
(2020) 11 BOM CK 0044

In the Bombay High Court

Case No : Criminal Application No. 1272 Of 2020

Vijay Kumar

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 23-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 152(2), 156(1), 482
Indian Penal Code, 1860 — Section 34, 323, 354(D), 504, 506

Citation : (2020) 11 BOM CK 0044

Hon'ble Judges : T.V. Nalawade, J; Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : V.P. Sawant, R.D. Sanap, N.R. Thorat

Final Decision : Allowed

Judgement

Shrikant D. Kulkarni, J

1. Rule. Rule made returnable forthwith. With the consent of learned Counsels for both the sides, taken up for final disposal.

2. The applicants by taking aid of Section 482 of the Criminal Procedure Code have prayed for quashing of First Information Report bearing Crime

No. 0196 of 2020 registered with Kaij Police Station, Tq. Kaij, Dist. Beed dated 28.05.2020 for the offences punishable under Sections 354-D, 323,

504, 506 read with Section 34 of the Indian Penal Code.

3. Brief facts for adjudication of this application are as under :-

3 (i) Respondent No. 2/First Informant is resident of Aarangaon, Tq. Kaij, Dist. Beed. She resides along with her family. The applicants are the relatives of the first informant.

3 (ii) According to the allegations made in the First Information Report, applicant

No.1 happens to be cousin brother in law of the first informant. From the last two months, he was following the first informant while she was going to her field. Applicant No. 1 was attempting to make contact with the first informant to foster personal interaction repeatedly despite the clear indication of disinterest by her. Applicant No. 1 did not stop his activities. The first informant disclosed such facts to her husband and in laws and husband of the first informant had convinced to applicant No. 1 not to harass his wife by stalking her and he should not contact her by making call on the mobile, but applicant No. 1 did not stop his activities. As a result, on 27.05.2020, in the evening at about 6.00 to 6.30 p.m., the first informant, her husband and her parent in laws went to the house of applicant No.1 and tried to convince him to stop such harassment and stalking. Applicant No. 1 behaved with them in a rude manner so also his parents. Applicant No. 1, his brother and parents alleged to have beaten to the first informant's husband by kicks and fist of blows. The first informant and her parent in laws tried to intervene in the quarrel when they were also beaten by fist of blows and kicks. One Digambar Suresh Sirsat and his wife Pooja, who happen to be her cousin intervened in the quarrel. Applicant No. 1 alleged to have threatened to the first informant and her family members with dire consequences. The incident was reported to Kaij Police Station on 28.05.2020 and on the basis of First Information Report lodged by respondent No. 2, Crime No. 0196 of 2020 came to be registered with Kaij Police Station against the applicants for the offences punishable under Sections 354-D, 323, 504, 506 read with section 34 of the Indian Penal Code.

4. Heard Mr V.P. Savant, learned Counsel for the applicants, Mr R.D. Sanap, learned A.P.P. for State/Respondent No. 1 and Mr N.R. Thorat, learned Counsel for the first informant/Respondent No. 2.

5. During the arguments, Mr V.P. Savant, learned Counsel for the applicants sought permission to withdraw this application to the extent of applicant No.1/main accused. Accordingly, permission is granted.

6. Mr Savant, learned Counsel for the applicants vehemently argued that the allegations against applicant Nos. 2 to 4 made in the First Information Report are false and bogus. The disputed First Information Report is outcome of civil dispute between the parties. Applicant No. 2 is taking education and he has been falsely implicated in the crime. Applicant Nos. 3 and 4 are old

aged. The allegations made against applicant Nos. 2 to 4 are vague and general in nature. No specific role is attributed against them. Mr Savant, learned Counsel for the applicants urged to quash the First Information Report against the applicant Nos. 2 to 4.

7. Mr Sanap, learned A.P.P. for the State/Respondent No. 1 opposed to grant relief to applicant Nos. 2 to 4. He submitted that only because civil dispute is going on between the parties, not a ground to quash the First Information Report. The first informant has no reason to falsely implicate applicant Nos. 2 to 4.

8. Mr N.R. Thorat, learned Counsel for the first informant/respondent No. 2 also invited our attention to the copy of the First Information Report and attempted to impress us that there are specific allegations against applicant Nos. 2 to 4. Applicant Nos. 2 to 4 have taken active part in the commission of alleged offences. The allegations levelled in the First Information Report if accepted at their face value, prima facie constitute the offences registered against the applicants.

9. The law regarding quashment of First Information Report is well settled in view of the landmark decision of the Hon'ble Supreme Court in case of State of Haryana and others Vs. Bhajan Lal and others reported in AIR 1992 SC 604 wherein, the Hon'ble Supreme Court in paragraph No. 108 has held as under :-

1. Where the allegations made in the First Information Report of 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 and make out a case against the accused.

4. Where, the allegations in the F.I.R. 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.â??

10. The width and contours of the power of the High Court under Section 482 of the Cr.P.C. has been expounded by a three-Judge Bench of the Supreme Court in the case of State of Karnataka Vs. L. Muniswamy MANU/SC/0143/1977 : (1977) 2 SCC 699 as under :-

â???.In the, exercise of this, whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Courtâ??s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do

justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.â??

11. While quashing of the First Information Report, it needs to be considered, whether allegations made in the First Information Report even if

accepted at their face value, prima facie constitute any offence or whether on the basis of the uncontroverted allegations, any offence is made out.

12. On the careful scrutiny of the First Information Report, it is noticed by us that allegations of stalking are made only against applicant No.1/main

accused. The First Information Report seems to be in two parts. One part relates to stalking of the first informant by applicant No.1/main accused and

second part relates to the alleged incident dated 28.05.2020. There is no whisper against applicant No. 2 regarding attempt to contact the first

informant to foster personal interaction repeatedly despite the clear indication of disinterest by her. It is nowhere stated in the First Information Report

that applicant No. 2 followed the first informant with an intention of stalking. So far as the second part of the First Information Report is concerned,

the allegations levelled against applicant Nos. 2 to 4 are vague and general in nature. No specific role seems to have been attributed against applicant

Nos. 2 to 4. They alleged to have beaten to the first informant and her family members by fist blows and kicks. These are general allegations levelled

in the First Information Report. The tone of the First Information Report is against applicant No. 1 if allegations made in the First Information Report

are taken together.

13. In small villages, there is tendency to rope entire family of opposite party, may be by way of revenge. No specific role is attributed against

applicant Nos. 2 to 4 as to who caught hold first informant, who gave kicks and who gave fist blows. The allegations against applicant Nos. 2 to 4 are

found in general with a view to rope them in above said crime. Even if these allegations are accepted at their face value, no cognizable offence is

made out against applicant Nos. 2 to 4. Certainly, continuation of prosecution against applicant Nos. 2 to 4 would amount to abuse of process of the

Court. Therefore, we arrive at conclusion to quash the First Information Report bearing Crime No.0196/2020 registered with Kaij Police Station, Tq.

Kaij, Dist. Beed dated 28.05.2020 for the offences punishable under Sections 354-D, 323, 504, 506 and Section 34 of the Indian Penal Code to the

extent of applicant Nos. 2 to 4. The application is withdrawn to the extent of applicant No. 1.

14. Having regard to the above reasons and discussion, we pass the following order :-

ORDER

(i) The application for quashing of First Information Report bearing Crime No.0196/2020 registered with Kaij Police Station, Kaij, Tq. Kaij, Dist. Beed

dated 28.05.2020 for the offences punishable under Sections 354-D, 323, 504, 506 and Section 34 of the Indian Penal Code is hereby allowed in terms

of prayer clause â??Bâ?? to the extent of applicant Nos. 2 to 4 .

(ii) Application of applicant No. 1 â?" Vijaykumar s/o Dinkar Sirsat is disposed of as withdrawn.

(iii) Rule is made absolute in above terms.

(iv) The observations made hereinabove are prima facie in nature and confined to the adjudication of present application to the extent of applicant

Nos. 2 to 4 and the trial court shall not get influenced by the said observations during the trial.