



Judgment

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

CRIMINAL APPLICATION (APL) NO.534 OF 2018

1. Varsha Govind Kankal,
aged about 36 years, occupation: lawyer,
r/o ward No.10, Sindhkhedraja,
district Buldana. **Applicant.**

:: V E R S U S ::

1. State of Maharashtra,
through PSO Deulgaonraja, district
Buldana.

2. Archana w/o Pradip Ghewande,
aged about 43, years, occupation: lawyer,
r/o Aadarsha Colony, Deulgaonraja,
taluka Deulgaonraja, district Buldana. **Non-applicants.**

**Shri M.V.Rai, Counsel for Applicant.
Shri N.H.Joshi, Addl.PP for the State
Shri S.V.Sirpurkar, Counsel for NA No.2.**

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

**CLOSED ON : 26/11/2025
PRONOUNCED ON : 05/12/2025**

JUDGMENT (Per : Urmila Joshi-Phalke)

1. The present application is preferred by the
applicant for quashing of the FIR in connection with Crime

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No.181/2017 for offences under Sections 294, 323, 504, and 506 of the IPC and subsequent proceeding arising out of the same bearing chargesheet No.272/2017.

2. The applicant is arrayed as accused on the basis of report lodged by Advocate Archana Ghewande on allegation that 27.6.2017 the applicant approached her and had altercations of words in abusive language and assaulted her by slaps and fists and also threatened her. On the basis of the said report, the police registered the crime under Sections 294, 323, 504, and 506 of the IPC.

3. It is contended by the applicant that she is arraigned as accused in the said crime, merely because she has lodged report against the informant and her husband alleging that the husband of the informant has subjected her for forceful sexual assault and threatened her and to give a counterblast to the said complaint, this false FIR is lodged against her. She contended that the statements of

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the witnesses nowhere disclose any *prima facie* material against her. In view of that, the application deserves to be allowed and the FIR against her deserves to be quashed.

4. Heard learned counsel Shri M.V.Rai for the applicant, learned Additional Public Prosecutor Shri N.H.Joshi for the State, and learned counsel Shri S.V.Sirpurkar for non-applicant No.2.

5. Learned counsel for the applicant invited our attention towards various statements of witnesses and submitted that considering statements of witnesses, no *prima facie* case is made out against the applicant. Merely because she has prosecuted the informant and her husband in cross complaint as well as in another complaint, this false FIR is lodged. He also invited our attention towards recital of the FIR and submitted that mere abusive and humiliating or defamatory words by itself cannot attract an offence 294(b) of the IPC.

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6. *Per contra*, learned Additional Public Prosecutor for the State submitted that cross complaints are filed against each other. In both cases, prima facie material discloses involvement of the applicant in the alleged incident and, therefore, the application deserves to be rejected.

7. After hearing both the sides and perusing recital of the entire FIR and investigation papers, it shows that allegations against the applicant are that the applicant has abused the informant in a filthy and abusive language and thereby committed an offence under Sections 294, 323, 504, and 506 of the IPC.

8. The law relating to quashing of FIRs was explained by the Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors**, reported in **1992 Supplementary (1) SCC 335** wherein principles have been laid down which are required to be

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considered while considering applications for quashing of the FIRs, which read as under:

“(a) 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;

(b) 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;

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(c) 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;

(d) 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;

(e) 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

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there is sufficient ground for proceeding against the accused;

(f) 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;

(g) 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”.

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9. In the light of the said settled principles, if the facts of the present case are taken into consideration, the informant as well as the applicant both are Advocates by profession. The informant as well as the applicant made contrary allegations against each other. The applicant has also lodged FIR regarding the said incident vide Crime No.180/2017 alleging outraging of modesty and criminal intimidation against the informant and her husband.

10. Perusal of statements of witnesses shows that though both FIRs are lodged arising out of the same incident, the investigating officer has recorded statements of different witnesses. The statements of the witnesses even if are perused and accepted as it is, it only discloses as to the abuses.

11. Now, it is settled law that mere abusive and humiliating or deformity words by itself cannot attract an offence under Section 294(b) of the IPC.

12. Section 294 of the IPC talks about obscene acts and songs. The said Section is reproduced as under for reference:

294. Obscene acts and songs.-

Whoever, to the annoyance of others –

(a) does any obscene act in any public place,
or

(b) 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. It is to be noted that test of obscenity under Section 294(b) of the Indian Penal Code is, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from

the judgment authored by Justice K.K. Mathew (as his Lordship then was) reported in **P.T. Chacko v. Nainan**, reported in (1967 KLT 799) explains as follows:

“The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin,[L.R.]3 Q.B. 360 at 371 Cockburn C.J. Laid down the test of ‘obscurity’ in these words:

“..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences” This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in **Ranjit D.Udeshi vs. State of Maharashtra**, AIR 1965 SC 881. In **Samuel Roth v. U.S.A.**,

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354 US 476 (1957), Chief Justice Warren said that the test of ‘obscenity’ is the “substantial tendency to corrupt by arousing lustful desires”. Mr. Justice Harlan observed that in order to be ‘obscene’ the matter must “tend to sexually impure thoughts”. I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are ‘obscene’ and the utterance would constitute an offence punishable under Section 294(b) IPC”.

14. In the instant case, in absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive,

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humiliating or defamative words by itself cannot attract an offence under 294(b) of the IPC. To prove the offence under 294(b) of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the applicants accused annoyed others and, therefore, ingredients of the offence under Section 294(b) of the IPC are not made out.

15. As far as offences under Sections 504 and 506 of the IPC are concerned, it deals with intentional insult with intent to provoke breach of the peace and punishable for “criminal intimidation”. The definition of “criminal intimidation” is given under Section 503 of the IPC, which states that whoever threatens another with any injury to

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his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

16. Perusal of the entire statement of the informant as well as statements of witnesses shows that the said ingredients are absent. It seems that there is only an altercation of words between the informant and the applicant, which are not sufficient to attract the offence under Section 504 or 506 of the IPC. Therefore, no *prima facie* case is made out against the applicant to attract the offences.

17. Since none of the ingredients of the said offence is present or appears from the statement of the

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informant or any of witnesses, no *prima facie* case is made out against the applicant and, therefore, the application deserves to be allowed, as per order below:

ORDER

(1) The Criminal Application is **allowed**.

(2) The FIR in connection with Crime No.181/2017 for offences under Sections 294, 323, 504, and 506 of the IPC and subsequent proceeding arising out of the same bearing chargesheet No.272/2017 are hereby quashed and set aside to the extent of the applicant.

Application stands **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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