

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4397 OF 2016

Sanchaita Ghoshal	...	Petitioner
Vs.		
The State of Maharashtra	...	Respondent

Mr.Swapnil Ovalekar,Advocate for the petitioner
Mr.V.B.Konde-Deshmukh,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 13th April, 2017.

P.C.

Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioner happens to be the first informant in Crime No.99 of 2014 registered at Oshiwara Police Station on 3.3.2014. The investigation is completed and charge-sheet is filed for the offences punishable under Sections 354 and 509 of the Indian Penal Code. The trial has commenced. The evidence of the complainant was in progress. On 28.11.2016, in the latter half of recording of substantive evidence, the complainant had submitted on oath before the Court that she had been to Oshiwara Police Station on 3.3.2014. She had given a written report to the Senior Police Inspector of Oshiwara Police Station at 8 p.m. The officer in charge was a

lady officer. She refused to take the report. The complainant had to plead before her to accept her report on 3.3.2014 and thereafter she had signed on the said letter. The complainant had then approached the Commissioner of Police, obtained their acknowledgment on 4.3.2014 and thereafter the police had called upon the complainant and recorded her statement. On 22.3.2014, she gave another application to the Senior P.I. which was duly served.

3. It was the contention of the complainant that the written report filed by her on 3.3.2014 at 8 p.m. did not form part of the charge-sheet and the report under Section 154 of Cr.P.C. did not contain all the allegations made by the complainant. In the written report, the complainant had referred to the instances dated 4.3.2011 and the minutes of the meeting dated 25.2.2011 as well as the reply dated 6.2.2014 and several other instances. That there is also no reference to the letter dated 11.1.2011. It is apparent on the face of the record that the complainant was being harassed by the accused and, therefore, she was constrained to approach the police station on 3.3.2014.

4. Perused the compilation of the charge-sheet. The said letter is not included in the charge-sheet. The Investigating Officer had kept the said letter in his own file for the reasons best known to him. The

complainant had filed an application below Exhibit 30 and had demonstrated that the said letter dated 3.3.2014 is not on record. The Metropolitan Magistrate had recorded the demeanour of the complainant for stalling the proceedings. The learned Court had also taken note of the fact that the complainant seeks to rely upon certain documents dated 11.1.2011, 2.3.2014, etc. According to the learned Magistrate, “the documents were supposed to be produced before the prosecution itself and nobody is preventing them from filing the said document. The learned Magistrate has observed that it is not the case that the said document is in custody of any private person. It is with the public office, one is the Court and another is police station. So certified copy can be produced from the court and the police can be directed to produce the said document.” According to the learned Magistrate, the complainant was only trying to protract the proceedings.

5. It is true that the Court would place reliance upon the compilation of the charge-sheet. i.e. papers of investigation filed by the Investigating agency when it appears to the Court that there is no fair investigation and that the investigation is carried out in a partial manner favouring the accused by suppressing the factual aspect. In the interest of justice, the Court cannot act as a silent spectator. Time and again, the

complainant is insisting upon the Court to see the letter written by her on 3.3.2014 and the same was rejected.

6. The learned counsel for the petitioner rightly submits that in the course of examination, the complainant would be confronted by her first information report, on the basis of which crime was registered and after noticing that the said instances stated by her in the examination-in-chief do not find place in the first information report. It would be an omission amounting to contradiction and benefit would naturally be extended to the accused.

7. The submissions are justified. It is normally seen that in most of the cases complained by women, who are harassed either by stalking or when there is an attempt to outrage their modesty, the police does not conduct a fair investigation and naturally the accused are acquitted. The complainant is just helpless. Fortunately, the complainant has taken steps to demonstrate before the Court that she may not get proper justice in the absence of the report written by her on 3.3.2014. It is in these circumstances that before proceeding with further stages of investigation, the prosecution shall file an appropriate application and place on record the statement of the complainant dated 3.3.2014 as well as all other instances mentioned in the report dated 3..2014. The prosecution shall place on

record the letter dated 3.3.2014 and all other documents referred to in the said letter. The prosecutor shall also record the examination-in-chief calling upon the complainant to prove the letter dated 3.3.2014 and all other documents. The learned Magistrate shall also take steps to frame appropriate additional charges on the basis of the documents submitted by the prosecution at this stage. It cannot be said that these are the papers which have been collected in further investigation under Section 173(8) of Cr.P.C. since they should have been a part of the record since inception. The investigating agency has failed in its duty to place all relevant documents on record which is an abuse of process of law and would cause injustice to the complainant.

7. With these directions, the Writ Petition is allowed. Rule is made absolute in the above terms. Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)