



Judgment

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

CRIMINAL APPLICATION [APL] NOS. 133 & 332 OF 2024.

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CRIMINAL APPLICATION [APL] NO. 332 OF 2024.

Shri Sunay s/o Wamanrao Pittalwar,
Aged 51 years, Occupation – Service,
resident of 119, Chitrkut Apartment,
Near Corporation School,
Ramnagar, Ambazari, Nagpur.

... APPLICANT.

VERSUS

1.The State of Maharashtra,
through the Police Inspector,
Ambazari Police Station, Nagpur.

2.Gunjan d/o Dharamvir Khatri,
resident of Flat No.102, 119, Chitrkut
Apartment, Near Corporation School,
Ramnagar, Ambazari, Nagpur.

... NON-APPLICANTS.

Mr. N.S. Khubalkar, Advocate for the Applicant.
Ms S. Thakur, A.P.P. for Non-applicant No.1.
Mr. R.D. Dharmadhikari, Advocate for Non-applicant No.2.

With

CRIMINAL APPLICATION [APL] NO. 133 OF 2024.

Raja Rebatiraman Sinha,
Aged 27 years, Occupation - Law
Student, resident of 119, Chitrkut
Apartment, Near Corporation School,
Ramnagar, Nagpur.

... APPLICANT.

VERSUS

1.The State of Maharashtra,
through Police Station Ambazari,
Nagpur.

2.Gunjan Dharamvir Khatri,
Aged 38 years, resident of 119, Chitrkut
Apartment, Near Corporation School,
Ramnagar, Nagpur.

... NON-APPLICANTS.

Mr. M.N. Ali, Advocate for the Applicant.
Ms S. Thakur, A.P.P. for Non-applicant No.1.
Mr. R.D. Dharmadhikari, Advocate for Non-applicant No.2.

CORAM : ANIL S. KILOR AND
VRUSHALI V. JOSHI, JJ.

DATE : JULY 01, 2025.

ORAL JUDGMENT (PER ANIL S. KILOR, J.) :

Heard. Rule. Rule is made returnable forthwith and by consent of learned Counsel appearing for the parties, the matters are taken up for final disposal.

2. By these two applications filed under Section 482 of the Code of Criminal Procedure, the applicants pray for quashing and setting aside of Crime No.6/2024 registered with Ambazari Police Station, Nagpur for the offence punishable under Sections 294, 354, 323 and 427 of the Indian Penal Code.

3. In the first information report in question, the informant has referred to two different incidences, one dated 10.11.2023 and another dated 02.01.2024.

4. Criminal Application No.133/2024 is related with incident dated 10.11.2023, and Criminal Application No.332/2024 is related with incident dated 02.01.2024.

5. Since in both the matters, the challenge is raised to the one and same first information report, though two different incidences are there, both the matters are heard and decided together by this common judgment.

6. As far as the incident dated 10.11.2023 is concerned, it took place in a meeting called by the Society members to discuss the issue relating to maintenance of building, in which the applicant and informant are residing.

7. The allegations against the applicant in Criminal Application No.133/2024 are that he abused the informant in presence of other members of the Society, and also assaulted her with fists and blows and commented on her divorce. Admittedly, there is delay of about 2 months in lodging the first information report, which was explained by the informant by stating that since there was Diwali festival, she did not made complaint to the police.

8. Having gone through the case diary and considering the investigation made by the Investigating Officer, so far it is evident

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that though in the first information report there is mention that one Sheela Mahapatra, Anju Tondgaonkar and Pittalwar Aunty were present in the meeting and they witnessed the incident, not a single witness came forward and gave statement in support of the prosecution case.

9. The another incident dated 02.01.2024 relates to the applicant in Criminal Application No.332/2024. The incident there took place at about 10.45 p.m. and it was alleged that the applicant abused her in filthy language and thereby outraged her modesty.

10. The place of incident is corridor of the flat scheme and the offence registered against the applicant is under Sections 294,354, 323 and 427 of the Indian Penal Code.

11. Having gone through the investigation made so far there is no supporting evidence as regards Section 323 of the Indian Penal Code.

12. As regards Section 294, it is evident that the incident

took place in the corridor of the society in the night at 10.45 p.m. In the said backdrop if the language of Section 294 is considered, it says that “*who so ever to the annoyance of others does any obscene act in any public place, or sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.*”

13. Thus, there are two requirements to constitute an offence under Section 294 of the Code – [1] the offender has done any obscene act in any public place or had recited or uttered any obscene song, ballad or words, in or near any public place, and [2] has so caused annoyance to others.

14. Admittedly the place of incidence cannot be said to be a public place, but, at the most it can be said near public place. However, there is not a single witness to the incident. Thus, considering intention of the legislature which can be gathered from the words used “public place”, we are of the opinion that no offence

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as alleged under Section 294 of the Indian Penal Code attracts in the present case against the applicant in Criminal Application No.332/2024.

15. It appears from the first information report that there is dispute in the society where the informant is residing, and there are differences in between the other residents of the said society and the informant, and out of such differences and dispute, the first information report came to be lodged by the informant.

16. In the circumstances, admittedly there is delay in lodging the first information report, as far as the first incident is concerned. The explanation given for such delay is improbable, for the reason that she could have lodged the report immediately even after Diwali festival.

17. As far as second incident is concerned, as we have already observed that no offence under Sections 294 and 323 of the Indian Penal Code attract and further Section 354 is non-cognizable, we are of the opinion that applicants cannot be forced and compel in this

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matter to face trial.

18. Accordingly Criminal Applications are allowed. The first information report bearing Crime No.6/2024 registered with Ambazari Police Station, Nagpur for the offence punishable under Sections 294, 354, 323 and 427 of the Indian Penal Code is hereby quashed and set aside.

19. Rule is made absolute in aforesaid terms.

JUDGE

JUDGE