



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPP] NO. 1346 OF 2023
IN CRIMINAL APPLICATION [APL] NO. 573 OF 2022.

Nikhil Ashokrao Waghmare and others.

-VERSUS-

The State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.V. Manohar, Senior Advocate with Shri R.R. Vyas,
Advocate for Applicants.

Shri M.J. Khan, A.P.P. for Non-applicant No.1.

Shri D.N. Mugdale, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.

DATE : OCTOBER 18, 2023.

Heard learned Counsel for the parties.

2. Applicants have been arraigned as accused in Crime No.103/2022 registered with Gittikhadan Police Station, Nagpur, for the offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code. Accused have invoked the inherent powers of this Court, for quashing of the aforesaid crime. Applicants have also moved this application for directing the police to consider their documents (with

application dated 08.08.2023) during the process of investigation. Precisely it is the contention of applicants that the documents sought to be produced are pivotal in nature, which would assist the investigating officer to arrive at a right conclusion. Rather, it is the contention of applicants that several printouts of WhatsApp chat of deceased would assist the investigating officer to arrive at a conclusion that no case is made out against the applicants to file final report.

3. The learned A.P.P. has put stiff resistance to the application by contending that the documents sought to be produced by applicants/accused are in the nature of probable defence which is a matter of trial. While exercising the inherent powers at the stage of investigation, those documents cannot be entertained. According to the learned A.P.P. directions sought for, amounts to interference in the process of investigation, which is not permissible. In support of resistance, he has relied on some decisions of the Supreme Court.

4. To understand the controversy in a better manner it necessitates us to take a brief resume of the facts of the case. Informant's daughter got married with applicant no.1 Nikhil on 19.12.2021. Soon after the marriage, she resumed cohabitation

at her matrimonial house along with applicants. She was subjected to cruelty to meet unlawful demands. On 20.02.2022, informant's daughter committed suicide by hanging. On that basis the informant Khushal lodged the report with the concerned police station, who in turn registered the crime for the offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code.

5. In the wake of said factual background applicants have approached to this Court for quashing of the first information report on account of absence of a prima facie case. Notices were issued to non-applicants on the main application on which they have put their appearance. This Court vide interim order dated 27.04.2022 has permitted the investigating agency to go on with the investigation, with a rider that charge sheet shall not be filed without obtaining leave of this Court.

6. In the meantime applicants have filed an application dated 08.08.2023 to the police with a request to accept the annexed documents for their consideration which are in the form of printouts of WhatsApp chat. It is submitted that the investigating officer is not inclined to consider those documents, and therefore, this application. In other words, it is urged by

the accused that the investigating officer be directed to consider the documents in defence during the course of investigation.

7. The learned Senior Counsel would submit that on proper analysis of these documents, the investigating officer would surely come to the conclusion that no offence is made out. He would submit that the investigating officer is under legal obligation to investigate the matter in unbiased and legal manner. As a part of fair investigation he is bound to consider all the material, irrespective whether it supports the prosecution or otherwise. Learned Senior Counsel has relied on the decision of Supreme Court in case of **Karan Singh .vrs. State of Haryana and another – [2013] 12 SCC 529**, to contend that the investigation must be free from unobjectionable features or infirmities. The investigation must be entirely impartial and must dispel any suspicion regarding genuineness of the investigation. Particularly emphasis is led on the observations made in paragraph no.16 of the decision that “*The investigating officer is not merely present to strengthen the case of the prosecution with the evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth.*” Precisely it is submitted that there is no propriety in denying the vital material from the assumption

which may assist the investigating agency to arrive at a right conclusion.

8. Per contra, the learned A.P.P. appearing for the State would submit that powers for investigating a cognizable offence totally vests with the police officer which shall not be interfered with by the Courts. The investigating officer should be left free to decide the course of investigation in the manner in which he deems fit and appropriate. The main thrust is on the point that indulgence of this Court amounts to interference in the process of investigation which is deprecated by the Supreme Court. To substantiate said contention reliance is placed on the decision of the Supreme Court in case of **M/s. Neeharika Infrastructure Pvt. Ltd .vrs. State of Maharashtra – AIR 2021 SC 1918**. The learned A.P.P. took us through various parts of the decision to emphasize that the Court shall not interfere into the process of investigation by invoking inherent powers of this Court.

9. Besides that the learned A.P.P. has placed reliance on the decision of the Supreme Court in case of **State of Orissa .vrs. Debendra Nath Padhi – 2005 [1] Crimes 1 [SC]**, to contend that, it is not permissible to consider the material placed by the

accused before commencement of the trial. In our view reliance on the above decision is misplaced. In said decision, the issue involved was whether the Court can consider the material filed by the accused at the time of framing of the charge. In that context, it has been ruled that, at the stage of framing charge, the defence of accused cannot be put forth. We are afraid to accept the submission of the learned A.P.P, since the facts are essentially different, as we are not dealing with the aspect of framing of charge.

10. It is essential to note that the essence of criminal justice system is to reach to the truth. The underlying principle of criminal jurisprudence is that, the accused is presumed to be innocent till he is proven guilty with requisite standard of proof. Fair, impartial and transparent criminal investigation is *sine qua non* for ensuring fair trial for the accused. The process of fair investigation and fair trial are as much necessary for the victim, as it is also equally necessary for the accused. The investigating officer is under an obligation to carry fair investigation with a sole moto to reach to the truth. In this regard we may make useful reference to the observations of the Supreme Court in case of **Babubhai .vrs. State of Gujarat and others – [2010] 12 SCC 254**. The relevant observations made in paragraph no.32

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reads as under :

“32. The investigation into a criminal offence must be free from objectionable features and infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer “is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth”.”

11. With a zest to complete the point in all respect, we may refer to the observations contained in paragraph no.48 of the decision of the Supreme Court in case of **Vinay Tyagi .vrs. Irshad Ali @ Deepak and others – [2013] 5 SCC 762**, which reads as under :

“48. What ultimately is the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence ? It has a

twin purpose : Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigation canons.”

12. Since the fair investigation and discovery of truth is the ultimate object, the investigating officer has to unearth the truth and bring the real facts on record. It is a requirement of fair trial that there is fair investigation, and there can be no fair investigation if the investigating officer does not take into consideration all relevant material which is desirable for the purpose of investigation. Needless to say that the Code of Criminal Procedure does not envisage one sided investigation aimed at collecting material only to substantiate the case of

prosecution.

13. For the purpose of better understanding, we are tempted to give few illustrations on exemplary basis. In case of first information alleging that there was consensual sexual intercourse with a minor, if the accused sought to tender birth certificate of the victim showing that she was major on the date of occurrence, which would materially divert the course of investigation. In such a situation, the police cannot say that let the charge sheet be filed for the offence of rape and then the accused shall tender birth certificate in defence during trial. Secondly, in case of requiring physical presence of culprit, if the accused sought to tender unquestionable documents showing that at the relevant time he was abroad. In such a situation also, those documents would assist the investigating agency to arrive on the truth. There can be variety of circumstances which we cannot predict, but, if the vital material is brought to the notice of the investigating agency they cannot shut their eyes by refusing the same. Of course it is within the domain of the Investigating Officer whether to rely or not on the said material.

14. Section 2[h] of the Code of Criminal Procedure

defines the term 'investigation' as under :

(h) " investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

15. Plain reading of the above section postulates that the investigation is a process of collection of evidence. The statute nowhere says that collection of evidence shall be in support of the case of the prosecution. No doubt, the investigating officer shall be given complete and full freedom to carry the investigation in accordance with law. The material which is sought to be produced by the accused may or may not help the investigating agency, but, it is totally unacceptable that he shall not look into the same. We do not see any provision of law which precludes the investigating officer to go through the material if he finds it relevant and germane to arrive at the truth.

16. In view of above, the present application is allowed. The investigating officer shall accept the documents sought to be produced by applicants and consider the same only to the extent those are relevant, necessary or desirable for the just and

fair investigation of the case. However, it is left to the discretion and wisdom of the investigating officer to rely or not to rely on the said documents so produced by applicants. Needless to say that we hope and expect that the investigating officer shall carry the investigation in a fair manner.

JUDGE

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