



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 CRIMINAL APPLICATION NO.3421 OF 2022

- 1 Subhash Rambhau Athare,
Age 31 yrs., Occ. Nil,
R/o Atharewadi, Post Manikdaundi,
Tq. Pathardi, Dist. Ahmednagar.
- 2 Santosh Rambhau Athare,
Age 35 yrs., Occ. Police Constable,
R/o Atharewadi, Post Manikdaundi,
Tq. Pathardi, Dist. Ahmednagar.
At present R/o Vashavi Park 'B' Wing,
Room No.204, Nandival Talav,
Haji Mandi Road, Kalyan, Mumbai.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through the Investigating Officer,
Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar.
- 2 Nilesh Gulab Mhaske,
Age 40 yrs., Occ. Service as
Police Constable, presently
working at Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar.

... Respondents

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Mr. A.G. Ambetkar, Advocate for applicants

Mr. N.R. Dayama, APP for respondent Nos.1 and 2

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 23rd SEPTEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed initially for quashing First Information Report vide Crime No.710/2022 dated 19.07.2022 registered with Pathardi Police Station and by way of amendment to quash and set aside entire charge sheet and proceedings bearing Regular Criminal Case No.125/2023 pending before learned Judicial Magistrate First Class, Pathardi, Dist. Ahmednagar, for the offence punishable under Section 120-B, 506 of the Indian Penal Code, 1860 and Section 3 of Official Secrets Act, 1923.

2 Heard learned Advocate Mr. A.G. Ambetkar for applicants and learned APP for respondent Nos.1 and 2.

3 Learned Advocate for applicants vehemently submits that First Information Report is false and concocted. In fact, applicant No.2 is a Police Constable, presently posted in Mumbai Police, however, his native place is Pathardi. Three persons had illegally trespassed in the house of applicants on

21.04.2022 when they were not at home, however, mother was at home. Those three persons had assaulted and threatened as well as outraged the modesty of mother, however, Pathardi Police Station had registered only non cognizable case on 26.04.2022. When applicant No.1 had questioned as to why only NC case has been registered, Investigating Officer had abused in filthy language and gave ill-treatment to him. Non cognizable offence has also been registered against the said person. Thereafter, applicant No.1 was called by present informant on 02.05.2022 and threatened him to withdraw the complaint filed by the mother and also threatened to lodge a complaint against him under the Atrocities Act. Applicant No.1 had made audio recording in respect of the said threat and made complaint to Director General of Police. Now, with said ulterior motive present First Information Report has been lodged. Since the First Information Report itself is based on concoction and falsity, it deserves to be quashed and set aside.

4 Per contra, learned APP strongly opposed the application and submitted that applicant No.1 was unnecessarily making videography and applicant No.2, who is also in police service, appears to have been threatening the informant and other police persons present in the Police Station.

5 The first and the foremost fact to be noted upon contents of First Information Report as well as statements of witnesses under Section 161 of the Code of Criminal Procedure that the entire episode has taken place in Police Station. Police have invoked the Official Secrets Act, 1923. Section 2 (8) of the said Act defines what is “prohibited place”. Police Station is not included in the said definition. Section 3 of the Official Secrets Act, 1923 deals with “Penalties for spying”. The said section is reproduced for convenience.

“3. **Penalties for spying.** - (1) If any person for any purpose prejudicial to the safety or interests of the State -

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy [or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States];

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal,

naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.”

Anything done in the police is absolutely not included in Section 3. Under such circumstance, ingredients of the said section are not at all attracted.

6 Now, in respect of other sections i.e. 120-B and 506 of the Indian Penal Code we are of the opinion that contents of First Information Report do speak about the insult or intimidation and we leave things to concerned Court to see whether particulars of offence/charge needs to be framed under Section 120-B or Section 34 of the Indian Penal Code to be invoked. We also leave it to the Court concerned to see whether any other offence is transpiring taking into consideration contents of First Information Report and charge sheet.

7 With these observations, the application deserves to be partly allowed. Hence, following order.

ORDER

1 Criminal Application stands partly allowed.

2 The charge sheet i.e. proceedings in Regular Criminal Case No.125/2023 pending before learned Judicial Magistrate First Class, Pathardi, Dist. Ahmednagar arising out of First Information Report vide Crime No.710/2022 dated 19.07.2022 registered with Pathardi Police Station, for the offence punishable under Sections 120-B, 506 of the Indian Penal Code, 1860 and Section 3 of Official Secrets Act, 1923 stands quashed and set aside to the extent of offence under Section 3 of the Official Secrets Act, 1923 only.

3 Matter to proceed for other offences and learned Magistrate to take note of above observations.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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