

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

CRIMINAL WRIT PETITION NO.4038 OF 2016

Vivek Rambhaji Dahiphale : Petitioner.
Versus
State of Maharashtra and ors. : Respondents.

Mr. P G Pandey for the Petitioner.
Mr. F R Shaikh, Addl. PP for the Respondent/State.
Ms. Aileen S Marques for the Respondent No.3.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.**
DATE : 27th MARCH 2018

P.C.

1 The writ jurisdiction of this Court is invoked for quashing of the charge sheet filed under Sections 376 and 506 (ii) of the Indian Penal Code arising out of the FIR being C.R. No.104 of 2014.

2 The principal contention of the learned counsel for the Petitioner is that the relationship was consensual and therefore the ingredients of the offence under Section 376 of the Indian Penal Code have not been made out. It was also the submission of the learned counsel for the Petitioner that there is inherent contradiction inasmuch as the first informant has allegedly changed her version on 11 occasions. The learned counsel for the Petitioner sought to draw our attention to the factual aspect to buttress his contention that the case for prosecution of the Petitioner under Section 376 of the Indian Penal Code is not made out. The learned counsel for the Petitioner sought to place reliance

on the compilation of judgments which includes the judgment of a Division Bench of this Court in the matter of Nandan Sadanand Bendarkar v/s. The State of Maharashtra, reported in LAWS(BOM)-2015-5-63. It was the submission of the learned counsel that the facts in the said case are close to the facts of the instant case. The said compilation of judgments also includes the judgment of the Apex Court in the matter of State of State of Haryana & ors. v/s. Ch. Bhajan Lal & ors. reported in 1992 Supp 1 SCC 335 wherein the circumstances in which the powers under Section 482 of the Criminal Procedure Code and Article 226 of the Constitution of India can be exercised for quashing of the proceedings have been culled out by the Apex Court.

3 In our view it is not possible to accept the contentions urged by the learned counsel for the Petitioner and record findings based on facts in our jurisdiction under Article 226 of the Constitution of India. In so far as the judgment in Nandan Sadanand Bendarka's case (supra) is concerned, we are of the view that apart from the facts involved in the said case, the provisions of Section 114A of the Indian Evidence Act would on account of the presumption which arises have a bearing on the applicability of the said judgment. In so far as the other judgments in Deelip Singh v/s. State of Bihar, reported in (2005) 1 SCC 88, in Uday v/s. State of Karnataka reported in (2003) 4 SCC 46 and, in Deepak Gulati v/s. State of Haryana reported in (2013) 7 SCC 675 are concerned, the Apex Court was in the said cases dealing with the Appeals

which had arisen out of the judgments passed by the Trial Court after a full trial and it is in the said context that the Apex Court had laid down the proposition of law as regards the requirement of the ingredients to bring home a charge under Section 376 of the Indian Penal Code. Such is not the case in the instant Writ Petition. The Petitioner is seeking quashing of the charge sheet on a demurer i.e. the facts as appearing in the charge sheet. We are therefore of the view that the said judgments would not further the case of the Petitioner in any manner. The question as to whether there was absence of consent or whether the consent was vitiated due to misrepresentation; will have to be decided after evidence is led in the trial.

4 In that view of the matter, no case for exercise of the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

5 At this stage, the learned counsel for the Petitioner seeks continuation of the ad-interim relief. The said prayer is refused.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]