

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

CRIMINAL WRIT PETITION NO. 892 OF 2019

Vishal Ramnayan Singh	]	
Aged 45 yrs, Occ- Business	]	
Res/At, 602, Green Plaza, 6 th Floor,	]	
Link Road, Goregaon West Mumbai	]	
Maharashtra.	]	...Petitioner

Versus

1.	XYZ	]	
2.	The State of Maharashtra	]	
	(Through, it's Public Prosecutor)	]	...Respondents

Mr. Samarth S. Karmarkar i/b. Karmarkar & Associates for petitioner.

Mr. N.B. Patil, for Respondent/State.

XYZ, Respondent No. 1 present in Court.

CORAM	:	S. S. SHINDE, J
DATE	:	26 th June 2019

JUDGMENT:

1. Rule. Rule made returnable with the consent of the parties.
2. At the outset it is required to be noted that since the allegations against the petitioner are in respect of the alleged sexual assault, the identity of the first informant needs to be concealed, and she is referred to as "XYZ". The Registry is directed to maintain the record accordingly.
3. This writ petition is filed with following substantive prayers:-

"b. The Hon'ble Court be pleased to set aside order dated 10/05/2018, being pronounced by the Hon'ble Sessions Court for Borivali Division at Dindoshi-Goregaon, Mumbai;

d. That, this Hon'ble Court be pleased the quash the charges u/sec. 376 & 420 IPC against the present applicant in connection with S.C. No. 163/2013, pending before the Hon'ble Sessions Court for Borivali Division at Dindoshi-Goregaon, Mumbai."

4. Learned counsel appearing for the petitioner invites attention of this Court to FIR lodged by Respondent no. 1 on 30.01.2013, and submits that the said FIR was lodged for alleged offence under Section 420 of Indian Penal Code. In the said FIR there was no whisper about allegation of sexual assault and the petitioner contrary to the wishes of Respondent No. 1 i.e. prosecutrix, had sexual relations. It is submitted that, it is only in supplementary statement of Respondent No. 1 recorded on 8th April 2013, allegations are made against the petitioner that the petitioner under the pretext and promise that, he will marry with Respondent No. 1, extracted huge amount from the Respondent No. 1 and sexually exploited her. It is submitted that, material collected during the course of investigation is not sufficient and relevant to sustain allegations of cheating and sexual assault against the petitioner. It is submitted that, an alleged offence has never taken place. Learned counsel relying upon e-mail messages submits that, perusal of one of such message would indicate that Respondent no. 1 herself, was not ready to marry with the petitioner. Therefore, relying upon the pleadings and grounds taken in the petition, and annexures thereto, learned counsel appearing for the petitioner submits that petition may be allowed.

5. On the other hand learned APP appearing for the State relying upon the material collected during the course of investigation and annexures to the petition submits that, overwhelming evidence has been collected by the Investigating officer during the course of investigation. During the course of trial petitioner will get an opportunity to put forth his contentions in his defence. It is submitted that, apart from the evidence collected by the Investigating Officer during the course of investigation, Respondent No. 1 will step in witness box and would depose before the Court. Therefore, at this stage prayer of the petitioner for quashing the proceedings pending before the Trial Court may be rejected. It is submitted that, the evidence of the prosecutrix assumes importance, and it has to be treated on high pedestal vis a vis the evidence of other witnesses. Therefore, learned APP submits that petition may be rejected.

6. Upon appreciating rival submissions and perusal of grounds in the petition and annexures thereto, and also copies of compilation of documents submitted by the learned counsel for the petitioner, I am of the opinion that only way to resolve the controversy is by way of appreciating the material collected during the course of investigation by way of trial. The various contentions raised by the petitioner in his defence needs to be considered during the course of trial, and while exercising writ jurisdiction it is not desirable to enter in to exercise of appreciation of statements of prosecutrix, and also other material collected during the course of investigation and draw

inferences. The material collected during the course of investigation will have to be tested during the Trial. On the whole material collected during the course of investigation and also allegations made in the FIR and also in the supplementary statement, *prima facie* constituted alleged offences and therefore, those needs to be tried by the Trial Court.

7. In the recent Judgment the Hon'ble Supreme Court, in the case of **Anurag Soni Vs. State of Chattisgarh in Criminal Appeal No. 629 Of 2019** in para 15 observed as under:-

“15. In this connection reference may be made to the amendment made in the Evidence Act. Section 114-A was introduced and the presumption has been raised as to the absence of consent in certain prosecution for rape. Section 114-A reads as under:-

“114-A. Presumption as to absence of consent in certain prosecution for rape. -In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub- section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. ”

8. In the light of discussion in forgoing paragraphs, no case is made out to invoke extraordinary writ jurisdiction and accede to the prayer of the petitioner. Hence, writ petition stands rejected. Rule stands discharged.

9. Observations made herein above are *prima facie* in nature and confined to the adjudication of the present writ petition, and Trial Court shall not get influenced by said observations during the course of trial.

[S. S. SHINDE , J]