

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1259 OF 2016

Dr. Axshar Vijay Kumar Ahirrao

... Applicant.

V/s.

State of Maharashtra

... Respondent.

Mr. Aabad Ponda a/w.Mr. Karma Vivan, Advocate for the Applicant.

Ms. Pallavi Dabholkar, APP for the State.

CORAM : RAVINDRA V. GHUGE,J.

DATE : 31 MARCH, 2017.

Order Reserved On : 23.03.2017

Order Pronounced On : 31.03.2017

ORDER :

1 The Applicant by this application has put forth the following prayers :

- a. This Hon'ble Court may be pleased to direct the prosecution to supply a copy of the CCTV footage relating to the St. Georges Hospital in respect to the alleged incident on 20th June 2013 as spoken off by witnesses Lalit Pandurang Bhosale, Jitendra Tukaram and Aarati Deepak Sawant in their statements under Section 161 of the Cr. P.C. and mentioned in the chargesheet;

b. This Hon'ble Court may be pleased to kindly direct the prosecution to supply the statement of the prosecutrix recorded under section 164 of the Cr.P. C. to the Applicant;

c. This Hon'ble Court may be pleased to kindly direct that the order of framing of charges dated 15.10.2016 may be kindly set aside and the applicant may be given an opportunity to argue for discharge and to oppose the charge after he receives the aforesaid documents sought for in prayer clauses (a) & (b);

d. This Hon'ble Court may be pleased to direct the prosecution to clarify whether they are relying upon the documents other than those in the charge sheet and the aforesaid two documents referred to in prayer clauses (a) and (b) and in the event that they are relying upon any other documents they may be furnished in advance and subsequently they may be directed to furnish any fresh documents which will necessarily prejudice the case of the Applicant;

2 I have heard the learned Advocates for the respective sides and have gone through the record available, with their assistance.

3 The Applicant is an accused in Sessions Case No. 1055 of 2013 and is charged with having committed offences, punishable under sections 354, 354(A), 354(B), 376(C) and 377 of the Indian Penal Code r/w. Sections 4, 8, 9 and 10 of

the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

4 The Applicant was granted bail on certain conditions. A chargesheet was filed in the matter on 20.11.2013. About 24 documents were supplied to the applicant including the statements of witnesses.

5 It is alleged that on 18.06.2013 when the victim girl was examined in the examination room by the applicant - doctor, he asked her to sleep on the patients' bed and administered/injected glucose saline. During the course of injecting the saline, the victim complained that her hands and legs were uncomfortable. She had an unusual sensation in her legs, which were getting awkwardly twisted. The applicant rubbed her hands initially and raised her T-shirt upto her neck level and removed her bra. He then started fondling her breasts and thereafter, left the OPD. The victim thought that this was a part of the medical examination and left the hospital alongwith her grand-mother after the entire bottle of saline was injected to her.

6 On 20.06.2013 she again reached the hospital alongwith her grand mother and went to the OPD section. She was taken to the examination room and the applicant again asked her to lay down on the patients' bed. It is alleged that

the applicant instructed the nurse to leave the examination room and again lifted the T-shirt of the victim and again committed the same act by removing her bra. He then told her that she has worms in her stomach and he therefore, removed her pajama and her underwear and started inserting his fingers in her private part. The victim resisted and removed his hand and lifted her underwear. The applicant again pulled down her underwear and turned her around on one side and started inserting his fingers in her anus. The victim cried out and she was joined in her protest by her grand mother. The victim started crying. The applicant then left the examination room.

7 It is the case of the victim that she and her grandmother returned home after she was discharged after two days on 22.06.2013. It is alleged that her grand mother was under great stress and because of the trauma caused by the acts of the applicant, she was admitted in the hospital on 24.06.2013 in the ICU. She was discharged on 25.06.2013 and she lodged the FIR with the concerned police station on 26.06.2013.

8 It is nobody's case that the victim or her grandmother or any of her relatives had any animosity or previous enmity with the applicant doctor.

9 Sessions Case No.1055 of 2013 commenced before the Sessions Court.

10 Several statements of the witnesses have been recorded, which I need not advert to since I am not required to deal with all the statements of such witnesses. It, however, needs mention that for obvious reasons, the examination room of the applicant is not under CCTV surveillance.

11 The Applicant made an application on 17.07.2014 before the learned Sessions Court, Mumbai (hereinafter referred to as “the Sessions Court”), seeking a copy of the CCTV footage of the recording of the victim and her grandmother. It needs mention that the allegations against the applicant are by a 14 year old school girl. She was studying in the 9th standard in a convent school.

12 The applicant has stated in the application that in the deposition of 13 witnesses, a CCTV footage is referred to which shows the victim and her grand mother leaving the hospital. The contentions of the applicant are that since CCTV footage is part of the documents referred to in the chargesheet, he should be given a copy of the said footage before the Sessions Court proceeds with the trial. It is in this context that an application was filed by the applicant on 17.07.2014, seeking a copy of the CCTV footage.

13 On 22.04.2016 the footage was supplied to the applicant. He waited up to 20.08.2016 and then filed an application on the said date before the Sessions Court, contending that the CCTV footage was blurred and the applicant cannot properly read the said footage. He, therefore, asked for an additional copy of the said footage. The Sessions Court directed the applicant to return the blurred CD in order to compare with the CCTV footage and subsequently ordered on 22.08.2016 that a proper CD be given to the applicant.

14 The grievance of the applicant is that though he had not received a copy of the CCTV footage, as directed by the Sessions Court, the charges were framed on 15.10.2016 by the Sessions Court, thereby taking away his right to file an application for discharge. It is, however, conceded that the applicant had not filed any application before the Sessions Court for seeking discharge, before the charge was framed.

15 The record reveals that the applicant had absconded after the FIR was registered and was untraceable. His anticipatory bail application was rejected. This court also rejected his anticipatory bail application and finally he surrendered to the concerned police station on 30.07.2013. He was subsequently released on bail on 17.09.2013.

16 The issue before this court is as regards the claim of the applicant that his right to file an application for discharge has been taken away by the court since he could not file such an application until he received the CCTV footage. It is therefore, strenuously contended by the learned Advocate for the applicant that his right to seek discharge cannot be taken away and he could not have filed an application for discharge until he receives the copy of the CCTV footage.

17 Considering the thrust of the applicant's case on the CCTV footage, I have gone through the chargesheet which runs into 99 pages. It includes the FIR, the victim's statement, a pen-drive containing the CCTV footage and statements of various employees of the hospital. The final report/form makes a mention of the CCTV footage. The brief facts narrated in the chargesheet only make a reference to the CCTV footage. It appears from the record that the CCTV camera is positioned in the hall outside the examination room by way of a security measure and it is aimed at recording the movements of hundreds of persons in the said hall. It does not appear that the prosecution has attached much importance to the said footage. It only indicates the movement of the victim and her grand-mother outside the examination hall.

18 A statement was made before this court by the applicant that he has received a copy of the CCTV footage during the pendency of this application. As such this court has observed in its order dated 18.11.2016 that this application now survives only for considering the prayer clause (c), which reads as under :

“c. This Hon'ble Court may be pleased to kindly direct that the order of framing of charges dated 15.10.2016 may be kindly set aside and the applicant may be given an opportunity to argue for discharge and to oppose the charge after he receives the aforesaid documents sought for in prayer clauses (a) & (b);”

19 There is no dispute between the litigating sides before this court in so far as the position of law is concerned that after the framing of the charge by the Sessions Court, an application for discharge is not maintainable.

20 In the above background, the applicant has contended that he did not move an application for discharge since he was not given a proper copy of the CCTV footage.

21 I find from the record that though the chargesheet is dated 20.11.2013 and the charges are framed on 15.10.2016. The applicant has never made any application before the Sessions Court, contending that he desires to move

an application for discharge and hence he needs a copy of the CCTV footage expeditiously. Even after he received the CCTV footage on 20.04.2016, he did not move any application for discharge. According to him, he moved an application before the Sessions Court on 20.08.2016, complaining that the CCTV footage is blurred. Even at that juncture, he did not file an application for discharge, in as much as, he did not state in his application dated 20.08.2016 that he needs a proper CCTV footage for enabling him to file an application for discharge. He could have filed such an application, indicating his intention and by reserving his right to add or amend the application after receiving a copy of the CCTV footage.

22 On 15.10.2016, the Sessions Court framed the charge. The record does not reveal that the applicant objected to the framing of the charge in any manner whatsoever.

23 The Sessions Court by an order dated 20.08.2016 (signed by court on 24.08.2016) has rejected the prayer of the applicant that the prosecution be restrained from filing/producing documents during the trial. The Sessions Court has observed that the documents can be produced before the trial and the prayer of the applicant concerning the documents filed during trial, would be considered at the relevant time.

24 While framing the charge on 15.10.2016, the accused, whose plea was recorded, has categorically stated that he has received the copies of the police papers, has understood the charges (six charges) read over and explained to him and he denies of being guilty. Record reveals that the applicant did not file an application on the same date, contending that he desires to seek discharge and hence, the charges may not be framed.

25 Considering the above, the conduct of the applicant becomes relevant. After receiving the chargesheet dated 20.11.2013, the applicant moved an application on 17.07.2014 seeking copies of the documents and the CCTV footage. Said documents were supplied to him in April, 2016. After receiving the documents as well as the CD in April, 2016, he did not move an application for discharge.

26 Even otherwise it does not appear from the contention of the prosecution that the CCTV footage would indicate any circumstances, as is being sought to be projected by the applicant. There is sufficient material available before the court for initiating trial against the applicant. A 14 year old school girl is the alleged victim of the acts of the applicant. There is no previous enmity between any of the relatives of the victim and the applicant so as to infer a false implication of the applicant. Similarly, no parent would sacrifice the

honour of a 14 year old girl for prosecuting the applicant, when he himself does not allege any motive against the victim and her grand mother.

27 Taking an overall view of the matter, I do not find that in the facts and circumstances of this case, the charge framed against the applicant could be quashed and set aside so as to enable him to file an application for discharge.

28 This application, being devoid of merits, is, therefore, rejected.

29 Considering that the offence dates back to 19.06.2013 and since the victim is a growing girl child, who would be attending college and would be pursuing further studies, I deem it proper to direct the trial court to expedite the trial so as to avoid embarrassment to the victim.

(RAVINDRA V. GHUGE,J.)

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