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4criapln1430.24

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

4 CRIMINAL APPLICATION NO. 1430 OF 2024

BHAGWAN HARCHAND SATHE AND OTHERS
.....Applicants

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER
.....Respondents

Mr. J. M. Wagh, Advocate for the applicants
Mr. S. N. Morampalle, APP for the respondents/State
Mr. A. P. Gune, Advocate for the respondent No. 2

CORAM : RAJNISH R. VYAS, J.

DATE : 30th MARCH, 2026

PER COURT :

1. Heard the respective counsels for the parties.
2. A prayer in this application is for quashment of First Information Report No. 51/2023 dated 15-02-2023 registered with Dondaicha Police Station, Tq. Sindkheda, Dist. Dhule for commission of offences punishable under Sections 452, 323, 504, 506, 427 read with Section 34 of the Indian Penal Code and subsequent criminal prosecution initiated thereupon.
3. The learned advocate for the applicants has argued the following points:

[a] First Information Report is striking example of

abuse of criminal law;

[b] There is nothing to show that any injury was suffered and therefore, offence under Section 323 should not have been registered;

[c] Verification was necessary before passing an order under Section 156(3) of the Cr. P. C. and the complaint to Superintendent of Police was not forwarded.

4. Per contra, learned advocate for the informant has contended that the charges are framed, panch witnesses are already examined and on 02-04-2026 the matter is fixed for examination of eye witnesses as well as Investigating Officer. He therefore, submitted that in absence of challenge to order of framing of charges, the present application cannot be entertained.

5. Learned APP has also supported the stand taken by complainant/informant and has further contended that perusal of the First Information Report as well as Final Report clearly makes out ingredients of offences registered and therefore, interference at this stage, more particularly, when only some witnesses along with Investigating Officer is required to be examined may not be done.

6. With the help of respective counsels, I have gone through the record of the case. The First Information Report dated 15-02-2023 was lodged by one Yashwantrao. The registration of the First Information Report is preceded by order passed by the jurisdictional Magistrate on 13-02-2023 while exercising the power under Section

156(3) of the Cr. P. C. In the First Information Report it was alleged by the complainant that he along with his wife and two sons are residing at village Dondaicha. The accused No.1 and 2 are the husband and wife; accused No.3 is the daughter; whereas accused No. 4 is the son of original accused Nos. 1 and 2.

7. It was alleged that marriage of son of the informant was solemnized with the original accused No.3 in the Month of December, 2021 and the original accused No.3 was in habit of drinking liquor. On that count, the accused No.3 has deserted the son of the informant and started residing at her parents' place. It was also alleged that son of the informant had filed the proceeding bearing HMP No. 159/2022 before the Civil Judge, Senior Division, Dhule and in spite of receipt of notice of the said proceeding, the accused Nos. 1 and 2 did not send the accused No. 3 for cohabitation. It was also further stated that they would grant divorce giving amount of Rs.25 lakhs, which proposal was refused by the informant. It was alleged in the First Information Report that due to refusal of demand, the accused persons had threatened the informant that they would see to it that the informant would be sent behind the bar.

8. Narrating the case further, it was alleged in the First Information Report that on 30-01-2023, the accused persons at 12.15 noon, entered the house of the informant. The complainant thereafter

paid due respect to them and asked his wife to offer water to them. At that time the accused persons were angry and had rushed towards the informant. The son of the complainant tried to interfere between the informant and the accused No. 1 and asked not to use abusive language. At that time, accused No.1 caught hold of the son of the informant and slapped him. It was also alleged that though wife of the complainant tried to convince the accused No. 2, at that time accused No. 3, caught hold of the hair of the wife of the complainant, made her fall on the floor and accused No.4 had thrown a water vessel (Lota) on the coup-board, due to which the glass of coup-board got damaged and the informant had sustained loss of Rs.5,000/-. Since shouts of the quarrel were heard, one Mukesh, Pruthviraj and others, entered the house of informant and tried to settle the matter. Again while leaving the place, the accused persons had threatened the informant.

9. It is in this background, a criminal law was set in motion.

10. Learned advocate for the applicants has submitted that initiation of criminal prosecution is nothing but abuse of process of law since earlier proceedings were initiated by taking recourse to provision of Hindu Marriage Act. It is necessary to mention here that just because earlier proceedings are filed under the Hindu Marriage Act and subsequently the First Information Report was filed, it would

not *ipso facto* mean that the criminal law was tried to be abused.

11. Learned advocate for the applicants also submitted that already proceeding under the Protection of Woman From Domestic Violence Act is pending against the husband and therefore, present proceeding is not maintainable.

12. In this regard, it is necessary to observe that the scope of said Act and IPC are totally different. Therefore, that cannot be a ground for quashment of the criminal prosecution.

13. Next contention of the learned advocate for the applicants that none of the accused persons have sustained injuries and therefore, Section 323 of the IPC should not have been invoked against them. Suffice it to say that Section 323 of the IPC prescribes the punishment for voluntarily causing hurt, is though non-cognizable offence but the defines hurt in Section 319, defines hurt as causing a bodily pain also. Thus, causing of visible injury is obviously not requirement for registration of offence under section 323 IPC.

14. Learned advocate for the applicants submitted that verification ought to have been recorded before ordering the investigation under Section 156(3) of the Cr. P. C. It is pertinent to mention here that the order under Section 156(3) is pre-cognizance

in nature. For ascertaining existence of sufficient ground for Magistrate to proceed further verification and enquiry under Section 202 of the Cr. P. C. can be ordered.

15. There is no requirement that before ordering the investigation under Section 156(3) Cr. P. C. verification is required to be recorded.

16. Coming to the last contention that before filing a complaint under Section 156(3), the necessary complaint should have been forwarded to the Superintendent of Police and thereafter recourse to section 156(3) should have been taken, it is necessary to mention here that even as per the case of the prosecution and the learned advocate for the applicants now the charges are framed and the complainant and one more witness is already examined. The case is fixed day-after-tomorrow for recording of evidence of Investigating Officer. In the peculiar facts and circumstances of the case, it can be said that it would be mere irregularity and not illegality which would go to the root of the matter.

17. The learned APP's contention that the allegations made in the complaint are very specific, which further find favour since the charge is already framed are also worth noting.

18. In that view of the matter, no case is made out which requires interference of this court at this stage. Therefore, the application is dismissed.

19. Needless to mention here that the observations made are prima-facie in nature.

[RAJNISH R. VYAS, J.]

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