

Vidya Amin.

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

CRIMINAL WRIT PETITION No. 2678 OF 2017

1. Neetin Bhoir		
2. Rama (Ramchandra) Bhoir	...	Petitioners
VS.		
The State of Maharashtra	...	Respondent

Ms. Gayatri Singh a/w. Mr. Ankit Kulkarni i/b. Ms. Bhavana Mhatre,
Advocate for the petitioners.

Mr. A.R. Patil, APP for the respondent/State.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 20th February, 2019.

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and disposed of at the stage of admission, as short issue is involved in this Petition.

2. The petitioners are original accused nos. 2 and 3 in C.R. No. 31 of 2014, which is registered at Murud Police Station, Raigad and whose Application for discharge was rejected by order dated 13th April, 2016 passed by learned Judicial Magistrate First Class, Murud in S.C.C. No. 108 of 2014 and the order dated 20th April, 2017 confirming the said decision passed by the learned Additional Sessions Judge, Raigad in Criminal Revision No. 50 of 2016 are

challenged. The petitioners/accused are prosecuted for the offences punishable under sections 143, 147, 354, 427, 323, 504 and 506 of Indian Penal Code. The incident of assault and criminal intimidation and outraging modesty has taken place on 14th June, 2014.

3. The learned counsel for the petitioners/accused has submitted that the petitioners/accused were not present at the time of incident, as petitioner No. 1-Neetin Bhoir, who is original accused No. 2, was working as a teacher at school in Alibag, which is 70 kms. away from the place of incident at Undargaon and petitioner No. 2-Rama alias Ramchandra, who is original accused No. 3, he is working as a clerk in CKP bank, which is also far away from the place of incident. She has submitted that school authority so also the bank authority both have issued the certificate of the attendance of respective petitioners, which were not taken into account by the learned Judges of the trial Court and Sessions Court. She submitted that in respect of same incident, accused no. 5, i.e., Dipti Datta Bhoir has registered FIR on 17th June, 2014 first in time wherein the husband of the complainant and other persons from her family are prosecuted for the offences

punishable under sections 341, 354, 504, 506, 427 r/w. 34 of the Indian Penal Code in C.R. No. 30 of 2014. She submitted that the said FIR is registered first in time. Thereafter the complainant Suchita Bhoir gave complaint against the petitioners. She pointed that another lady Vimal Bhoir, who was present in the beginning also gave complaint to the police in respect of the incident and in the said case, the names of three persons, i.e., Madan Bhoir, Datta Bhoir, Dipti Bhoir, i.e., wife of Datta Bhoir are taken. The names of petitioners Neetin and Rama alias Ramchandra are absent and no case is registered against them in the complaint filed by Vimal Bhoir. She submitted that the complaint given by Suchita Bhoir is out of vengeance and no complaint is made out under section 354 of Indian Penal Code, as no allegations are made against the present petitioners/accused.

4. Learned APP while opposing this Petition has supported the order passed by the Courts below. He has submitted that the evidence of alibi and other evidence can be tested at the time of trial and not at the time of discharge. Learned APP submitted that specific role is attributed to the present petitioners, as they pushed the complainant Suchita Bhoir and they hurled abuses towards

her. He also further submitted that if overall tenure of the complaint and allegations taken on record, all the offences including the offences under section 354 are made out.

5. Considered the submissions. Perused the complaints of Suchita Bhoir, Vimal Bhoir and Dipti Bhoir. It is noted that though the incident has taken place on 14th June, 2014, Suchita Bhoir gave complaint on 17th June, 2014. On perusal of her statement and statement of other witnesses, it appears that they have stated that these petitioners/accused have pushed her and abused her. However, specific role is attributed to one Madan Bhoir that he pulled her sari and sexually abused her. No such role is attributed to the present petitioners- Neetin and Rama alias Ramchandra. On perusal of this complaint and other statements, I am of the view that no offence under section 354 of Indian Penal Code is made out against the present petitioners and therefore, they deserve to be discharged from Section 354 of Indian Penal Code.

6. If the documents are produced on the point of alibi and so authentic can be looked into, however, the documents produced here are the photocopies, therefore, the view taken by the Learned

Judges of the trial Court and Sessions Court are correct. In view of this, Writ Petition is partly allowed. The petitioners are discharged from the offences punishable under section 354 of Indian Penal Code and the orders passed by the learned Additional Sessions Judge, Raigad-Alibag and learned Judicial Magistrate First Class, Murud are set aside only to the extent of Section 354 of Indian Penal Code.

(MRIDULA BHATKAR, J.)