

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4722 OF 2018**

Dilip Kumar RoyPetitioner
versus
The State of Maharashtra and Ors.Respondents

Mr. Arsh Mishra a/w. Kavita Anchan, Heena Shaikh i/b. M.V.Kini,
Advocate for the Petitioner.

Mr. Deepak Thakre, PP a/w. Sangita Shinde, APP for the Respondent-
State.

Mr. Laxman Kanai i/b. Laxman Kona & Associates, Advocate for
Respondent No.3.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 22nd JULY, 2019.

P. C. :

1. The petitioner, a senior employee of the Air India Express Limited, a wholly owned subsidiary of Indian Flag Carrier Airline Air India has approached this Court praying for quashing and setting aside the charge-sheet instituted subsequent to FIR dated 20th September, 2018. The case of the petitioner is that in the charge-sheet an offence under Section 354 of the Indian Penal Code, 1860 has been invoked and applied against the petitioner and according to the learned counsel for the petitioner on the bare reading of the charge-sheet, it do not disclose any offence punishable under Section 354 of the Indian Penal Code, 1860. The learned counsel for the petitioner has invited our attention to the relevant portion of the said charge-sheet to support his submission that he could not be charge-sheeted under Section 354 of the Indian Penal

Code, 1860.

2. We have perused the charge-sheet with the assistance of the learned counsel for the petitioner as well as the respondents. The charge-sheet disclose that the complaint came to be filed by the respondent No.3, who was working as a Pilot in the service of Air India Express Management and there is a reference to an incident which occurred on 20th September 2018. In the complaint, it is alleged by the complainant that the complainant took a decision to leave her job with the Air India Company and e-mailed her resignation. On 20th September 2018 she visited the Air India office for returning her AEP (Identification Card) alongwith her sister. She was asked to attend the chamber of the petitioner and as per her version, she was asked by the petitioner as to how did she enter the premises and thereupon, the complainant started recording through her mobile phone and at that time, the petitioner got up from his chair and tried to stall her. It is alleged that in that incident, the petitioner pushed her and twisted her hand and it is alleged that the petitioner touched the complainant on her chest, based on this incident, an offence punishable under Section 354 of the Indian Penal Code, 1860 came to be registered.

3. According to the petitioner, the complainant was working as a Pilot in the service of Air India Express Management and was assigned with flying duties, however, subsequent to her alleged unprofessional

behaviour, she was placed under suspension. She was holding the petitioner and the Air India Express Management responsible for the enquiries and the litigation pending against her and it is the claim of the petitioner that the allegations in the FIR are an outburst of her frustration and they are totally imaginary. The version of the petitioner is that the complainant entered the old Airport office to return her AEP, but she has refused to return the ID Card. Since the issue as regards to her resignation/termination was pending for adjudication, the matter was referred to the petitioner, who was a senior employee with the company. According to him, certain amount was due on account of the respondent No.3. According to him, when she entered the chamber, she threatened the petitioner and she started video-graphing the happenings and threatening the petitioner that she will place the video recording on the social media and she was asked by Mr. Sashidharan and Mr. Umesh Desai to go out and the petitioner also got up from his seat to block her camera and recording. Despite this, petitioner continued the recording and when she was asked to go out, she left the premises and lodged the complaint.

4. Be that as it may, the FIR is came to be registered and the charge-sheet is filed under Section 354 of the Indian Penal Code, 1860.

5. We are conscious of the settled position of law in relation to exercise of our inherent jurisdiction under Section 482 of the Code of

Criminal Procedure, 1973 and in light of the settled position of law, the said power has to be exercised with great cautions and sparingly and the exercise of this power is justified only when the allegation made in the complaint or the first information report taken on their face value and even if accepted in its entirety do not constitute an offence or where the allegations made in the FIR or complaint do not disclose commission of any offence against the accused.

6. In light of the settled position of law, we have examined the allegations in the complaint as they are and we are required to determine as to whether Section 354 of the Indian Penal Code, 1860 is attracted. The said section relate to outraging the modesty of a woman and reads thus:-

"Assault or criminal force to woman with intent to outrage her modesty - Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

7. Perusal of Section 354 of the Indian Penal Code, 1860 would disclose that whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, he shall be liable for punishment. The said offence is

cognizable, non-bailable and triable by any Magistrate. The necessary ingredients of the offence is the intention to outrage the modesty of a woman or knowledge attributed to the accused that by such an act he is likely to outrage the modesty of a woman.

The necessary ingredients of an offence under Section 354 of the Indian Penal Code, 1860 is the assault or use of criminal force to a woman with an intention or knowledge that it is likely to outrage the modesty of a woman.

8. Perusal of the complaint taken on the face value do not disclose any such intention of the petitioner or knowledge on his part, thereby justifying the invocation and application of Section 354 of the Indian Penal Code, 1860 in light of the ingredients of the offence of Section 354 of the Indian Penal Code, 1860. The incident alleged in complaint disclose that the petitioner was prohibiting the complainant from recording and this resulted in he pushing her back, to prevent her from doing so and this may have caused the force applied on the chest of the complainant, but there is no intention on part of petitioner to outrage her modesty, nor he had knowledge that he is likely to outrage her modesty. In absence of this intention or knowledge, the petitioner cannot be held guilty of offence under Section 354 of the Indian Penal Code, 1860. In a scuffle, the complainant was hit, it may amount to an offence under Section 323 of the Indian Penal Code, 1860.

9. In such circumstances, we quash and set aside the charge-sheet filed as a consequence of investigation in FIR bearing No.60 of 2018 registered with Airport Police Station, Mumbai. At the same time, we also grant liberty to the respondent No.3 to take appropriate steps if she is interested in prosecuting the matter under Section 323 of the Indian Penal Code, 1860.

10. With the aforesaid directions, the writ petition is allowed in terms of prayer clause (a-1) and is disposed of as such.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]