

(2025) 01 BOM CK 0018

Bombay High Court (Nagpur Bench)

Case No: Criminal Application (Apl) No.365 Of 2024

Narendra Kumar Santraj Sharma

APPELLANT

Vs

State Of Maharashtra Thr. Pso Ps
Achalpur Tq.Achalpur
Dist.Amravati And Another

RESPONDENT

Date of Decision: Jan. 16, 2025

Acts Referred:

- Constitution of India, 1950 - Article 20(2), 300
- Code of Criminal Procedure, 1973 - Section 482
- Indian Penal Code, 1860 - Section 354A, 354D

Hon'ble Judges: Avinash G. Gharote, J; Abhay J. Mantri, J

Bench: Division Bench

Advocate: S.A. Kanetkar, H.R. Dhumale, Kirti Deshpande

Final Decision: Disposed Of

Judgement

Abhay J. Mantri, J

1. Heard finally with the consent of the learned Counsel for the parties.

2. The applicant seeks to quash the First Information Report (for short- "FIR") dated 29-04-2021 in Crime No.125/2021 registered at Achalpur

Police Station for the offences punishable under Sections 354-A and 354-D of the Indian Penal Code, 1860 (for short- "IPC"), filing of the

charge-sheet bearing No.31/2021 and registration of the Regular Criminal Case (for short- "RCC") No.184/2021 pending before the Judicial

Magistrate First Class, Court No.3, Achalpur pursuant the said FIR.

3. The facts of the case are as under :

(a) The applicant was working as a Joint Manager at Finlay Mill, Achalpur, District "Amravati, which is a Government of India undertaking (for

short, "Mill"). Non-applicant No.2 also works as a Training In-charge in Mill in the Training Department.

(b) On 29-04-2021, non-applicant No.2 lodged a report against the applicant, alleging that the applicant intentionally harassed her; he would look at her

with evil eyes and abuse her with filthy words, thereby making her ashamed of herself. He also used to tell her that she looks sexy in a saree.

(c) Based on the complaint, an offence was registered against the applicant vide Crime No.125/2021.

4. Mr. S.A. Kanetkar, learned Counsel for the applicant, vehemently contended that the applicant has not committed any offence, but he has been

falsely implicated in the present crime as the applicant had made a complaint against non-applicant No.2 with the Higher Authorities, for slapping him,

by her on 23-04-2021. To retaliate, non-applicant No.2 made a false complaint against the applicant. Based on the said complaint, the authorities

conducted the enquiry through the Internal Complaint Committee (for short, "ICC"), which deals with complaints regarding harassment of women

in the workplace. Also, the seven-member committee conducted a departmental enquiry, headed by an assistant manager and the head of the HR

department. He drew our attention to both enquiry reports and submitted that in both enquiries, the applicant was exonerated from the allegations

made against him by non-applicant No.2, which were not proved. The Enquiry Committee, headed by the Assistant Manager and the Head of the

H.R. Department, observed that "non-applicant No.2, by taking undue advantage of being a lady, had filed a false report and exonerated

the applicant." Therefore, he submitted that in view of the mandate laid down in the case of Ashoo Surendranath Tewari v. Deputy

Superintendent of Police, Eow, CBI and Another, (2020) 9 SCC ,it is a fit case to quash and set aside the first information report and the further

proceedings initiated against the applicant.

Lastly, he contended that the allegations in the FIR are vague and omnibus, and, therefore, no ingredients of the offence have been made out against

the applicant. Hence, he has urged that this is a fit case to quash the FIR and criminal proceedings.

5. Per contra, Mr. H.R. Dhumale, learned Additional Public Prosecutor for non-applicant No.1/State and Mrs. Kirti Deshpande, learned Counsel for

non-applicant No.2, resisted the application on the ground that allegations made in the FIR and statements of the witnesses prima facie denote that the

applicant was harassing and stalking to non-applicant No.2. Therefore, it cannot be said that no offence is made out against the applicant. They further

contended that there was sufficient material against the applicant to show that he was involved in the crime; hence, they urged the rejection of the

application.

6. We have considered the parties' rival contentions and perused the first information report, charge-sheet, and decision in the case of Ashoo

Surendranath Tewari (supra) relied upon by the learned Counsel for the applicant.

7. At the outset, it appears that the applicant was working in the Mill as Joint Manager (Technical), and non-applicant No.2 was working under him in

the Training Department as Training In-charge.

8. It further appears from the FIR and the statements of witnesses that on 23-04-2021 at about 3.30 p.m., when the applicant was passing nearby to

his office/chamber, at that time, non-applicant No.2 went towards him and suddenly gave two slaps on his face/cheek. The witnesses present there

caught hold of both. Non-applicant No.2 was not feeling well and, therefore, she was taken to the hospital.

9. On the next day, i.e. 24-04-2021, the applicant filed a complaint to the General Manager about the said incident. Accordingly, the General Manager

constituted the Seven-Member Committee headed by the Assistant Manager and six others. After conducting the enquiry, the Committee held that

“It is clearly proved from the statements recorded before the enquiry committee that Anushka Belorkar (i.e.-non-applicant No.2) by

taking undue advantage of being a lady, on 29-04-2021, has filed a false report before the General Manager and all the enquiry

proceedings, evidence and charge-sheet proves the report filed by Narendra Sharma (i.e. the applicant) on 24-04-2021 to be true and

hence, all the members of the enquiry Committee comes to the conclusion and declared that the report filed before the General Manager by

non-applicant No.2 against the applicant is absolutely false.â€

10. After the incident dated 23-04-2021 and the applicant's filing of the complaint with the higher authorities on 24-04-2021, on 28-04-2021, she filed a complaint against the applicant before the â€~ICCâ€™™ and filed the impugned FIR dated 29-04-2021.

11. It further reveals that the â€~ICC also conducted the enquiry and held that -

â€œ(1)Â the allegations of sexual harassment made by Mrs. Anushka Belokar against Shri Narendra Sharma are not proven.

(2) theÂ allegationsÂ ofÂ makingÂ sexual/foulÂ remarksÂ byÂ Mrs. Anushka Belokar against Shri Narendra Sharma are also not provedâ€

Â and therefore, held that â€œthe allegations made against the applicant was not proved and hence, he was not found guilty.â€

The â€~ICCâ€™™ further recommended that, -

â€œ(1) as the allegations made against Shri Narendra Sharma are not proven, Shri Narendra Sharma may be exonerated from the said allegations,

(2) the ICC is of the opinion that an awareness programme of the Sexual Harassment Act is needed in the Mills/Organisationâ€.

12. It is pertinent to note that non-applicant No.2 in the complaint alleged that since August 2017, the applicant intentionally harassed her; he would

look at her with evil eyes and abuse her with filthy words, thereby making her ashamed of herself. He also used to tell her that she looks sexy in a

saree and tried to stalk her. However, till the applicant filed the complaint against her on 24-04-2021, she had not made any complaint against the

applicant to any superior authority nor made any communication to anyone, but for the first time, when she slapped the applicant. The applicant made

a complaint against her; thereafter, only to retaliate, she filed the complaint with the higher authority and lodged a report at the police station on 29-04-

2021. She has not made any other allegations against him except for the above-said averment.

13. Perusal of the statements of other employees of the Mill, i.e. Kamlesh Gadge, Sagar Gadhave, Yogesh Nimje, Pranali Balapure, Pushpa Hirpurkar

and other witnesses, none of the witnesses have corroborated or supported the version of non-applicant No.2. Though, they have narrated the incident dated 23-04-2021 and stated that thereafter they came to know that the applicant was harassing and stalking non-applicant No.2 as alleged above, however, none of the employees had witnessed the same at any point in time nor stated in their statements about the same. On the contrary, their statements reflect that on 23-04-2021, when the incident occurred, non-applicant No.2 gave two slaps on the cheek/face of the applicant. Had it been the fact that since August 2017, as alleged, the applicant was harassing and stalking non-applicant No.2, then certainly she would have made a complaint about the same to a higher authority or lodged a report against the applicant. Likewise, the employees in the Mill, i.e. the witnesses, would have also stated the same, but none of the witnesses has corroborated or supported the version of non-applicant No.2 and only after filing the complaint by the applicant against non-applicant No.2, she made a complaint against him at the higher authority and lodged a report at the police station.

14. In the case of Ashoo Surendranath Tewari (supra), the Hon^{ble} Apex Court referred to paragraph 38 in the case of Radheshyam

Kejriwal v. State of W.B., (2011) 3 SCC 581. It is to be noted that the Hon^{ble} Apex Court, after considering the various judgments,

culled out the ratio of those decisions in para 38 and has held if the parameter in para No.38(vii) had been applied, then on a reading of

CVC report (in this case the ICC report) on the same facts, the appellant should have been exonerated. The chances of conviction in

criminal trials involving the same facts appear to be bleak. Therefore, the appellant therein was discharged from the offences under the Indian Penal

Code. Paragraphs 38 and 39 of the said judgment read thus -

38. The ratio which can be culled out from these decisions can broadly be stated as follows:-

(i) Adjudication proceeding and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of the finding. If the exoneration in the adjudication proceeding is on technical grounds and not on merit, the prosecution may continue and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all, and the person is held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue with underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceeding, as well as the proceeding for prosecution, is identical and whether the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court.â€

15. In the case at hand, initially, the Committee headed by the Assistant Manager, H.R. Department, with six others, categorically held that â€œnon-

applicant No.2 filed a false report on 29-04-2021 against the applicant, and the applicant was exonerated in the said enquiryâ€€. Similarly,

after considering the detailed enquiry, the 'ICC' held that â€œthe allegations against the applicant were not proven, and he was exonerated

from the allegationsâ€€. It is to be noted that the facts alleged in the complaint before the General Manager as well as in the first information report

are identical and, therefore, in our opinion, the case in hand is squarely covered by the dictum laid down in the case of Ashoo Surendranath Tewari

(supra).

16. The Honâ€™ble Supreme Court in State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supplementary (1) SCC 33,5 has laid

down guidelines to be adhered to while exercising the inherent powers under Section 482 of the Code of Criminal Procedure. With regard to the facts,

we find that the applicant's case would fall under guideline Nos. (i), (iii) and (v), which read thus:

i) where the allegations made in the First Information Re-port 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;

ii) where the allegations made in the First Information Re-port or the complaint, even if they are taken at their face value and accepted in their entirety, do not

disclose the commission of any offence nor make out a case against the accused;

iii) 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 nor make out a case against the accused;

iv) 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;

17. Thus, it is evident that though according to non-applicant No.2, the applicant was harassing and stalking her since August 2017, till, she did not

make any complaint against him to the higher officer or at the ICC when she claimed herself as an activist and representative of the staff.

She has not assigned any reason for belatedly lodging the first information report. A bare perusal of the allegations in the complaint prima facie do not

disclose that non-applicant no.2 has made any specific allegation against the applicant of harassing her or stalking her. The first information report and

the statements of the witnesses recorded do not show that the applicant was harassing or stalking non-applicant No.2, as alleged. No specific

allegation appear against the applicant, constituting the offence punishable under Sections 354-A and 354-D of the Indian Penal Code. The

allegations made against the applicant are vague and omnibus. On the contrary, it seems that on 24-04-2021, the applicant lodged the complaint against

non-applicant No.2 with the higher authority and, therefore, to retaliate, the possibility of implicating the applicant in a false complaint to create

pressure on him cannot be ruled out.

18. To sum up, it appears that the allegations made against the applicant are general and vague, which do not prima facie constitute any offence as

alleged by non-applicant No.2. Therefore, considering the facts of the case, findings recorded by the committee headed by the Assistant

Manager, H.R. Department and ICC as well as the mandate laid down by the Hon'ble Apex Court, it appears that the applicant has made

out a case to invoke the inherent powers of this Court. Facing criminal prosecution is a serious affair which one shall not be pushed into unless there is

substantial material. Merely by making general and vague allegations that the applicant was involved in the crime without mentioning even a specific

single incident against him or by any of the witnesses, it would not be proper to push him to face the trial.

19. In the background above, we deem it appropriate to quash the proceedings initiated against the applicant. As a result, the application is allowed as

prayed. The First Information Report vide Crime No.125/2021 registered with Achalpur Police Station for the offences punishable under Sections 354-

A, 354-D of the Indian Penal Code, 1860 and filing of the charge-sheet in Crime No.125/2021 and registration of the Regular Criminal Case

No.184/2021 pending before the Judicial Magistrate First Class, Court No.3, Achalpur pursuant to the FIR are hereby quashed and set aside. Inform

the trial Court accordingly.

20. The application, if any is pending, stands disposed of.