

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 822 OF 2015

SUNITA W/O MAHESH SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA & ORS

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Advocate for Petitioner : Mr. Dharashive M. L.
APP for Respondent No.1: Mr. N.B. Patil
Advocate for Respondents 2 to 5: Mr. Warad S.V.

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CORAM : V. K. JADHAV, J.
DATED : 13th JANUARY, 2016

PER COURT:-

1. By consent of learned counsel for respective parties, heard finally.

2. On the basis of complaint lodged by the petitioner Sunita on 28.3.2012, crime No. 38 of 2012 for the offences punishable under Sections 376 (G) and 452 of I.P.C. came to be registered at Police Station, Ausa. It is alleged in the said complaint that present respondent Nos. 2 to 5 have committed gang rape on the complainant by entering into her house. On the basis of these allegations, investigating agency was set in motion and accordingly investigation was carried out. Initially "B" summary report was submitted by then Investigating Officer before the learned Magistrate. The learned Magistrate has called upon the complainant to file her say. The petitioner/complainant has resisted the said "B" summary report on the ground that investigating officer has not placed material evidence on

record which was furnished by her and that she is further ready to produce the same before the investigating officer. The learned Magistrate has observed that the Investigating Officer has recorded statements of witnesses and produced all possible evidence on record. However, further directed the investigating officer to re-investigate the offence and submit the report as early as possible.

2. However, again Deputy Superintendent of Police, Dr. Ashwini Shelar submitted "B" summary report. Learned Magistrate by its impugned order dated 6.5.2015 has accepted the same and accordingly allowed "B" summary report submitted by the investigating agency. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner original complainant has given her statement in detail to the investigating Officer and the same is not considered. The petitioner-original complainant has made specific allegations against respondent Nos. 2 to 5 about commission of gang rape by entering into her house at the midnight time.

4. Learned counsel for respondent Nos. 2 to 5 original accused submits that there is no substance in the complaint. Learned counsel further submits that the petitioner-original complainant has developed illicit relations with one Pandit Gavali. Even the petitioner-complainant

has filed complaint against said Pandit Gavali under the provisions of Domestic Violence Act and the same is pending. Learned counsel also submits that the petitioner-complainant is in habit of filing complaints. Learned counsel has also pointed out that respondent No.3 Ganesh is son of Pandit Gavali, respondent No.2 Suryakant is real brother, respondent No.4 Kashinath is son in law and respondent No.5 Balaji is brother in law of said Pandit Gavali. Learned counsel thus submits that the investigating officer has rightly submitted "B" summary report and learned Magistrate has allowed the said summary report.

5. Learned A.P.P. submits that the statements of neighbouring witnesses have been recorded. Immediately after the alleged incident, the petitioner complainant was referred for her medical examination, however, the medical report is in negative. Learned A.P.P. submits that the neighbouring witnesses have not supported the prosecution case in any manner. Learned A.P.P. thus submits that there is no substance in the writ petition and the writ petition is liable to be dismissed.

6. Learned Magistrate on submission of "B" summary report, initially, considering seriousness of the allegations made by petitioner-complainant, directed the investigating officer to re-investigate into the offence and submit report at the earliest. Even, thereafter the petitioner-complainant was given liberty to produce evidence before the investigating Officer to substantiate her allegations. However,

petitioner-complainant has failed to produce any evidence before the investigating officer. Even neighbouring witnesses have shown their ignorance about alleged incident. Though the petitioner-complainant has made allegations that during the course of alleged incident, she has sustained injuries on her chest and private part and even though she was referred on the same day for her medical examination, the medical report does not corroborate the allegations made by her. It appears that respondent nos. 2 to 5 are close relatives of said Pandit Gavali. During the course of investigation, it was revealed that against said Pandit Gavali, petitioner-complainant has filed complaint under the provisions of Domestic Violence Act and also under some other penal provisions. Learned Magistrate has drawn inference that the possibility cannot be ruled out that the petitioner complainant in order to teach lesson to said Pandit Gavali might have made false allegations against close family members and relatives of said Pandit Gavali.

7. In the light of above, I do not find any substance in the writ petition. The writ petition is devoid of any merits. The learned Magistrate has rightly issued "B" summary. Writ petition thus liable to be dismissed and it is accordingly dismissed. No costs.

(V. K. JADHAV, J.)

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