

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2624 OF 2019

Siddhodhan alias Shudhodan s/o
Namdeorao Kurule, Age : 33 years,
Occu : Private Service, R/o : Rahul Nagar,
Parbhani, Taluka and District Parbhani.

... Applicant
(Orig. Accused)

Versus

1] The State of Maharashtra,
through the Officer Incharge,
Nava Mondha Police Station,
Parbhani, Taluka and District
Parbhani.

2] XYZ

... Respondents
(No.2-Orig. Informant)

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Mr. Rajendra S. Deshmukh, Senior Advocate i/by Mr. Devang R. Deshmukh,
Advocate for the Applicant.

Mr. M. M. Nerlikar, APP for Respondent No.1-State.

Mr. P. N. Kalani, Advocate for Respondent No.2-Informant.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 05.12.2022

PRONOUNCED ON : 19.12.2022

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Present proceeding is at the instance of applicant with prayers for
quashing charge-sheet as well as FIR bearing No. 30/2018 registered at the

instance of respondent no. 2 at Nava Mondha Police Station, District Parbhani, i.e. by invoking provisions under Section 482 of Cr.P.C.

2. Respondent no.2 herein approached Nawa Mondha Police Station on 30.01.2018 alleging that she is married and had a son and a daughter and she had also lost her husband on 18.03.2017 because of ailment of cancer.

Informant claims that on 13.07.2017 at 10.00 p.m. while she was in her house with her children, accused-applicant entered her house on the pretext of drinking water and when she went inside, he followed her, embarrassed her and by brandishing knife and issuing threats to kill, he had forcible sexual intercourse with her. She further informed that accused threatened to kill her children if she informs any one. According to her, so to save her children, she did not raise hue and cry. Thereafter repeatedly, under influence of liquor, he used to come to her, threaten to defame her and against her wish had forcible physical relations with her. She also informed that once accused-applicant came with a demand of money and when she informed that she had no money, that time he beat her and forcibly took out her gold ornaments from the cupboard saying that 'why she needs ornaments when she is a widow' and took the ornaments informing that he would mortgage it to the jeweller to

raise money. According to her, accused continued to harass her and have forcible sexual relations with her. On 20.12.2017 he entered her house at 11.00 p.m. and when she resisted, he beat her and ransacked the house and by threatening to kill the children, he again raped her. She claims that when she informed it to her parents, at that time accused went away. He again indulged in aforesaid acts and therefore getting fed up of his such conduct and behaviour, she claims that she approached police and set law in motion.

On the strength of FIR at her instance, Nava Mondha Police registered crime for offences punishable under Sections 376, 406, 427, 323, 506 of the Indian Penal Code (for short, "IPC).

By way of present application, accused-applicant has prayed for quashment of the above FIR and the consequential proceeding by invoking the inherent power of this Court under Section 482 of Cr.P.C.

SUBMISSIONS

3. Learned counsel for applicant pointed out that instant FIR is apparently belated, false and full of baseless allegations. He invited our attention to the FIR and submitted that informant is a widow having two children and moreover, she resides in a thickly populated locality. She was acquainted with accused applicant since long. Whatever relations developed between herself

and the applicant were nothing but consensual one. Subsequently, with oblique motive, false allegations are levelled against the applicant. He would submit that informant herself extended financial help to the applicant-accused as and when situation arose i.e. by mortgaging her ornaments. This she did only because of close relations. Statement of the jeweller is recorded by investigating machinery and he pointed out that it is evident from the same that said transaction of mortgage for raising money was at her own instance. However, subsequently with sole intention of falsely implicating applicant, she has alleged in the FIR that accused forcibly took away her ornaments and gave it to the jeweller for raising money.

It is his next submission that FIR is silent as to when exactly the alleged instances of forceful physical relations took place and as such, the FIR and allegations therein are vague and omnibus in nature. He would strenuously submit that alleged forceful sexual relations on knife point to a full grown lady in her own house is not possible and therefore such allegations are false and afterthought.

It is his next submission that even going by the FIR, *prima facie* it is clear that there were repeated sexual encounters between informant and accused but the same were consensual as they had become intimate several times. He points out that in fact, statement of her own parents shows that they

were ignorant about the alleged incidences and she did not herself visit them at any point of time nor allowed them to visit her. He also submitted that statements of immediate neighbours are also not supporting the version of informant. Thus, while concluding, it is his submission that present FIR and the proceedings lodged by informant is sheer abuse of process of law. Whatever relations developed between applicant and informant were purely consensual one and there were no forcible relations at any point of time. Consequently, he prays for invoking inherent jurisdiction of this Court under Section 482 of Cr.P.C. for quashing the FIR and the consequent proceedings.

4. While resisting the application and relief, learned APP would submit that apparently the applicant has taken disadvantage of a widow having two children and at knife point, informant was repeatedly ravished. That, he also forcibly took away her ornaments. Finally, getting fed up of the conduct and behaviour of the applicant, it is his submission that, she mustered courage to approach the police. Now investigation is over. There is ample material against the applicant and therefore it is his submission that for above act, accused should face trial and legal consequences arising out of it.

5. Learned counsel for respondent no.2 also opposed the application by submitting that informant was raped by the applicant by issuing threats to kill her children. She did not willingly submit. There was no consensual act at any

point of time. Rather, according to him, to save children from accused, she avoided to resist the sexual encounters advanced by applicant. There are allegations of forceful rape and even taking away ornaments. Investigation has been carried out. Charge sheet is also filed and thus, it is his submission that, accused must face trial for the deeds done by him and so he prayed to dismiss the application.

6. Here, relief is sought by the applicant praying to invoke inherent jurisdiction under Section 482 of Cr.PC. As to when said inherent powers should be exercised has time and again been succinctly held by the Hon'ble Apex Court and this Court. We deem it fit to refer to few landmark judgments on the object and scope of Section 482 of Cr.PC. as to when said inherent powers must be exercised by this Court.

In the landmark case of *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.*, reported in (2007) 12 SCC 1, it was observed as under:

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under section 482 of Cr.PC. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court.”

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court, and*
- (iii) to otherwise secure the ends of justice.*

24. *Inherent powers under section 482 of Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”*

In the case of ***Mahendra K.C. Vs. State of Karnataka and Another;*** (2022) 2 Supreme Court Cases 129, the Hon’ble Apex Court in para No.19 observed as under:

*“19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In **State of Orissa v. Saroj Kumar Sahoo; (2005) 13 SCC 540**, a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8)*

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve

the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

Similarly, in ***Vineet Kumar v. State of U.P ; (2017) 13 SCC 369***, after referring to several other cases, including ***State of Haryana and others v. Ch. Bhajan Lal ; AIR 1992 SC 604***, the Hon’ble Apex Court concluded and made following observations in Paragraph No. 41 :

*“41. Inherent power given to the High Court under Section 482 Cr.PC is with the purpose and object of advancement of justice. In case solemn process of court is sought to be abused by a person with some oblique motive, the court has to thwart the attempt at the very threshold. The court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in ***State of Haryana v. Bhajan Lal ; 1992 Supp (1) SCC 335***. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr PC to quash the proceeding under Category (7) as enumerated in *State of Haryana v. Bhajan Lal (supra)*, which is to the following effect:*

“102. ... (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.”

*Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal*, but did not advert to the relevant*

facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 Cr PC and quashed the criminal proceedings.”

7. In the light of above settled legal position, we proceed to examine the material before us to satisfy ourselves whether case for grant of relief by exercise of power under Section 482 Cr.P.C. has been made out or not.

8. We have given considerable thought to the submissions of each side and we have also undertaken exercise of carefully examining FIR and charge-sheet before us. It seems that informant is a widow having two children. She seems to have lost her husband because of ailment of cancer. The length and breadth of the FIR shows that there are direct allegations about accused entering her house on 13.07.2017. Informant alleges that while her children were asleep, accused applicant visited her house on the pretext of drinking water and thereafter, on knife point made her remain silent, threatened to kill her children and thereafter had sexual intercourse with her. In the remaining part of the FIR, she has alleged that accused-applicant used to repeatedly visit her house under influence of liquor and used to force him on her. Then she alleges that once he also came to borrow money from her and when she refused, she has alleged that, he forcibly took out her ornaments form cupboard and left the house saying that he would mortgage the ornaments and raise money.

Then there are allegations about accused repeatedly visiting her and repeatedly having forcible intercourse with her and then she claims that finally, getting fed up of such behaviour. She approached the police station.

9. On carefully examining the FIR, it is apparent that so called instances of forceful rape which allegedly began from 13.07.2017 are reported to police for the first time directly on 30.01.2018 i.e. after six months. In the FIR there seem to be direct allegations of accused entering her house and forcing himself on her. Whereas, in the supplementary statement which is given by her on 31.01.2018, there is detail narration about her family, about accused-applicant to be her neighbour and regularly visiting her house and even coming to her help at times. Her supplementary statement shows that she had even entrusted her ATM card for operation. Therefore, with such material on record, there is room to presume that there is long standing association between accused-applicant and informant since lifetime of her husband.

10. So far as her allegation about accused forcibly taking away ornaments is concerned, it is apparently demonstrated to be false and afterthought because the jeweller with whom the said alleged ornaments were mortgaged, in his statement to police, has informed that applicant was accompanied by informant twice on the pretext of mortgaging ornaments for raising money. The jeweller has clearly stated that he knew present applicant as well as the

informant. He has further stated that the informant herself handed the ornaments. Therefore his such statements knocks the allegation in FIR about applicant forcefully taking her ornaments, at the bottom itself.

11. On going through the charge-sheet, one comes across statements of neighbours, but they seem to be totally unaware. Surprisingly informant's parents have also given statement to police that their daughter was residing separately and neither she visited them nor she allowed them to come to her house and as such, they were completely unaware of any incident that took place.

12. Therefore, taking into account the material available on record which is outcome of thorough investigation, we are of considered opinion that apart from inordinate delay in lodging FIR, the allegations of rape levelled against the applicant does not inspire confidence. In fact, there was long standing acquaintance between applicant and accused. It is difficult to accept that a widow with two children residing in a thickly populated residential locality could be forcibly raped not once but on several occasions. In our considered opinion, whatever sexual encounters took place between informant and applicant apparently seem to be consensual one, in the light of above discussed reasons. Therefore, making present applicant face trial with such allegations would render him not only hardship but great injustice. For ends of

justice to meet, we find it a fit case to exercise the inherent power bestowed on this Court under Section 482 of Cr.P.C. Hence, we proceed to pass the following order:

ORDER

- I. The application is allowed in terms of prayer clause (C).
- II. The application is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

VRE