

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4281 OF 2016

Mohammed Faraz Farmood Ali Salmani. .. Petitioner

Vs

The Senior Inspector of Police and Another. .. Respondents

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Shri S.R.Garud i/b Jayakar and Partners for the Petitioner.

Ms. M.H. Mhatre, APP for the Respondent No.1.

Shri Aabad H.H. Ponda i/b Shri Karma Vivan for the Respondent No.2.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 24TH MARCH 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. The submissions were heard yesterday. Rule. The learned APP waives service for the first Respondent. The Advocate for the second Respondent waives service. Forthwith taken up for final disposal.

2. The prayer in this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”) is for quashing the First Information Report (FIR) lodged alleging commission of offences under Sections 354(B), (D), 506(II), 504 of the Indian Penal Code as well as under

Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”). The quashing is sought on merits as well as on the ground of settlement.

3. The second Respondent is the victim of the offence. At the relevant time, the second Respondent was a minor. His date of birth is 5th December 1998. Thus, she has become major on 6th December 2016. Perusal of the statement of the second Respondent on the basis of which FIR was registered shows that through the mode of Face Book, the second Respondent was in touch with the present Petitioner since the year 2012. In April/May 2014, when the second Respondent visited the place of her father in Saudi Arabia, on the invitation given by the father of the Petitioner, the family of the second Respondent and the second Respondent visited the house of the father of the Petitioner in Saudi Arabia. It appears that after coming back to India, the second Respondent was in touch with the Petitioner. It appears that they were meeting each other from August 2014 to December 2015. However, on some issues, they used to fight with each other.

4. The allegation in the FIR is that on 29th August 2016, when she reached her College Lala Lajpatrai, the Petitioner came there in a Car. While the second Respondent was alighting from a motor cab, the Petitioner told her to sit in his Car. It is her case that she refused to sit

in the Car but the Petitioner threatened her to create a scene in front of the College and, therefore, she sat in the car. It is stated that the Petitioner proceeded with her by the car from Mahalaxmi Station towards Worli Sea Link. At that time, according to the first informant, the offence complained of under Section 354 was committed by the Petitioner. It is alleged that he threatened the second Respondent to kill her. He also threatened to commit suicide. Ultimately, the Petitioner's friend stopped the Car at K.K. Road where the second Respondent's friends were standing. It is alleged that the Petitioner abused her friends and threw her cell phone on the footpath on two occasions. The FIR was registered on 1st September 2016.

5. It is apparent from the statement of the mother of the second Respondent which is a part of the chargesheet that the mother of the second Respondent along with the second Respondent proceeded to the Tardeo Police Station on 29th August 2016 when a complaint of Non-cognizable case (NC) was registered in connection with the same incident. We have perused the NC complaint registered by the second Respondent against the Petitioner. In the NC complaint, the second Respondent stated that the Petitioner is her cousin. They knew each other. It is further stated that they were having love affair for a period of two years. She further stated in the NC Complaint that at 7.30 a.m., the Petitioner came to her College and requested her to accompany to

him. When the second Respondent refused, the Petitioner abused her and assaulted her by hand. No other allegation is made in the NC Complaint lodged by the second Respondent at 8.30 p.m. on 29th March 2016. As stated earlier, the FIR about the same incident which took place at 7.30 a.m. on 29th August 2016 was lodged by the second Respondent. It appears from the FIR that in fact at 23.50 hrs on 1st March 2016, the statement of the second Respondent was recorded. Thus, it appears to us that the allegations made in the FIR regarding outraging her modesty by tearing her clothes is clearly an afterthought. As stated earlier, the only allegation is made by the second Respondent on 29th August 2016 in her NC complaint was that the Petitioner abused her and assaulted her by hand.

6. There are consent terms signed by the Petitioner and the second Respondent and their respective Advocates. The Petitioner has undertaken that he will not harass the second Respondent and her family members and he will stay away from them. There is an affidavit filed by the Petitioner in terms of the undertakings. It is stated that the second Respondent wants to move ahead in her life to complete her education and to get married. There is an affidavit filed by the second Respondent in terms of the settlement. There is a specific undertaking of the Petitioner not to visit College or Institution where the second Respondent is studying. He has further undertaken not to visit the

second Respondent and not to communicate with the second Respondent in any manner. He has also undertaken not to cause harassment or disturbance to the second Respondent or her family members.

7. As stated earlier, going by the complaint lodged by the second Respondent herself on the date of incident, the only allegation made by her against the Petitioner was of abusing her and assaulting her by hand. Therefore, the allegation of commission of serious offence of outraging her modesty in the FIR appears to be completely by way of an afterthought.

8. Therefore, it is not possible to accept that the offences under Sections 354(B), 354(D), 506(II) and 504 of the Indian Penal Code and the offence alleged under Sections 8 and 12 of the POCSO Act are made out.

9. In view of this position, considering the settlement between the parties and the undertakings given by the Petitioner, this is a fit case to exercise the powers under Section 482 of the CrPC.

10. Accordingly, we pass the following order:

ORDER :

(a) We accept the undertakings of the Petitioner dated 8th February 2017;

(b) Rule is made absolute in terms of prayer clause (a) which reads thus;

“(a) This Hon'ble Court be pleased to quash and set aside POSCO Special Case No.470 of 2016 pending before the Addl. Sessions Judge, Court Room No.18, Mumbai and the Chargesheet arising out of FIR being C.R.No.224/2016 registered by the Tardeo Police Station for offences U/s.-354(B)(D), 504(2), 506 of IPC and Sections 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 against the Petitioner.”

(c) All concerned to act upon an authenticated copy of this order.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)