

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.427 OF 2017

RIYAJUDDIN HUSSAIN THANGE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Ms.Noorseema M.V. Baig i/b. Ms.Sarfaraz Khalife, Advocate for the Applicant.

Ms.J.S.Lohokare, APP for the Respondent - State.

Mr.Sachin Mandole, Police Sub-Inspector, Nagpada Police Station, present in court.

CORAM : A. M. BADAR, J.

DATE : 24th NOVEMBER 2017

P.C. :

1 By this revision petition, the revision petitioner/accused in Sessions Case No.794 of 2016 for offences punishable under Sections 376, 328 and 506 of the Indian Penal Code (IPC) as well as under Section 66(e) of the Information Technology Act, is challenging the order below Exhibit 3 – the

discharge application, passed on 20th July 2017 by the learned Additional Sessions Judge, Mumbai.

2 Heard the learned advocate appearing for the revision petitioner/accused. She drew my attention to the complaint dated 25th February 2016 and 28th march 2016 lodged by Yunus Ayub Shaikh making allegations in respect of illicit relations between his wife i.e. the First Informant and the present revision petitioner/accused. With this, the learned advocate took me through the statement of the First Informant recorded on 3rd March 2016 by the police, wherein, she has averred that she has no relation whatsoever with the present revision petitioner/accused. With the aid of these documents, the learned advocate for the revision petitioner/accused argued that the First Information Report (FIR) is false and concocted. By drawing my attention to the statement of Abid Ansari – waiter with Paramount Restaurant, the learned advocate argued that it is a restaurant serving food, wherein it is not possible to commit rape. The learned advocate argued that the First Informant and the revision

petitioner/accused were having affair and sharing consensual sexual relations with each other. By relying on statements of Mangesh Shinde, Raju Mahadik and Sachin Mhatre, the learned advocate argued that these witnesses have not identified the woman who had attended the office of the revision petitioner/accused. It is argued that the signature on the FIR differs with the signature of the First Informant and the FIR is lodged due to coercion exerted by pressure of the First Informant.

3 The learned APP drew my attention to the FIR lodged by the prosecutrix and argued that the case in hand is not a case of discharge.

4 I have carefully considered the rival submissions and also perused the charge-sheet. The crime in question is registered on the basis of report lodged by the prosecutrix on 28th April 2016. In that report, she has alleged that the revision petitioner/accused developed acquaintance with her and then took her to his office. Near his office, he made her to drink a cold drink. She suffered

giddiness after drinking the cold drink offered by the revision petitioner/accused. Then, she was taken inside the office and when she regained senses, she found herself in complete nude condition. The First Informant further averred that the revision petitioner/accused was also found in nude condition besides her and she found that she has been raped by the revision petitioner/accused. The First Informant further averred that the revision petitioner/accused had taken a video clip of the incident and by threatening her to use that video clip and making it public, he has repeatedly committed rape on her in the hotel at Chowpatty as well as at the second floor of his office.

5 The Charge was framed against the revision petitioner/accused. Even papers of investigation reflect several grounds for proceeding against the revision petitioner/accused. At the stage of framing Charge, mini trial is not contemplated. If the material collected by the prosecution, taken at its face value, reflects ingredients constituting the alleged offence, then the Charge is required to be framed and the accused is required to face the trial.

6 In the case in hand, the documents which are not forming the part of the charge-sheet are pressed in service to point out that the sexual intercourse was consensual affair between the First Informant and the revision petitioner/accused. That will be the defence which will have to be examined and weighed at the time of the trial.

7 Statements of witnesses relied by the learned advocate appearing for the revision petitioner/accused goes to show that, infact, a lady was coming to the office of the revision petitioner/accused for meeting him. The version of these witnesses indicates that the First Informant was meeting the revision petitioner/accused. At the same time, it will have to be kept in mind that averments in the FIR are to the effect that by threatening her to make the video clip of their intimate relationship public, the revision petitioner/accused used to call her at various places.

8 In this view of the matter, it cannot be said that there are no grounds for proceeding against the revision petitioner/accused. I see no perversity or illegality in the impugned order of the trial court rejecting the application for discharge.

9 The revision petition is, therefore, dismissed.

(A. M. BADAR, J.)