

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

CRIMINAL APPLICATION NO. 1944 OF 2020

Rushikesh Vijay Khandagale and Others

..APPLICANTS

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. D.A. Mane, Advocate for applicants

Mrs. V.N. Patil-Jadhav, A.P.P. for respondent no.1 – State

Mr. Shaikh M.A. Jahagirdar, Advocate for respondent no.2

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**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 17th JANUARY, 2023

PER COURT :

1. Learned counsel for the applicants seeks leave to amend the prayer clause B-1 as to incorporate the number of special case pending before the trial Court.

2. Leave granted. Amendment to be carried out forthwith.

3. Heard finally at admission stage with consent of learned counsel for the respective parties.

4. This is an application under Section 482 of Code of Criminal Procedure to quash the F.I.R. bearing C.R. No. I-410 of 2020 registered with

Sonai Police Station, Dist. Ahmednagar and consequent Charge-sheet No.66 of 2022 and S.C.C. No. 27 of 2022 pending on the file of learned Additional Sessions Judge, Newasa for the offences punishable under Sections 376(2)(l), 376(2)(j), 354-A, 363, 366-A and 506 of the Indian Penal Code, under Sections 4, 6, 8, 12 and 17 of the Protections of Children for Sexual Offences Act, 2012, under Section 66(e) of the Information Technology Act, 2000 and under Sections 3/25 of Arms Act, 1956.

5. Learned counsel for the applicants states that the Applicant No.1 and Respondent No.2 – victim were known to each other. He submits that the father of the victim had lodged a missing report. The victim was traced and she had made a statement before the police on 20th August, 2020 wherein she had stated that she had eloped with the Applicant No.1 and married him in *Kala Ram Mandir*, Nashik and that their marriage has also been registered. He further submits that the father of the victim had also made a statement that he had no complaint against anyone since his daughter had returned home. He submits that the statements of the victim as well as her father would indicate that the allegations levelled in the F.I.R. are false and fabricated. He further states that statements of the witnesses recorded in the course of investigation are cyclostyle copies of the statements of the victim and her father made before the police. He further submits that Applicant Nos. 2 and 3 have been implicated only for the reason that they

were the witnesses to the marriage certificate. Learned counsel for the applicant also states that the allegation levelled against Applicant Nos. 4 and 5 are false and that compelling these applicants to face trial on the basis of such allegations would be an abuse of the process of Court.

6. Per contra, learned A.P.P. states that the birth certificate of the victim indicates that the victim was below eighteen years of age as on the date the Applicant No.1 had physical relationship with her. She further submits that the victim had explained the circumstances under which her marriage was performed and registered. She further submits that contents of the F.I.R. cannot be disbelieved solely on the basis of the previous statements. She states that the medical records also support the charges levelled against the Applicant No.1. Further there is material on record to indicate that Applicant Nos. 2 and 3 were involved in the abducting the victim. It is also on record that Applicant No.1 had established physical relationship with the victim and demanded money from her father under the threats of that he would publish the said photographs. Learned A.P.P. states that there are also specific allegations against Respondent Nos. 4 and 5 in the F.I.R., which at this level cannot be disbelieved.

7. For the purpose of exercising inherent jurisdiction under Section 482 Cr.P.C., this Court needs to take into consideration whether the F.I.R. and other material collected during investigation discloses cognizable offence

against the accused or not. The Hon'ble Apex Court has laid down guidelines in case of *State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. 1992 AIR 604*, and if the case falls in any one of the illustrations therein, it would be open for this Court to exercise the powers to quash criminal proceedings.

8. In the instant case, the material on record reveals that since the year 2017, the applicant would stalk the victim. He used to threaten her. In the year 2017 he forcibly took her to Devgad and took photographs with her. In the year 2018 also he took the victim to one hotel in Brahmni, Tq. Newasa and clicked her nude photographs. She has also alleged that he gave her a cold drink laced with some intoxicant and had physical relationship with her. He would constantly threaten her that he would defame her by showing her photographs to her parents and others and by posting the same on social media. She claims that on 17th August, 2020 the Applicant No.1 told his father – Applicant No.4 that they could demand Rs.5 lakhs from the father of the victim since he had her photographs. He also told Applicant No.4 that since he was a journalist, he could publish the photographs in the newspapers in the event they failed to meet the demand of money. The victim has stated that she informed the Applicant No.4 that her father would be disturbed in the event they took such steps. She had stated that Applicant No.4 had told her that the photographs would be published in the event she did not listen or meet the demand of Applicant No.1.

9. The record further reveals that, on 18th August, 2020 at 01:00 a.m. Applicant Nos.1, 2 and 3 came to her house. They dragged her into a car and took her to Panchawati, Nashik. Applicant No.1 showed her photographs to Applicant Nos. 2 and 3. He further forced her to marry him under the threats of circulating the photographs. She further states that after the marriage, one of the friend of Applicant No.1 kept both of them in a room and locked it from outside. Thereafter Applicant No.1 had physical relationship with her. Applicant No.1 lateron brought her to Sonai Police Station. The Applicant Nos. 4 and 5, who were present at the police station, compelled her to make a statement that she had married Applicant No.1 willingly. She had stated that Applicant Nos. 4 and 5 had also threatened to publish her photographs in the event she did not make such statement. It is on the basis of the aforestated allegations, crime has been registered against the applicants.

10. The F.I.R. prima facie reveals that Applicant No.1 used to stalk the victim and that he had physical relationship with her in the year 2018. The birth certificate which forms part of the charge-sheet reveals that the victim was born on 16th August, 2002. As on the date the Applicant No.1 had established physical relationship with the victim, she was below eighteen years of age. The material on record indicates that the victim was sent for medical examination and medical report reveals that her hymen was ruptured.

11. The provisions of Protection of Children from Sexual Offences Act, 2012 are applicable to the facts of the case. It is further to be noted that the F.I.R. indicates that the Applicant No.1 had taken the photographs of the victim in compromising position and had relationship with her under the threats of showing the said photographs to her parents and posting the same on social media. Though Applicant Nos.2 and 3 are not involved in offence under Section 376 I.P.C. or 12 Protection of Children from Sexual Offences Act, 2012, the allegations in the F.I.R. indicate that they had aided Applicant No.1 in taking her to Panchawati, Nashik, which prima facie constitute an offence under Section 366 I.P.C. Similarly accusations are also made against the Applicant Nos. 4 and 5 that they had compelled the victim to act as per their demands under the fear of circulating her photographs. It is well settled that the Court at this stage cannot embark upon an inquiry and delve into the truthfulness or otherwise of the allegations made in the F.I.R. or the statements of the witnesses under Section 161 Cr.P.C. The inquiry contemplated at this stage is restricted to ascertaining whether the allegations in the F.I.R. and the other material collected in the exercise of the investigation prima facie discloses cognizable offence. In the event the allegations in the F.I.R. made out the offences, it is not permissible to exercise discretionary power under Section 482 Cr.P.C. to thwart a legitimate proceeding.

12. Having considered the allegations levelled in the F.I.R. and the other material, which forms part of the charge-sheet, we are of the considered view that the offences as alleged are prima facie made out. We are unable to conclude at this stage that the prosecution is maliciously instituted due to private grudge. The allegations levelled in the F.I.R. as well as the defence raised by the applicants will have to be proved in the course of a regular trial. The case does not fall in any of the categories in the case of Ch. Bhajan Lal (supra). We, therefore, do not find any justifiable reason to quash the charge-sheet or the proceedings against the applicants. Consequently, the application under Section 482 Cr.PC. is dismissed.

13. It is made clear that the Special Court shall proceed with the matter, including the discharge application, if any, on its merits and shall not be influenced with any of these observations made in this order.

(R.M. JOSHI, J.)

SSD

(SMT. ANUJA PRABHUDESSAI, J.)