

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1701 OF 2024

1. VIVEK SHERBAHADUR SINGH
2. SANJAY SHERBAHADUR SINGH ..APPLICANTS

VS.

THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

Mr. P. D. Kavale for the Applicants.

Ms. P. N. Dabholkar, APP for Respondent No.1 – State.

**CORAM : RAVINDRA V. GHUGE &
RAJESH S. PATIL, JJ.**

DATE : 20th JANUARY 2025.

JUDGMENT (PER RAJESH S. PATIL, J.) :-

1. This Application is filed under Section 482 of the Code of Criminal Procedure, 1973, by the Applicants (original accused) seeking quashing of First Information Report (F.I.R.) No. 14 of 2023 dated 9th January, 2023 registered at Mahatma Phule Chowk Police Station, Kalyan, at the behest of Respondent No.2, for the offence punishable under Sections 376-B, 354-A, 354-D, 509, 323, 504, 506 read with 34 of the Indian Penal Code.

2. It is the case of the prosecution in the subject F.I.R., that Respondent No.2/ Complainant had pursued her 11th and 12th standard education from Wamanrao College, Mulund, Mumbai. While studying in junior college, she had joined private tuition classes known as “Wakankar Classes”. In the said classes Applicant No.1 herein/Accused no.1 was a teaching faculty for Physics. After being in contact with the Complainant, the Applicant No.1 started chatting with her on Whats App and soon on 2nd June 2017 sent her a proposal message, to which the Complainant refused. In spite of such refusal of the Complainant, the Applicant No.1 kept on sending her flirtatious messages and used to stalk her. Frustrated, with the acts of Applicant no.1, the Complainant’s mother registered F.I.R. under Sections 354, 354-D of the I.P.C. read with Section 8 and 12 of the POCSO (for convenience referred as “*the first FIR*”). It is further case of the prosecution that in the year 2018, Applicant No.1 requested the Complainant to withdraw the case filed against him. However during the pendency of the POCSO case, on 21st August, 2018 the Complainant and Applicant No.1 got married, against the wishes of the parents of the Complainant. After marriage the complainant started residing with Applicant No.1’s family.

3. It is the case of the prosecution that after one week of the marriage, Applicant No.1 started pressurising the Complainant to withdraw the POCSO case and also started doubting her character. So also the Complainant's father-in-law, mother-in-law and brother-in-law were constantly pressurizing her to withdraw the POCSO case and started assaulted her. They also started demanding monies from her. As the physical and mental torture to the Complainant went unbearable, hence, on 16th March, 2019, the Complainant registered a F.I.R. against the Applicants and her in-laws under Section 498-A, 420, 406, 354, 323, 504, 506 read with 34 of the I.P.C. at Manpada Police Station, Dombivali (for convenience referred as "*the second FIR*"). Since then the Complainant started staying separately from her husband/Petitioner No.1.

4. On her father's insistence the complainant joined a law course in Vivekanand College. Thereafter, somewhere around June 2019, Applicant No.1 managed to contact the Complainant through social media platforms. He requested her to reside with him, to which the Complainant refused. However, on 7th December, 2019, the Applicant No.1 landed at the Complainant's college premises and under the pretext of his mother being unwell, requested the

Complainant to visit her matrimonial house. The Complainant was not ready to trust Applicant No.1 and did not wanted to accompany him. However, as the Applicant no.1 repeatedly insisted the Complainant, trusting him she eventually agreed to meet her mother-in-law. The Complainant specifically told the Applicant No.1 that after meeting her mother-in-law, she has to go back to her parents' home. Ultimately at around 15:00 hours, she accompanied the Applicant No.1 to her mother-in-law's at Dombivli. However, the Applicant No.1 took the Complainant to Korum Mall, at Thane and started talking about their matrimonial life and reconciling the disputes between them. The Applicant No.1 insisted upon having food at the Mall and thereafter they would be going to his house. The Applicant No.1 kept on delaying the process of going to his house, and as the complainant didn't return home the father of the Complainant lodged a Complaint at Navghar Police Station, Mulund.

5. From the Mall the Complainant, along with Applicant No.1, reached the matrimonial home at Dombivli at around 23.30 hours. The Applicant No.1 asked the Complainant to wait downstairs, on the pretext that he will first consult his mother whether wants to meet the complainant. After a while, the Applicant

No.1 returned back and informed the Complainant that his mother was not ready to meet her. Thereafter, Applicant No.1 told the Complainant that it was too late in night, hence they will stay at a lodge in Kalyan, and next morning she can go back to her parental house. The Complainant refused the idea of staying at the lodge, but as it was too late, hence she without realizing the intentions of Applicant No.1, accompanied him to a lodge in Kalyan on his motorcycle. At the lodge, the Applicant No.1 committed a forceful sexual intercourse with the Complainant. On 9th December, 2019, the Applicant No.1 told the Complainant that they will stay separately from his mother and would take rental accommodation so that they will have peaceful matrimonial life. Believing the Applicant No.1, the Complainant borrowed a sum of Rs.25,000/- from her mother and gave the said amount to Applicant No.1 to take rental accommodation. For next four days, Applicant No.1 pretended that he is searching for accommodation in Dombivali. However, on 15th December, 2019, he again took the Complainant to a guest house at Kalyan and again forcefully committed sexual intercourse without her consent. Even during this period, Applicant No.1 was pressurising the Complainant to withdraw the cases filed against him. When the Complainant refused to withdraw the cases,

Applicant No.1 assaulted her with his hands and told her that she should commit suicide. It is further alleged in the Complaint that during the relevant time, Applicant No.2(who is the brother-in-law of Complainant) had a telephonic communication with the Complainant, when he told her that if she has intention to stay with Applicant No.1, she must withdraw all the cases. Further he also demanded sexual favors, due to which the Complainant's modesty was outraged.

6. It is further alleged in the F.I.R. that Applicant No.1 again took her to a hotel "Stay Inn" and committed forceful sexual intercourse without her consent. And next day i.e., on 18th December, 2019, Applicant No.1 suddenly left the hotel. The Complainant tried to contact him but applicant No.1 was not receiving her calls, hence the Complainant called her mother-in-law. However the mother-in-law of the Complainant told her not to call her again and hence forth she should directly communicate with her husband. Being desperate the Complainant somehow again contacted the Applicant No.1 and during this conversation, her husband/Applicant No.1 told her that she had no connections with the matrimonial home and disconnected the phone.

7. Further somewhere around June 2022, Applicant No.1 again started contacting the Complainant and was trying to reconcile with her. The complainant had no trust left in the Applicant no.1, pursuant to earlier incidents, occurring again and again, therefore the complainant on 9th January 2023 lodged F.I.R. No.0014, registered with the Mahatma Phule Chowk Police Station, Kalyan. (for convenience referred as “*the third FIR*”). The applicant no.1 and 2, have filed the present criminal application under section 482 of Cr.P.C. seeking quashing the third FIR.

8. Further it is also pertinent to note that the Complainant in her statement recorded by police on 27th June, 2022 (enclosed to the Application at page no.163) has stated that after her marriage, when she visited her parental house in the month of January, 2019, to meet her parents, at that time her uncle, Upendra Kamlaprasad Dubey visited her parents home, and while her mother was in the kitchen, her uncle caught her hand and pulled her towards him and while uttering words he touched her chest. When the Complainant shouted for help, her mother came out of kitchen, and her mother started conversing with the Complainant’s uncle, as to why did he

acted in this manner. At that time complainant's father intervened, and both the Complainant's father and uncle physically assaulted the Complainant's mother. Next day she went back to her matrimonial house. However, since she was not properly treated by her husband and in laws, she in the month of February, 2019, came back to her parents' home, and in a very filthy language abused the Complainant. To which Complainant's mother objected and opposed the language used by the Complainant's uncle. He left their home after having narrated a false and fabricated story to the father of the Complainant. On instance of father, the Complainant joined law course in Vivekanand Law College, Chembur. Thereafter in the month of October 2019, while she was about to go to her college she asked for some money from her father. To her surprise, her father abused her and asked her for sexual favors. The Complainant was stunned with the words spoken by her father. The Complainant after overcoming her fears and gathering courage approached Police to file a separate Complaint against her own father and her uncle. The police have received the complaint and had lodged the F.I.R. against the father for offence committed under Section 354, 354 A, 323 and 504 of the Indian Penal Code. (for convenience referred as "*the fourth FIR*").

9. It is vehemently submitted on behalf of the Applicants that mere perusal of the subject F.I.R. and the Charge-sheet it appears that the complainant has a habit of making multiple frivolous complaints against the Applicant no 1 and his family members. The subject F.I.R. is also filed with the ulterior motive and with *mala fide* intention.

10. It is further submitted that the subject F.I.R. was filed after delay of more than 3 years and lacks reasonable explanation as to why there was gross delay in registering F.I.R. for the incidences which were alleged being committed on 8th December 2019 to 18th December 2019. The allegations in the F.I.R. and the statements of witnesses appears that the Applicant no.1 and the complainant stayed in various Hotels being husband and wife and whatever relations is claimed by the complainant seems to have been allegedly done with the consent of both being husband and wife and therefore the allegations under section 376B of IPC is nothing but farce created by the complainant. Thus, F.I.R. raises questions about veracity of the allegations. There is no plausible explanation for delay of 3 years in registering the F.I.R.. So also multiple F.I.R's. are

filed by the complainant wife is an abuse of process of law. Thus, F.I.R. filed with such *mala fide* intention just to harass Applicants should be quashed.

11. *Per contra*, the learned A.P.P. strongly opposed the Criminal Application and submitted that the perusal of the entire F.I.R. and charge-sheet would show that there is ample evidence against both the Applicants, to convict them under the offence under Sections 376 B, 354 A, 354 D, 509, 323, 504, 506 read with 34 of the Indian Penal Code. It is further submitted that once Charge-Sheet is filed this court should not entertain the present Criminal Application. The Statement recorded of witnesses and the fact that it has come on record that the Applicant, further proves that the Applicant persons needs to face trial and the F.I.R. can't be quashed at this stage.

12. We have heard the learned counsel for the parties and with, their assistance, we have perused the documents on record.

13. For quashing criminal proceedings under Section 482 of Criminal Procedure Code, we have to see whether the allegations

in the complaint and F.I.R. *prima facie* indicate that there are serious allegations against the Applicants of having committed an offence.

14. The Supreme Court has held in (i) *State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors.*, AIR 1992 SC 604, (ii) *Rajeev Kourav vs. Baisahab & others*, (2020) 3 SCC 317 and (iii) *Kaptan Singh vs. State of Uttar Pradesh and others*, (2021) 9 SCC 35, that exercise of powers under section 482 CrPC to quash the proceedings is an exception and not a rule. Appreciation of evidence is not permissible at the stage of quashing of proceedings is exercise of powers under Section 482 CrPC.

15. In the recent judgment of *CBI vs. Aryan Singh*, reported in AIR 2023 SC 1987, the Supreme Court has held that while examining the power under Section 482, the High Court should not conduct a mini trial. Similarly in the judgment of *State of Odisha vs. Pratima Mohanty and others*, reported in (2022) 16 SCC 703, the Supreme Court has held that once the charge-sheet is filed, the High Court should be reluctant to quash the complaint. Paragraph no.8.2 of the judgment reads as under :

8.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an F.I.R./complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the F.I.R./complaint. Quashing of a complaint/F.I.R. should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under section 482 CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under section 482 CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this court the powers under section 482 CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts all onerous and more diligent duty on the Court.

[Emphasis supplied]

16. In the present proceedings, the charge-sheet has already been filed in February, 2023, and the police have recorded the statement of witnesses, copies of which are enclosed with the charge-sheet and forms part of the records of the present proceedings.

17. So far as the delay in lodging F.I.R. is concern, the delay in a case of sexual assault to a married woman cannot be equated with the case invoking other offences. In the present

proceedings complainant's life appears to be in turmoil, that is what one can gather from the F.I.Rs. and statements recorded which are part of police records. Several factors must have come in her mind, before approaching the Police, the conduct of her husband, his family members, and above all the unexpected demeanor of her own father and her Uncle. Hence in our view it will be failure of justice if the proceedings are quashed at this stage.

18. The mother of the Complainant had lodged Complaint against the Complainant's husband, pursuant to which police lodged the F.I.R. under Sections 354, 354-D of the Indian Penal Code read with Section 8 and 12 of the POCSO. However, from record it appears that due to prosecution witness not being ready to give evidence, the Applicant No.1 was acquitted. According to us this fact will not be enough to quash the present FIR.

19. After considering the contents of F.I.R. and the various documents on record attached to the F.I.R., and the Charge-sheet, we are satisfied that it constitutes the ingredients of the offences alleged. Taking into account the law as laid down by the Supreme Court in the judgments referred above, we find that there is no merit

in the present Criminal Application and the same deserves to be dismissed. Hence, the following order :-

ORDER

- (i) **The Criminal Application stands dismissed.**
- (ii) Needless to state, any observations made herein are only for the purposes of deciding the Criminal Application only and would have no bearing on the final adjudication of the proceedings.

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)