



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.311 OF 2023

- 1) Yadav s/o Bapurao Shrikhande,
Aged about 54 years, Occu.-Private,
R/o Post Makardhokda, Umrer Rural,
Nagpur.
- 2) Dipak s/o Dadarao Gajbhiye,
Aged about 54 years, Occ.- Private,
R/o House No.903, Ward No.5,
Near Vitthal Rukhmini Mandir,
Makardhokda, Umrer Rural, Nagpur.

.... APPLICANTS

VERSUS

- 1) State of Maharashtra,
through Police Station Officer,
Police Station, Umrer, District Nagpur.
- 2) XYZ in Crime No.214/2022,
P.S.O. Umrer, Nagpur.

.... NON-APPLICANTS

Mr. R.R. Prajapati, Counsel for the applicants,
Mr. M.K. Pathan, Addl. P.P for non-applicant No.1,
Mr. N.P. Meshram, Counsel for non-applicant No.2.

CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.

DATE OF RESERVING THE JUDGMENT : 02-12-2025

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 28-02-2025

JUDGMENT : (Per : ABHAY J. MANTRI, J.)

Heard. **Admit.** Heard finally, with the consent of the learned
Counsel for the respective parties.

2. The applicants seek to quash the First Information Report (for short, "*FIR*") dated 25-03-2022 bearing Crime No.214/2022 registered with Umrer Police Station, District Nagpur, for the offences punishable under Sections 376(2)(n), 354 and 506 read with Section 34 of the Indian Penal Code (for short, "*IPC*") against the applicants and consequently filing of the charge-sheet and Sessions Case No.633/2022, pending on the file of the learned Additional Sessions Judge, Nagpur.

3. **FACTUAL MATRIX :**

(a) Non-applicant No.2/victim is a widow of 40 years of age, who lodged a complaint against the applicants and one Bablu Wankhede, alleging that applicant No.1-Yadav Shrikhande has repeatedly committed rape on her and applicant No.2 outraged her modesty by touching her breast.

(b) Non-applicant no.2 alleged that in December 2020, she proceeded to Wagholi to see her plot. On the way, she met with applicant No.1, who told her that he was going to the same area so that he could drop her at the place of her plot. Accordingly, she accompanied him on his motorcycle towards the place of her plot. Then, they stayed there for some time. Non-applicant No.2 took her meal. Applicant No.1 was with her, and they were chitchatting.

(c) After some time, applicant No.1 mixed something in her water bottle, and after consuming it, she became unconscious. After

getting consciousness, she noticed that her undergarments had been removed, and her petticoat was found loose. Applicant No.1 stated to her that he had taken the video shooting of her and threatened to viral it. Under the pretext of threat, he repeatedly committed sexual intercourse with her. Thereafter he was regularly visiting her house, and under the false promise of marriage, he, intending to seduce non-applicant No.2, indulged in a sexual act; such an act would amount to rape. After that, he avoided meeting her, so non-applicant No.2 did his search at his house and farm, but he was not found there.

(d) Applicant No.2 was at the farm, so she enquired with him about Applicant No.1. He replied that he did not know the whereabouts of Applicant No.1. Then, Applicant No.2 made a phone call to Applicant No.1. Applicant No.1 asked him to allow her to stay for a night at his house. After dinner, when she went to sleep, applicant No.2, with sexual intention, repeatedly touched her breast. From 02-01-2022 onwards, applicant No.1 did not answer the call of non-applicant No.2. Therefore, she lodged a report against the applicants and one Bablu.

(e) Based on the said report, an offence punishable under Sections 376(2)(n), 354 and 506 read with Section 34 of the IPC was registered, and an investigation was carried out.

4. The applicants, aggrieved by the filing of the report and charge sheet, approached this Court under Section 482 of the Criminal Procedure Code (for short, "*Code*").

5. On 19-09-2024, after hearing the parties, this Court stayed the proceedings pending before the Trial Court.

6. Mr. R.R. Prajapati, learned Counsel for the applicants, vehemently contended that the applicants had not committed any offence as alleged by non-applicant No.2, but she had lodged the false and bogus report against them to take revenge against them. The report was lodged belatedly. According to her, since December 2020, she has been in relation with applicant No.1, so he submitted that no ingredients of Section 376(2)(n) of the IPC are made out against the applicants. Hence, he urges to allow the application.

7. *Per contra*, Mr. M.K. Pathan, learned Additional Public Prosecutor for non-applicant No.1 and Mr. N.P. Meshram learned Counsel for non-applicant No.2, strenuously opposed the application and submitted that considering the nature of allegations and material on record, it would be proper for the applicants to first apply for discharge before the Trial Court instead of invoking the inherent powers of this Court. They further canvassed that a bare perusal of the FIR and charge sheet shows that there is a strong *prima facie* case made out against the applicants. In the report and statement of non-applicant No.2, she categorically stated that applicant No.1 has repeatedly committed forcible sexual intercourse with her from December 2020 to 09-11-2021. Lastly, they argued that in view

of the mandate laid down in the *State of Haryana and others v. Ch. Bhajan Lal and others*, AIR 1992 SC 604, the applicants failed to make out *prima facie* case to invoke the inherent powers of this Court. Hence, they pray for the rejection of the application.

8. We have appreciated the rival contentions of the learned Counsel for the respective parties, perused the FIR and entire charge sheet, and also gone through the law laid down in the case of *Bhajan Lal* (supra).

9. A bare perusal of the FIR and the supplementary statement of non-applicant No.2 *prima facie*, it appears that she made specific allegations against applicant No.1 that in December 2020, he mixed something in her water and thereafter, she became unconscious and, after getting consciousness, she found that her undergarments were removed. Petticoat was found loose, and applicant No.1 had also taken a video shooting of her. Under the pretext of a viral video, applicant No.1 repeatedly established a physical relationship with her. She further categorically stated that applicant No.1, against her will, forcibly committed sexual intercourse with her under a misconception of the fact that he is unmarried.

10. It prima facie reveals that the Medical Officer, after examining non-applicant No.2, opined that “*evidence of sexual intercourse/assault cannot be ruled out.*”.

11. However, non-applicant No.2 had not made any allegation against applicant No.2 about the committal of sexual intercourse with her but only alleged that he tried to touch her breast when she stayed at his house on the farm.

12. In ***Bhajan Lal*** (supra), the Hon'ble Apex Court has laid down the guidelines to be adhered to while exercising the inherent powers under Section 482 of the Code, which read thus :

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence nor make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific

provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) 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.”

13. Considering the above mandate, we have to ascertain whether the applicants have made a prima facie case to invoke inherent powers under Section 482 of the Code.

14. Similarly, it is a settled position of law that it is not necessary for the complainant to reproduce all the ingredients of the offence she alleges in the body of her complaint. If the required factual foundation of the offence has been made in the complaint, merely on the ground that few ingredients have not been stated in detail, proceedings should not be quashed. Likewise, while exercising powers under Section 482 of the Code, the Court does not function as a court of appeal or revision. Inherent jurisdiction under this section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by tests specifically laid down in the section itself. In the exercise of power, the court would be justified to quash any proceedings if it finds that initiation/continuation of it amounts to abuse of process of law or quashing of the proceedings or otherwise would secure the ends of justice; appreciation of evidence is not permissible.

15. The main ingredient to constitute the offence under Section 376 (2)(n) of the IPC is that a man is said to commit rape if he commits sexual intercourse with a woman against her will. As per Explanation-II of Section 375, 'consent means an unequivocal voluntary agreement when a woman by words, gestures or any form of verbal or non-verbal communication communicates a willingness to participate in the sexual act; provided that a woman who does not physically resist the act of penetration shall not by using only of that fact, be regarded as consenting to the sexual activity.

16. It must be noted that vague allegations are levelled against applicant No.2 in the FIR being the farm labourer of applicant No.1, which amount to absurd and improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against him. The general and omnibus allegations cannot manifest in such a situation. In such an eventuality, the possibility of implicating applicant No.2 by non-applicant No.2 cannot be ruled out.

17. Based on the principles/guidelines in ***Bhajan Lal's*** case (supra), this Court, to be adhered to while exercising its inherent power under Section 482 of the Code to quash the FIR lodged against applicant No.2-Deepak, with regard to the facts, we find that his case would fall in the category of guidelines nos. (1),(3) & (5)-

“(i) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused;

(iii) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(v) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused”

18. Having regard to the mandate laid down in ***Bhajan Lal's*** case (supra) and the ingredients of Sections 375 and 376 of the IPC, prima facie, it does not appear that applicant No.1 has made out the case to invoke the inherent jurisdiction of this Court under Section 482 of the Code. As against, the material produced on record *prima facie* indicates that ingredients of Section 376(2)(n) of the IPC have been made out against applicant No.1. However, no material brought on record to *prima facie* shows that applicant No.2 has outraged the modesty of non-applicant No.2 except mere allegations made in the complaint. As held by the Hon'ble Apex Court in ***Bhajan Lal's*** case (supra), where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against applicant No.2.

19. Thus, it reveals that the allegations in the complaint, as well as the statement of witnesses' *prima facie*, do not disclose the allegation against applicant No.2 that he outraged her modesty by touching her breast since it appears absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against him. Therefore, as per guideline No. (7) in ***Bhajan Lal's*** case (*supra*), it would not be proper to draw the conclusion that the allegations made in the FIR are sufficient to proceed against applicant No.2.

20. As a result, in our opinion, applicant No.2 emphatically made out the case to invoke our inherent powers under Section 482 of the Code to quash the FIR and proceedings pending against him to meet the ends of justice. In such circumstances, it would not be proper to drag applicant No.2 to face the prosecution, and it would be an abuse of process of law in view of the vague allegations made against him in the FIR. However, we do not find any peculiar circumstance compelling us to exercise the inherent power under Section 482 of the Code to terminate the proceedings against applicant No.1. Thus, *prima facie*; he failed to make out the case to quash the proceedings against him in relation to Section 376(2)(n) of the IPC.

21. In view of the above discussion and mandate of the Hon'ble Apex Court, we find that continuation of the criminal proceedings before the trial Court against applicant No.2 would result in an abuse of the process of law and would not serve the ends of justice. Therefore, by exercising powers under Section 482 of the Code, we pass the following order:

- (i) The application is partly allowed to the extent of applicant No.2 and dismissed against applicant No.1.
- (ii) We hereby quash and set aside the FIR dated 25-03-2022 bearing Crime No.214/2022 registered with Umrer Police Station, District Nagpur, for the offence punishable under Sections 376(2)(n), 354 and 506 read with Section 34 of the IPC against applicant No.2 and consequently filing of the charge-sheet and initiation of the Sessions Case No.633/2022, pending on the file of the learned Additional Sessions Judge, Nagpur against applicant No.2.
- (iii) Inform the learned Additional Sessions Judge accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)