



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2942 OF 2014

Premasukh Kisandas Kataria)
Age: 69 years, Occupation – Business,)
Borikar Building, Gandhi Chowk)
Daund, Dist. Pune.) ...Petitioner

Vs.

1. The State Of Maharashtra)
(Through Daund Police Station))

2. XYZ)
Anand Apartment, Forest Quarters,)
Shalimar Chowk, Opp. to Shirke)
Building Daund, District – Pune 413 801.) ...Respondents

Ms. Rucheeta Dhuru for the Petitioner.

Smt. Prajakta P. Shinde, for the Respondent-State.

Ms. Pranita P. Hingmire, appointed Advocate for Respondent No.2.

CORAM : A. S. GADKARI AND
RAJESH S. PATIL, JJ.

RESERVED ON : 1st July 2025.

PRONOUNCED ON : 20th August 2025.

JUDGMENT (Per : RAJESH S. PATIL, J.) :-

- 1) This Petition is filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking quashing of First Information Report (FIR) No.250 of 2014 which is registered with Daund Police Station, Pune, dated 31st July 2014, for the offences punishable under Sections 376, 417, 506 of the Indian Penal Code and under Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- 2) By an order dated 5th April 2016, Rule was issued and ad-interim relief granted earlier was continued.
- 3) It is alleged by the Petitioner in the FIR that, the Respondent No.2's son was studying in the Seth Jyotiprasad School and due to financial condition of the Respondent No.2 she decided to change the school of her son from English medium to Marathi medium. At that point of time, the Respondent No.2 met present Petitioner who was then the Secretary of the school. The Petitioner insisted the Respondent No.2 not to change the school and assured that, he would take care of the Respondent No.2's son's school fees and insisted on continuing with the English medium school. Thereafter, the Respondent No.2's son continued his schooling in the English medium school. Later, the Petitioner used to call upon the Respondent No.2 when she used to go to school to drop her son. On one such day, the Petitioner enquired about the family status of the Respondent

No.2 and further informed her that, he had marital issues with his wife and promised the Respondent No.2 that, he would marry her and would also make arrangement of her residence by buying a house for her. Soon thereafter, one day the Petitioner came to the house of the Respondent No.2 and without her permission and willingness maintained physical contact with her and committed rape on her. Thereafter, the Petitioner repeatedly committed the act of rape on the Respondent No.2. He also threatened the Respondent No.2 that, if she informs anybody about the act committed by the Petitioner he would remove the Respondent No.2's son from the school, so also, he would kill the Respondent No.2. The Petitioner continued his act of committing rape on the Respondent No.2 and though, he had promised her for getting married to him, he started avoiding the said promise. The Respondent No.2 thereafter got pregnant due to physical relations of the Respondent No.2 with the Petitioner and delivered a baby girl on 17th February 1999. Even after the baby girl was born, the Petitioner kept on having physical relations with the Respondent No.2 and after two years on 6th February 2001, a baby boy was born due to the relationship of the Petitioner with the Respondent No.2. The Petitioner kept on threatening the Respondent No.2 with dire consequences if she discloses about his relationship with the Respondent No.2 and also further passed remarks of castism against the Respondent No.2 as she was from Scheduled Tribe. Hence, the Respondent No.2 lodged an FIR with the police.

4) It is submitted on behalf of the Petitioner that, he was elected as a Councilor of the Daund Municipal Council for Six Terms and was a President of the Municipal Council till 6th August 2014. In order to harm the political career of the Petitioner, the Complainant with ulterior motive has filed the FIR for offences punishable under Sections 376 of the IPC and Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Before lodging the present FIR, the Complainant on 1st April 2011, had filed a complaint under the Domestic Violence Act, on 1st April 2011, against the Petitioner. So also in the year 2012, the Complainant had filed a complaint under Section 125 of the Cr.P.C. with the Judicial Magistrate First Class, Daund, Pune, against the Petitioner. Both the proceedings under the D.V. Act and under Section 125 of the Code of Criminal Procedure were challenged by the Petitioner and he got favorable orders in both the proceedings.

4.1) The Petitioner, himself has filed the criminal complaint against the Complainant on 7th August 2013 for offences punishable under Sections 419, 420, 464, 465, 468 r/w. 34 of the Indian Penal Code. In the said Criminal Complaint the Magistrate has already issued process. It is the Complainant's own story in the earlier complaints that, she was in relationship with the Petitioner during the lifetime of her husband which is contrary to the allegations made by her in the FIR. In the Criminal Complaint filed under Sections 419, 420, 464, 465 and 468 of the IPC since

the Complainant had changed her name in the official gazette by using the name of the Petitioner as her husband. There is no merit in the present FIR lodged by the Complainant and the same requires to be quash and set aside.

4.2) Ms. Dhuru, learned Advocate appearing for the Petitioner, to buttress her submissions relied on the following judgments:-

- (i) Suresh Garodia Vs. The State of Assam and another, Criminal Appeal No. 185 of 2024 (arising out of S.L.P (Criminal) No. 9142 of 2022) ;*
- (ii) Dhruvaram Murlidhar Sonar (Dr.) Vs. State of Maharashtra and another, Criminal Appeal No. 1443 of 2018 (arising out of S.L.P (Criminal) No.6532 of 2018) ;*
- (iii) Pramod Suryabhan Pawar Vs. State of Maharashtra and another, Criminal Appeal No.1165 of 2019 (Arising out of S.L.P (Criminal) No.2712 of 2019) ;*
- (iv) Amol Bhagwan Nehul Vs. State of Maharashtra and others, Criminal Appeal No.002835 of 2025 (arising out of S.L.P (Criminal) No. 10044 of 2024) ;*
- (v) S. Rajadurai Vs. State (NCT) of Delhi & Anr, W.P. (Crl) 208/2003 & Crl. M. A. 5217/2023 (Delhi High Court);*
- (vi) Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and another, Criminal Appeal No.233 of 2021 (arising out of S.L.P (Criminal) No.11218 of 2019) ;*
- (vii) Vishwas Bajirao Patil Vs. State of Maharashtra, Criminal Writ Petition NO.4912 of 2019 (Bombay High Court);*
- (viii) Hitesh Verma Vs. State of Uttar Pradesh and another, Criminal Appeal No.707 of 2020 (arising out of S.L.P (Criminal) No.3585 of 2020) ;*

(ix) Priti Agarwalla and others Vs. The State of GNCT of Delhi and others, Criminal Appeal No.348 of 2021.

5) Ms. Hingmire, learned Advocate appointed by the Legal Aid on behalf of Respondent No.2 opposed the Petition. She argued that, once the Petitioner denies marriage to the Respondent No.2 in his Application under Section 125 of the Cr.P.C., the fact gets proved that he has committed the act of rape repeatedly on the Respondent No.2. An Application for DNA Test was made in order to check parentage of the son and daughter of the Respondent No.2. The same having been opposed by the Petitioner proves that, the daughter Rakhi and the son Sanjog are born out of the relationship of the Petitioner with the Respondent No.2. There is no merit in the Petition and the same should be rejected.

6) We have heard learned Advocates of the parties and with their help we have gone through documents on record including the charge-sheet.

7) In the present proceeding, the FIR has been filed on 31st July 2014, for the offences punishable under Sections 376, 417, 506 of the Indian Penal Code and under Section 3(1)(xii) of the S.C. and S.T. Act. As per the Respondent No.2's own case, she got acquainted with the Petitioner in the year 1994. Thereafter, it is alleged that, the Petitioner took advantage of his position and committed rape. It is the case of the Respondent No.2 that, during the subsistence of her marriage with her husband, the

Petitioner had committed the act of rape and due to her physical relationship with the Petitioner, she delivered a baby-girl on 17th February 1999 and two years later, she delivered a baby-boy on 6th February 2001. It is further alleged that, as physical relation continued and as the Petitioner started avoiding the Respondent No.2, the Respondent No.2 first filed Domestic Violence complaint, on 1st April 2011 and thereafter, a complaint for maintenance u/s. 125 of the Cr.P.C. Much later, on 31st July 2014, the present FIR has been lodged. It is the case of the Respondent No.2 that, from the year 1996, the Petitioner was committed the act of rape, hence the FIR has been lodged belatedly after a period of eighteen years.

8) The Petitioner himself has filed a criminal case against the Respondent No.2 on 7th August 2013, for the offence punishable u/s. 419, 420, 464, 465, 468 r/w. 34 of the IPC. After this complaint was lodged by the Petitioner, the Respondent No.2 has filed present FIR. It is the Respondent No.2's case in the complaint that, she was in relationship with the Petitioner during the lifetime of her husband. Respondent No.2 had changed her name in the official gazette by using the name of the Petitioner as her husband, pursuant to which the Petitioner filed a complaint against the Respondent No.2. Only thereafter present FIR has been lodged by the Respondent No.2 against the Petitioner.

9) In our opinion, once the Respondent No.2 files a complaint u/s. 125 of the Cr.P.C. for maintenance and also a complaint under the Domestic

Violence Act, where her case is that, she is the wife of the Petitioner, her subsequent complaint u/s. 376, 417 and 506 of the IPC claiming that the Petitioner has raped her will not hold much relevance or substance as both the allegations are contradictory to each other, cannot stand. Either it can be a case where the Respondent No.2 claims that, the Petitioner is married to her or she claims that, the Petitioner by using his authoritative position, and has raped her.

10) The Respondent No.2 has alleged in the FIR that the Petitioner has used words on the basis of the caste of the Respondent No.2 and has sexually exploited her. There is no dispute that the Respondent No.2 belongs to Scheduled Caste, and the Petitioner is not belonging to the Scheduled Caste or Scheduled Tribe. Therefore, at this stage, *prima facie* the provisions under Section 3(1)(xii) of the S.C. & S.T. Act, are also attracted.

11) The Supreme Court in the case of *State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors.*, AIR 1992 SC 604 in paragraph No.102 has given category of cases wherein the extraordinary powers of the Courts under Article 226 or inherent powers under Section 482 of the Code of Criminal Procedure, can be exercised to prevent abuse of process or to secure the ends of justice. In our view, the Ground Nos.5 and 7 of paragraph No.102, would be applicable to the present proceedings. The said Ground No.5 and Ground No.7 reads as under:-

(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.

(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.

12) In a recent decision of the Supreme Court in *Abhishek Vs. State of Madhya Pradesh* reported in (2023) 16 SCC 666, the Supreme Court followed the decision of *Bhajan Lal* (supra) and held that, it was not enough for the Court to look into the averment made in the FIR alone, the Court owes a duty to look into many other attending circumstances emerging from the record of the case, over and above the averments made and if need be with due care and circumspection to try and read between the lines.

13) As regards the case law relied upon by the Appellant in support of his submissions we may note that :

13.1) In *Suresh Garodia* (supra), the Supreme Court quashed the FIR u/s. 482 of the Cr.P.C. as there was no explanation in the FIR as to why the prosecutrix was keeping silent for a long period of 34 years. The Court held that, the finding of the IO that the case was filed only for the greed for the property of the Appellant cannot be said to be erroneous.

13.2) In *Amol Bhagwan Nehul* (supra), the accused was a 23 years old studying Bachelor of Science (Agriculture), and staying as a tenant next door to the Respondent No.2, whereas Respondent No.2 a divorcee residing with her four years old son at her parental home. It was alleged in FIR that the accused borrowed monies from Respondent No.2 on various occasions and used her car for his personal use. The accused had sexual relationship with the Respondent No.2 on the pretext of marriage, at different occasions. The Court held that there is no reasonable possibility that the Respondent No.2 would continue to be deceived by the accused, she being married and a mother of four years old son. The FIR was quashed by the Hon'ble Supreme Court.

13.3) In *Sonu @ Subhash Kumar* (supra), the only allegation in the FIR was that the accused is refusing to marry the Respondent No.2, who had developed friendship with the accused and had exploited her physically for one and half year on the pretext that he will marry her. The Court held that only on refusal to marry, the FIR was registered against the accused. Hence, the FIR was quashed by the Hon'ble Supreme Court.

13.4) In *Hitesh Verma* (supra), the Supreme Court was dealing with quashing of FIR which was lodged for the offences u/s. 452, 504, 506 of the IPC and Section 3(1)(x) and 3(1)(e) of the S.C. & S.T. Act. The Supreme Court held that the charges against the accused were not made out, hence, the FIR and the charge-sheet was quashed. Paragraph No.13 of the

judgment reads as under:

“13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is member of Scheduled Caste.”

13.5) In *Priti Agarwalla* (supra), the Supreme Court was dealing with an FIR lodged under Sections 3, 4 of the SC & ST Act. The Supreme Court found that there was no material on record to attract offences as

mentioned for registration of the FIR.

14) Taking into consideration the allegations made in present FIR, we don't find sufficient grounds and/or reasons for proceeding against Petitioner. Except bald statements that the Accused had committed the offence, there is not even iota of material to substantiate the basic allegation. From the relationship of Respondent No.2 with the Petitioner, two children were born, who are major as of today. There is a delay of 18 years in lodging the crime. In our view, the complaint is not genuine and is lodged with malafide intention. We are therefore satisfied that the prosecution has not made out any case against Petitioner for any of the alleged offences.

15) We find merits in this Petition, hence the same stands allowed in terms of prayer clauses (b).

15.1) FIR No.250 of 2014 which is registered with Daund Police Station, Pune, dated 31st July 2014, for the offences punishable under Sections 376, 417, 506 of the Indian Penal Code and under Section 3(1) (xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands quashed.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)