

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

CRIMINAL APPLICATION NO. 1505 OF 2020

Archana Vijaykumar Baheti
Age: 48 years, Occu: Household,
R/o: Prasanadata Park Deolai,
Beed by-pass, Aurangabad.

... Applicant
(Original Accused)

Versus

1. The State of Maharashtra
Through Vedant Nagar Police Station,
District : Aurangabad.
2. Veenita D/o Ramnivas Bhandari,
Age: 27 years, Occu. Service,
R/o: Flat No.201, Sai Apartment,
Station Road, Bansilal Nagar, Aurangabad.

... Respondents

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Mr. Govind M. Sharma & Mr. C. C. Deshpande, Advocate for the Applicant.
Mr. A. M. Phule, APP for Respondent No.1.
Ms. Madhaveshwari Thube, Advocate for Respondent No.2.

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

DATED : 21.11.2022

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

1. By invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), applicant herein has prayed for quashing and setting aside crime bearing no. 17/2020 registered at Vedant Nagar Police Station as well as charge-sheet arising out of such crime for offence under Section 509 of the Indian Penal Code (for short, 'IPC') and Section 67-A of the Information Technology Act, 2000.

2. According to informant (respondent no.2), her father Ramnivas Bhandari had developed contacts with present applicant and he is living with her in spite of objection of herself and her mother. Further, according to her, present applicant is also indulging in registering various cases and complaints against informant with mere intention to harass her. According to informant, on 06.10.2019, present applicant forwarded a photograph from her mobile baring no. 9158069999 which depicted informant's father planting kiss on the cheek of present applicant. Similar photo was forwarded again on 11.01.2020. Because of such transmission of photographs, it is the case of informant that her modesty was outraged and therefore she approached police station alleging her to be victim of crime under Section 509 of IPC and Section 67-A of the Information Technology Act, 2000.

3. It is the above complaint which is questioned by the present applicant by invoking Section 482 of Cr.PC. praying to quash the same along with consequential charge-sheet.

4. Before advertng to the entitlement of relief, as provisions under Section 482 of Cr.PC. are invoked, the law as to when such inherent posers can be exercised is required to be dealt with.

In the landmark case of *State of Haryana and Ors. Vs. Ch. Bhajan Lal* ; 1992 Supp (1) SCC 335 : 1992 SCC (Cri.) 426, this Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under Section 482 of the Cr.PC. to quash an FIR. Justice Ratnavel Pandian, J. laid down the limits on the exercise of the power under Section 482 Cr.PC. for quashing the FIR and observed : (SCC pp. 378-79, para 102)

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the CrPC which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.

(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 FIR 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) CrPC.

(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.”

Based on above **precedent**, the Hon’ble Apex Court **very recently** in the case of ***Mahendra K.C. v. State of Karnataka and another*** ; (2022) 2 SCC 129 observed that “while exercising powers under Section 482 Cr.P.C., for quashing proceedings, following tests are required to be applied, ***firstly***, whether the allegations made in the complaint, *prima facie* constitute an offence; and ***secondly***, whether the allegations are so improbable that a prudent man would

not arrive at the conclusion that there is sufficient ground to proceed with the complaint.

Keeping in mind the above settled legal position, we proceed to examine the case in hand, more particularly the complaint, so as to ascertain whether said complaint is a sheer abuse of process of law as contended by applicant.

5. On carefully scrutinizing the complaint annexed herewith, it is emerging that informant is daughter of Ramnivas Bhandari. According to informant, her father was living with present applicant in spite of objection of herself as well as her mother. She has alleged that present applicant has instituted various proceedings at various police stations against her merely with the intention to harass her.

The cause of action for lodging present complaint seems to be a photograph of her father in the company of present applicant which was received by her on her mobile from the mobile of applicant on 06.10.2019 and 11.01.2020. It is this photograph which offended informant and she claims that by seeing the said photograph, wherein her father is kissing present applicant, her modesty got outraged and therefore there is commission of said offence.

6. Section 509 of IPC reads as under:

509. Word, gesture or act intended to insult the modesty of a woman.-

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

7. Section 67-A of the Information Technology Act, 2000 reads as under:

67-A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.-

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

8. Having taken into account the above two provisions, it is seen that the gist of Section 509 of IPC is uttering words, making sound or gestures or exhibiting any object intending that said word or sound would be heard, or that such gesture or object shall be seen by a woman or it amounts to intrusion of her privacy and thereby she is insulted and her modesty is outraged.

Whereas the gist of Section 67-A of Information Technology Act, 2000 is that there should be publication, transmission or causing it to be published or transmitted, in electronic form, any material which contains “sexually explicit act or conduct”.

9. As to what amount to ‘sexually explicit’ act or conduct has not been defined in the Information Technology Act. However, in common parlance “sexually explicit material” means an audio recording, a film or video clip or video recording or visual depictions produced in any medium, the dominant theme of which depicts or describes nudity, including sexual acts or display of organs in a lascivious way.

10. In the above background, if the questionable material which allegedly outraged the modesty of informant is examined, in our considered opinion, it is just a photograph which apparently shows that father of informant is planting a kiss on cheek of applicant. There is nothing in it which depicts it to be ‘sexually explicit’ in terms of above meaning. Moreover, it is not a selfie photograph. Rather it apparently seems to be a photograph snapped in a function or programme by a third person. Above all, it needs to be noted that the alleged mobile from which complainant claims to have received the said photograph is in fact shown to be standing in the name of father of complainant herself. Bill to that extent is also placed on record by the

applicant herein and it is marked as Exhibit “D” which clearly shows that the bill for mobile no. 9158069999 stands in the name of Mr. Ramnivas Kachardas Bhandari. In the light of such material, doubt creeps in as to whether present applicant has herself forwarded the said photographs or it was very father of the complainant. In absence of further material to show that said mobile was in possession and use of applicant herein, we feel it unsafe to attribute the act of forwarding said photograph to present applicant alone.

Therefore, as the necessary ingredients of either Section 509 of IPC or Section 67-A of the Information Technology Act, 2000 are not surfacing, in our considered view, the present complaint has no substance so as to brand it as objectionable one. By no means the said photograph depicts nudity or sexual act or any organ so as to take it in offending sense and hold it to be an act amounting to outraging modesty.

11. In the light of above discussion, in our considered view, the complaint in hand *prima facie* seems to be out of annoyance of informant as she and her mother had disapproved said relations between applicant and father of informant. We do not wish to enter into the arena of nature of relations between father of informant and the applicant and we intend to restrict ourselves to the material which allegedly offended informant. Therefore, we are of the considered opinion that making applicant, who is also a lady, to face

prosecution with such quality of allegations on record, it would definitely amount to abuse of process of law. Making applicant face prosecution for such act would expose her to injustice. *Prima facie* we do not find essential ingredients for attracting either Section 509 of IPC or Section 67-A of the Information Technology Act to be available in the record before us.

Deriving strength from the guidelines laid down in *State of Haryana & ors v. Ch. Bhajan Lal* ; 1992 SCC (Cri) 426/AIR 1992 SC 604, more particularly clause (7) reflected in para 102, we are of the considered view that proposed prosecution against applicant herein is unwarranted and for ends of justice to meet, we think it a fit to exercise powers under Section 482 of Cr.PC. and so accordingly proceed to pass following order:

ORDER

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

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]