

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

CRIMINAL WRIT PETITION NO. 4057 OF 2016

Guruprasad Muttappa Pujari]
Age about 33 years, Occ. Indian Navy]
Indian Inhabitant, presently residing at]
INS Talwar, C/o. Fleet Mail Office,]
Naval Dockyard, Mumbai – 400 001.].. Petitioner

Vs.

1. The State of Maharashtra]
At the instance of Senior Police]
Inspector, Marine Drive Police Station,]
Marine Drive, Mumbai,]
Vide C.R. No. 205 of 2014]
Registered under Section 376(B),]
354(A), 420, r/w. 506 of IPC]
2. Miss Barnali Nagen Baishya]
242/B, Regent Apartment,]
Shipra Sun City, Indirapuram,]
Gaziyabad, Uttar Pradesh – 201014].. Respondents

Mr.S.G. Kudle, Advocate for petitioner.

Mr.A.D. Kamkhedkar, APP for respondent No.1-State.

Mr.S.J. Panicker i/b Panicker and Associates, Advocate for respondent No.2.

**CORAM : RANJIT MORE,
N.J. JAMADAR, JJ.**

DATE : 7TH OCTOBER 2019.

PC :

1. This petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, has been filed by the petitioner, who has been arraigned for the offences punishable under

sections, 354(A), 376(B), 420 and 506 of the Indian Penal Code, 1860 (for short, 'the IPC') for quashing and setting aside the first information report bearing C.R.No.205 of 2014 registered with Marine Drive Police Station, Mumbai, at the instance of the respondent No.2 (hereinafter referred to as, 'the first informant') and the consequent prosecution leading to Sessions Case No.100496 of 2016.

2. The indictment against the petitioner, as revealed in the first information report, can be summarized as under :-

The first informant became acquainted with the petitioner through the matrimonial website jeevansathi.com. As the first informant and the petitioner liked each other's profile thereon, they started to have conversation on phone. The petitioner expressed the desire to meet the first informant in-person. On 5th July 2014, the first informant and the petitioner met at Hotel Sea Palace near Gateway of India, Mumbai. They had dinner thereat. The petitioner told the first informant that he liked her and wished to marry her. At the insistence of the petitioner, the first informant accompanied the petitioner to Marine Drive, in a taxi. When the taxi was passing Marine Drive, the petitioner placed his hand on the shoulder of the first informant and forcibly kissed her. The first informant resisted the sexual advance of the petitioner. However, despite resistance, the petitioner pressed the breast of the first informant and inserted his finger

in the private part of the first informant. The first informant asked the taxi driver to halt the taxi and alighted therefrom. The petitioner followed the first informant and again started to touch the first informant. Thereafter, the first informant went to the place of her friend. The petitioner remained in touch with the first informant and continued to assure to marry her. The father of the petitioner called the father of the first informant and informed that they were not inclined to solemnize the marriage of the petitioner with a girl, who does not belong to their caste. The petitioner, thereafter, started to avoid the first informant. It was, thus, realized by the first informant that the petitioner has sexually exploited her on the promise of marriage. Hence, she lodged the first information report on 25th December 2014.

3. The petitioner has approached this Court with the assertions that the prosecution is an abuse in process of the Court. There is inordinate delay in lodging the first information report. The allegation therein do not make out a case for the offences punishable under sections 354-A, 376-B, 420 and 506 of IPC. The continuation of the prosecution, in these circumstances, amounts to miscarriage of justice. Hence, the first information report and the consequent proceedings be quashed.

4. We have heard Shri S.G. Kudle, the learned counsel for the

petitioner, the learned APP for the respondent No.1-State and Shri S.J. Panicker, the learned counsel for the respondent No.2.

5. Shri Kudle would urge that section 376-B of IPC prescribes punishment for sexual intercourse by a person with his own wife, who is living separately, without her consent. Ex-facie, the said section has no application to the facts of the instant case, by any stretch of imagination, urged the learned counsel for the petitioner.

6. The allegations in the first information report apparently do not make a case for the offence punishable under section 376-B. The matter, however, cannot be considered from this standpoint only. In view of the provisions contained in section 375 of IPC, as substituted by Act No. 13 of 2013, the insertion, to any extent, any object or a part of the body, not being the penis, into the vagina, amounts to commission of rape. The allegations in the first information report reveal that the petitioner had inserted his finger in the private part of the first informant, without her consent. The conduct, thus, attributed to the petitioner falls within the mischief of amended definition of 'rape' under the Indian Penal Code. The insertion of 376-B in vernacular in the first information report, thus, *prima-facie*, appears to be in the context of the definition of 'rape' under section 375 clause (b) of IPC.

7. It is trite that while considering the prayer for quashment of the prosecution, on the premise that the allegations do not make out a *prima-facie* case, the truthfulness or otherwise of the allegations cannot be adjudged. What can be considered is whether the allegations are inherently improbable and absurd. The veracity of the allegations is a matter for trial.

8. The learned counsel for the petitioner urged that there is a delay of about five months in lodging the first information report and the first informant has also been in the habit of lodging such first information reports. Certain documents were tendered in support of the latter submission. The submission of delay is required to be appreciated in the backdrop of the fact that the first informant claimed that even after the incident in question, the petitioner was in touch with her and continued to give an impression that he would marry the first informant. It was only after the father of the petitioner conveyed unwillingness to settle the marriage on account of caste consideration, the petitioner started to avoid the first informant. The question as to whether the aforesaid explanation is justifiable is again a matter of trial. We are not, thus, persuaded to quash the prosecution on account of delay, at this stage. Similarly, the question as to whether the first informant is in the habit of lodging such first

information reports to wreck vengeance is again a matter of trial. It would be difficult to accede to the submission of the learned counsel for the petitioner at this stage, for quashing and setting aside the prosecution case on that ground.

9. In the aforesaid circumstances, we are of the view that the allegations in the first information report, *prima-facie*, make out a case for the offences arraigned against the petitioner. Thus, we are not inclined to quash and set aside the first information report and the consequent prosecution initiated against the petitioner.

10. The petition, thus, stands dismissed.

Rule discharged.

[N.J. JAMADAR, J.]

[RANJIT MORE, J.]