

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 294 OF 2017

Devendra Rabhajirao Kawade,
Age:69 Years, Occupation- Retd.
Resident of H.No.6760, Kawade
Wada, Nalegaon, District Ahmednagar. ... **Petitioner**

VERSUS

1. The State of Maharashtra
2. Shital Sanjay Walkar,
Age:24 Years, Occupation- Household Work,
Resident of Burudgaon Road, Ahmednagar. ... **Respondents**

Mr. S.V. Sudrik, h/f. S.S. Jadhavar., Advocate for the Petitioner.
Mr. V.M. Kagne, APP for Respondent-State.

CORAM : MANGESH S. PATIL, J.
DATE OF RESERVING THE JUDGMENT : 03.08.2018
DATE OF PRONOUNCING THE JUDGMENT : 05.09.2018

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent no.1. Respondent no.2 is served. With the consent of both the sides the matter is taken up for final hearing.

2. The petitioner who is arraigned as accused no.2 in Crime No. I-93 of 2015 registered with Kotwali Police Station, Ahmednagar for the offence punishable under Sections 307, 376, 420, 323, 504, 506 read with Section 34 of the Indian Penal Code applied for discharge under

Section 227 of the Criminal Procedure Code by filing application (Exhibit-11) in Sessions Case No.351 of 2015 arising from that crime. After hearing, by the impugned order the learned Additional Sessions Judge rejected the application. Hence this writ petition.

3. Shortly stated, the allegations in the F.I.R. lodged by the respondent no.2 as can be made out from the charge-sheet are to the effect that the accused no.1 who happens to be the nephew of the petitioner promised her to marry and deceived her to have sexual relations with him. He maintained such relations and as a result she became pregnant. However, he forcibly administered her pills as a result she suffered abortion. He then started neglecting her. When he started looking for a girl to marry she filed a complaint with Women's Grievance Committee. It was then alleged that the petitioner thereafter intervened and promised that he would bring about the marriage between the two. However in spite of lapse of four months when nothing happened she went to the house of the petitioner on 13.04.2015 to inquire with him. However he abused and threatened her and also beaten her. He also declared that he wanted the accused no.1 to marry his niece and asked her to leave. When she refused he forcibly administered her pills. But somehow she went to a shelter home and from there she was taken to a hospital. Her statement was recorded by the Special Judicial Magistrate while under going treatment on 15.04.2015. It was treated as F.I.R. and the offence was registered.

4. The learned advocate for the petitioner submitted that accepting the allegations in the F.I.R. at their face value and going by the papers collected by the Investigating Officer and filed along with the charge-sheet as also some documents of impeccable character relied upon by the petitioner clearly demonstrate that he is being falsely implicated. There was no sufficient ground for proceeding against him. The information collected from Anandrishiji Hospital by the petitioner which was from the doctor concerned clearly shows that the respondent no.2 had given the history of having consumed the pills herself. There is a history about such an attempt by her at earlier point of time. The documents annexed to the charge-sheet further reveal that the petitioner had gone to Junnar on the relevant date i.e. 13.04.2015 for attending the last rites of his sister and was also required to be admitted in Tuljai Bhavani hospital between 12.04.2015 to 14.04.2015. All these police papers clearly substantiate the version of the petitioner that he was not present in his house at all when the alleged incident is stated to have taken place in his house. All these material facts and circumstances have been ignored by the learned Additional Sessions Judge. The impugned order is illegal.

5. The learned advocate for the petitioner would further point out that the subsequent text messages sent by the respondent no.2 and her relative to the accused no.1 also demonstrate as to how the respondent no.2 has lodged the F.I.R. as a revenge and an attempt is being

made to extort money. He would also point out the affidavit of mason Sandip Dattatraya Kolge who has stated about absence of the petitioner in the house between 12.04.2015 and 14.04.2015 while he was doing flooring in the house. Therefore, even such a record of impeccable character should have been looked into by the learned Additional Sessions Judge. She having failed to do so, the impugned order has resulted in miscarriage of justice and the petitioner may be discharged.

6. The learned A.P.P. strongly opposed the petition. He submitted that at this juncture subjective satisfaction of existence of sufficient material to frame charge was enough for the learned Additional Sessions Judge to refuse to discharge the petitioner. Though the documents of impeccable character can be looked into, since the documents are being relied upon by the petitioner to substantiate his plea of alibi, those cannot be looked into at the stage of framing of the charge. Going by the allegations in the F.I.R. and the statements of witnesses there was sufficient material to reveal complicity of the petitioner in commission of the crime. It cannot be said that there were no sufficient grounds to proceed against him. The petition may be rejected.

7. It is apparent that the petitioner has been banking upon some of the documents collected by the Investigating Officer purportedly showing that he was taking treatment in Tulja Bhavani Hospital at

Junnar between 12.04.2015 and 14.04.2015 and also relying upon the affidavit of mason to substantiate his plea of alibi. It is true that documents of impeccable character even if those are produced by the accused can be gone into while considering the request of discharge under Section 227 of the Code of Criminal Procedure. However, since the petitioner is seeking to take a plea of alibi which is purely based on facts, the veracity or otherwise of the above mentioned record either collected by the Investigating Officer or produced by the petitioner independently can only be gone into and commented upon at a full-fledged trial extending sufficient opportunity for both the sides to establish these circumstances by cogent and reliable material. Drawing any inference either way at this juncture would certainly cause a serious prejudice to either of the parties and that cannot be allowed to happen. Precisely for this reason, in my considered view, this Court should not comment upon the quality of material or can scan it threadbare to arrive at a conclusion either way as regards such a plea of alibi.

8. True it is that copies of some text messages purportedly sent by the respondent no..2 or her relative to the accused no.1 would have apparently some bearing on the veracity or otherwise of prosecution version. But again, it is a matter of proof of the fact as to whether such texts were really sent by her on her behalf, which fact can only be established by leading evidence. Therefore at this juncture, no inference can be drawn as is submitted by the learned advocate for the petitioner

about false implication.

9. As is rightly submitted by the learned A.P.P, there are specific and precise allegations against the petitioner about he having initially promised to bring about a marriage between the accused no.1 and the prosecutrix which if established would clearly constitute an ingredient for the offence of cheating since the prosecutrix is alleged to have relied upon such a promise made by him after she had lodged a complaint with the Women's Grievance Committee.

10. The respondent no.2 had further alleged about he having threatened and assaulted her and also forcibly administered her pills which would *prima facie* constitute some of the other offences with which the petitioner is being charged. At this juncture, such a material would be more than sufficient to conclude existence of sufficient grounds to proceed. The learned Additional Sessions Judge based on the material annexed to the charge-sheet has reached a plausible conclusion which cannot be interfered with in the writ jurisdiction. There is no apparent illegality, perversity or arbitrariness.

11. The Writ Petition is dismissed.

12. The Rule is discharged.

[MANGESH S. PATIL, J.]