

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION  
CRIMINAL WRIT PETITION NO. 1518 OF 2013

Shri. Balasaheb Hiralal Bharaskar  
R/at : Arihant Aashish Co-op Hsg.  
Society, A-Wing, House No. 295/3,  
Dhamankar Naka, Bhiwandi,  
Dist. Thane.

....Petitioner

Vs.

1. The State of Maharashtra  
2. Noorjahan Mohammad Husain Ansari  
R/at: Bhikku Chawk, Malegaon, Dist. Nashik.

... Respondents

Mr. Yashpal Thakur Advocate for the Petitioner

Mr. V. B. Konde-Deshmukh APP for the State.

**CORAM: SMT.SADHANA S.JADHAV, J.**

**DATED : 3<sup>rd</sup> MAY , 2017.**

**JUDGMENT:**

1) The Petitioner herein impugns the order dated 16/07/2010 passed by Ad-hoc Additional Sessions Judge- 2, Malegaon thereby rejecting the application filed by the Petitioner seeking discharge in Sessions Case No. 64

of 2005. The Petitioner herein was charge-sheeted in crime no. 31 of 2005 registered at Malegaon Chavani Police Station for offence punishable under sections 376 and 354 of the Indian Penal Code.

2) Such of the facts necessary for consideration of the present petition are as follows:

(i) The Petitioner herein was officiating as Civil Judge Junior Division and Judicial Magistrate First Class, Malegaon.

(ii) It is the case of the prosecution that on 08/03/2005, the Complainant i.e. present Respondent no. 2 had filed F.I.R. alleging therein that one and half month prior to 08/03/2005, the Complainant had received a call from the Petitioner informing her that he was unwell and that she should visit him. The Complainant had obliged. According to the report, when the Complainant reached the house of the Magistrate i.e. the present Petitioner, she was assaulted by the Petitioner who was in a state of intoxication. That the Petitioner had proposed to her and thereafter had forcible sexual intercourse

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with her. It is also alleged in the report that the Petitioner had called upon the Complainant to meet him behind the Court building from where she was taken to Godavari rest house. It is also alleged in the report that in order to get married to the Complainant, the Petitioner had expressed his willingness to convert to Islam. That he had then attempted to ravish her. That the Complainant had allegedly raised hue and cry, people gathered on the spot and thereafter, the Petitioner had fled from the spot. It is also alleged that the people belonging to the Complainant's community had then taken the Petitioner and the Complainant to a Mosque in a rickshaw and thereafter, on 08/03/2005, she had allegedly lodged the report.

(iii) After completion of investigation, the charge-sheet was filed against the Petitioner for the alleged offences.

3) It is pertinent to note that the Complainant had filed Criminal Writ Petition No. 2203 of 2005 before this Court specifically contending that she was forced to sign the copy of the report which was already scribed. She had specifically contended in the petition that she is an Advocate by profession

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and is practicing law in the Court of Malegaon.

4) The Respondent no. 2 i.e. the Petitioner in Writ Petition No. 2203 2005 had given the factual matrix of the case and had contended that on 07/03/2005, at about 6.30 p.m., after finishing the Court work, she had been for a walk at Sidharth Garden which is in front of Godavari rest house, Malegaon. That 4-5 boys had approached her and were abusing her. The said boys had attempted to outrage the modesty of the Complainant and therefore, she was constrained to take shelter in the premises of Godavari rest house. She was chased by the boys and had then assaulted her. She had raised hue and cry. Upon hearing her cries, Mr. Shinde, who was working as care taker, rushed to rescue her. According to Respondent no. 2, the present Petitioner who was residing in the rest house also intervened to rescue her from the clutches of the boys. Thereafter, the boys had mounted assault upon Mr. Bharaskar i.e. the present Petitioner. He had rushed to the first floor to call for help. He was assaulted by the miscreants and thereafter, the Complainant i.e. Respondent no. 2 and the Petitioner were forced to board auto-rickshaw and they were taken away from the rest house. In the rickshaw, miscreants were

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demanding one lac rupees from each of them. Upon refusal, to oblige them, rickshaw was taken towards Madarasa situated at Kidwai road, Malegaon. The care taker Mr. Shinde had lodged a report about the said incident.

5) That care taker Mr. Shinde has stated in the F.I.R. that the present Petitioner was residing in Godavari rest house for almost one month as he was not allotted a residence. It was also stated, that in February, he was allotted the house and therefore, he had left the rest house. That a suit was booked for a Judge between 5<sup>th</sup> and 8<sup>th</sup> March in Godavari rest house. Mr. Kulkarni, the Judge had visited the rest house on 6<sup>th</sup> and had left the same on 7<sup>th</sup> March. Suit No. 4 was occupied by P.I. Mr. Tadvī for more than a week. The keys of the suit occupied by Mr. Kulkarni were with the Petitioner. That on the relevant date i.e. on 07/03/2015, Mr. Bharaskar had visited the rest house at about 6.45 p.m. and had asked the Complainant to prepare tea. At that time, they heard commotion noise outside the rest house and therefore, they rushed out and saw that a woman was being assaulted by 4-5 persons. The Complainant Mr. Shinde rushed to Mr. Tadvī for help. But he was sleeping. In the meanwhile, the Petitioner had also rushed out. The Complainant had seen the said

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miscreants assaulting the Petitioner with fist and kick blows. The woman was also being assaulted and thereafter, the Judge i.e. the Petitioner and the woman were forcibly taken by the miscreants in a rickshaw bearing no. MH 41- 8461. It is also stated in the F.I.R. that the Complainant had learnt that Mr. Bharaskar was confined in Madarasa and the police had gone and rescued him and thereafter, the Muslim woman was made to lodge a report.

6) Besides relying upon F.I.R. Respondent no. 2 had also contended in the petition that Mufti and Maulvi who were present in Madarasa were forcing Mr. Bharaskar to convert to Muslim religion and marry Respondent no. 2 and that upon denial Mr. Bharaskar was beaten mercilessly. That Mr. Bharaskar & the woman were confined in the Madarasa for three hours by Mufti and Maulvi. Petitioner i.e. present Respondent no. 2 had also filed an application before the District Judge with a prayer that her statement be recorded under section 164 of the Code of Criminal Procedure, 1973. Her statement was recorded by 4<sup>th</sup> Judicial Magistrate First Class and that she had stated true and correct facts of the case. The Complainant i.e. Respondent no. 2 had also taken a press conference and had brought the facts on record, specifically

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stating that she was never ravished and that she was pressurized by Mr. Jajwardhane, the then Superintendent of Police, Nashik to lodge a report against Mr. Bharaskar. She had disclosed during electronic media press and public. That Deputy Superintendent of Police Mr. Pawal had also offered to file a report under section 169 of the Code of Criminal Procedure, 1973 against Mr. Bharaskar, however, Respondent herein had submitted that it would be necessary to bring the correct facts on record and not simply release the alleged accused under section 169 of the Code of Criminal Procedure, 1973 in the light of her statement under section 164 of the Code of Criminal Procedure, 1973. The prayer clause in Writ Petition No. 2203 of 2005 was seeking directions to take necessary action in light of her statement under section 164 of Code of Criminal Procedure, 1973 and also declare that Respondent no. 2 to 5 have abused process of law by suppressing her statement under section 160 of the Code of Criminal Procedure, 1973. She had also prayed for staying further proceedings in Sessions Case No. 64 of 2005.

7) It is pertinent to note that she was subjected to clinical examination on

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08/03/2005. There was no evidence of rape or sexual intercourse in the recent past. That there were external injuries on her person such as contusions on her face and other parts of the body which were result of assault by the miscreants. In her statement under section 164 of the Code of Criminal Procedure, 1973, she had specifically stated that the contents of the alleged F.I.R. were not read out to her. Her mental condition was not proper as she was mercilessly beaten by the mob. Upon learning about the registration of the F.I.R., she had approached Chavani Police Station to withdraw the alleged F.I.R. against Mr. Bharaskar, however, at that time, police had informed her that the law and order of Malegaon city was not under control and therefore, she was driven away from the police station. She had specifically stated that the police officers of Chavani Police Station and the Superintendent of Police, Nashik, Shri. Jajwardhane had compelled her to sign on an already written complaint. It is pertinent to note that despite the fact that she had stated so before the Judicial Magistrate First Class, Sessions Court as well as the High Court, no action was taken against the said police officers. In fact because of such incidents, the general public would loose faith in the police machinery.

8) In the case of **State of Maharashtra Vs. Arun Gulab Gawali and Ors** [AIR 2010 SC 3762] The Hon'ble Apex Court has observed as follows:

*“A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police”.*

9) Be that as it may, according to the Complainant i.e. present Respondent no. 2, a false prosecution was initiated and she did not wish to be a subject matter of such prosecution.

10) The Petitioner had also filed Writ Petition No. 1518 of 2013. Notice was issued to the Respondent. She had filed affidavit stating therein that no offence had taken place and that she was never victimized nor ravished and filing of the charge-sheet is an abuse of process of law. She had also submitted the same in an application seeking discharge filed by the present Petitioner. She had supported the Petitioner and requested the Court to discharge him as no offence is committed.

11) It is pertinent to note that despite the Complainant insisting that she had not been ravished, charge-sheet was filed, discharge application is rejected.

12) In the course of the hearing of the present Writ Petition, the Complainant i.e. Respondent no. 2 had appeared before this Court on 21/10/2005 and had addressed the Court. She had specifically stated that the Petitioner has been falsely implicated and that no such incident as alleged by her in the F.I.R. has taken place and hence, this Court had issued Rule and stayed further proceedings in Sessions Case No. 64 of 2005.

13) The Petitioner had filed an application seeking discharge on the ground that prosecution had no case even to file charge-sheet. The Complainant had specifically stated on oath that Senior Police Officers had expressed that they would file a report under section 169 of the Code of Criminal Procedure, 1973. Upon perusal of the charge-sheet, statement under section 164 of the Code of Criminal Procedure, 1973 and the contentions in the Writ Petition No. 2203 of 2005, it is clear that a case for discharge was made out.

14) The Hon'ble Apex Court in the case of **State of Maharashtra V/s. Priya Sharan Maharaj and Others [(1997) 4 Supreme Court Cases 393]** has observed as follows:

*“At the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.*

*What the Court has to consider at the stage of framing of the charge is whether the version of the person complaining together with his/her explanation is prima facie believable or not”.*

15) The Complainant i.e. Respondent no. 2 had expressed her desire to submit before the Court in chamber. Considering the sensitivity in the matter, the Complainant was heard in the chamber. The present file was not traceable. The Complainant had specifically stated that she does not wish to go through the ordeal of trial as the case is foisted upon her. That she is the mother of two children and due to pendency of the present petition, her husband had abandoned her and therefore, the matter was listed for final hearing on 03/05/2017.

16) This Court cannot be oblivious of the fact that the Complainant had not stated that prosecutrix does not wish to prosecute the case any further but had candidly stated that no such incident, on the basis of which crime no. 31 of 2005 was registered and therefore, according to her, she did not wish to face victimization of going through the ordeal of the trial. According to her, first F.I.R. lodged by Mr. Shinde cannot be ignored as he had voluntarily and truthfully disclosed the incident to the police and had stated that the Petitioner herein had come out of the rest house only after he had heard hue and cry of

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helpless woman who was being assaulted by some miscreants. The Complainant i.e. Respondent no. 2 had specifically stated on oath that the Petitioner along with her were forcibly taken to Madarasa and were confined and she was made to sign the report forcibly. She was given no time to even read the contents of the alleged report which was purportedly treated as F.I.R. Moreover, the Complainant had categorically stated on oath that she is not conversant or well versed with Marathi language. She had stated before this Court [In the open Court] in the course of hearing that she was exposed to social obloquy by miscreants. Her image was tarnished to such an extent that her husband had abandoned her as he did not wish to move in the society with a stigma on his wife and family. She had clearly stated that she is the victim of circumstances.

17) Similarly, a member of Judicial services who was on probation was exposed to moral and social obloquy. By ruining his career, the institution i.e. the image of Judiciary was also tarnished as the media circulated the news that a member of lower Judiciary had committed heinous offence like rape on practicing Advocate. It is no doubt a sorry state of affairs that a member of the

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Judiciary who had promising career had been victimized. The continuation of the said proceedings would be an abuse of process of Law.

18) It is apparent on the face of the record that the Complainant i.e. Respondent no. 2 would not support false prosecution which was foisted upon her and therefore, continuation of such proceedings would be futile exercise. It is necessary to restore the honour of the Complainant as well as the accused who have been victim of circumstances. Upon meticulous examination of the facts of the case, discharge of the Petitioner in the present case would be imperative in the administration of justice. Hence, following order.

### **ORDER**

- (i) Writ Petition is allowed.
- (ii) The Judgment and Order dated 16/07/2010 passed by the learned Ad-Hoc Addl. Sessions Judge-2, Malegaon at Exh. 23 and 24 in Sessions Case No. 64 of 2005 is hereby quashed and set aside.

(iii) The Petitioner herein is discharged from the Sessions Case No. 64 of 2005 pending before Ad-Hoc Addl. Sessions Judge-2, Malegaon.

(iv) Rule is made absolute in the above terms.

(v) Writ Petition stands disposed of in the above terms.

**(SMT. SADHANA S. JADHAV, J.)**