than 50 persons who were present at the time of the alleged occurrence, cannot be simply brushed aside. Even Mrs. Khanvilkar, with whom the first informant allegedly had

conversation, completely disowned the version of the first information. The statement made by the first informant under Section 164 of the Code before the learned Magistrate, therefore, cannot be placed on a higher pedestal.

24. Resultantly, the Court is persuaded to hold that the propositions (1) and (7) in para No.102 of the judgment in the case of **State of Haryana V/s. Ch. Bhajan Lal and Ors.**⁶ are attracted to the facts of the case at hand. The continuation of the prosecution would clearly amount to an abuse of the process of the Court. Hence, the Criminal Application deserves to be allowed.

25. Thus, the following order :

ORDER

- (i) Criminal Application stands allowed in terms of prayer clauses A1 and A2.
- (ii) No costs.

(N.J.JAMADAR, J.)

⁶ (1992) Supp(1) SCC 102335