

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 321 OF 2016

Nitin Savaji Nanda

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. E.B. Dixit a/w. Ms. Priyanka Dubey a/w. Ms. Radha Agrawal i/b. Mr.
P.R. Yadav for Applicant

Mr. Swapnil S. Pednekar -APP for the State

CORAM : PRAKASH D. NAIK, J.

DATE : 16 JANUARY, 2018.

P.C. :-

1. This is an application challenging the order passed by the Learned Additional Sessions Judge, Vasai rejecting the application for discharge preferred by the Applicant. The impugned order was passed on 28th April, 2016.

2. The Applicant is being prosecuted for the offence punishable under Sections 376, 307, 377, 354(8), 420, 328, 506 of the Indian Penal Code r/w. Section 67 of the Information Technology Act, 2000. The first information report was lodged by the Informant on 5th October, 2013.

3. The prosecution case is that the family of the victim and accused were acquainted with each other. When the victim was studying in Xth Standard, the Accused had administered her stupefying substance in the

cold drink and, thereafter, he sexually assaulted her. It is further alleged that the accused used to blackmail her by giving threats of publication of photographs. It is also alleged that the victim was engaged with another person in 2013 and at that time, the accused approached her fiancé and tried to malign the victim on the basis of the objectionable photographs. The prosecution further alleged that on several occasions the victim was sexually assaulted by the Accused. It is further alleged that the accused was also indulged in criminal incrimination and also indulged in criminal offences. The victim was allegedly threatened that she will be killed or acid will be thrown on her person. Pursuant to that, the investigation was completed and the charge-sheet was filed.

4. The Applicant preferred an application for discharge before the Sessions Court which has been rejected vide order dated 28th April, 2016. Hence, the Applicant preferred the present criminal revision application.

5. Learned Advocate for the Applicant submits that a false case has been registered against the Applicant. There is a delay about eight years in lodging the first information report which has not been explained by the prosecution. It is further submitted that even assuming that the alleged offence is true as a tenor of the complainant, it is apparent that the relationship in between both the parties was consensus and, therefore, section 376 is not attracted. It is further submitted that a concocted story

is made out by the victim with a view to falsely implicate the Applicant. The conversation relied by the prosecution as well as the documents relied upon to fix the hotel etc. show that the victim had volunteered to do so and the physical relationship was consensual. The first incident which is alleged by the complainant had occurred 8 years ago and there is no reason for the victim to wait for such long time for lodging the first information report. It is further submitted that the nature of allegation itself suggest that the first information is imaginary and the allegations attributed to the Applicant/accused are difficult to accept. It is therefore, submitted that the applicant may be discharged from the said case.

6. The learned APP submitted that there is a voluminous evidence against the Applicant against which he is being prosecuted. The Applicant committed serious offences punishable under section 376, 377 and other offences as stated in the charge-sheet. It is further submitted that the victim was minor at the time of first incident and the question of consent does not arise. It is further submitted that the evidence on record clearly goes to show that the Applicant/Accused had indulged into incriminate practice. Learned APP pointed out the statement of the father of the victim which indicates that an envelop through courier was received by him containing objectionable photographs. He also pointed out the statement of the fiance of the victim which also attributes the role to malign the

character of the victim by the Applicant/Accused. It is submitted that the contentions raised by the Applicant are required to be tested in the light of the evidence and it is not a fit case to accept the submissions advanced by the learned Advocate for the Applicant.

7. I have perused the documents on record. The first information report was lodged on 5th October, 2013. The victim has narrated the incident of sexual assault committed by the Accused. The first information report also indicates that the Accused had threatened the Complainant/victim. The FIR also attributed the role of the accused in committing the offences and incrimination of the accused. The FIR prima facie makes out a case for the alleged offence. The submissions advanced by the learned Advocate for the Applicant that there is delay and the relationship was consensual and hence the offences are not made out, cannot be accepted at this stage. The statements of the father of the victim and the fiance attribute the role to the Applicant/Accused wherein he tried to malign the character of the victim. The submissions advanced by the Applicant being his defences, can be agitated at the time of trial. No case is made out for discharge. Hence, I pass the following order:

ORDER

(i) Criminal Revision Application No. 321 of 2016 is

dismissed.

(ii) It is clarified that the observations in this order are made for considering the present application and the trial Court shall not be influenced by the same at the time of trial.

[PRAKASH D. NAIK, J.]