

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.770 OF 2019

Tushar Dilip Sampat	...	Petitioner
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr.Siddharth C. Wakankar, Advocate for the Petitioner.

Mr.A.R.Kapadnis, the Additional Public Prosecutor for the Respondent/State.

PSI Chitra Chaudhari, Koregaon Park Police Station, Pune is present in person.

CORAM : A.M.BADAR J.

DATED : 20th JANUARY 2020.

P.C. :

1 By this Writ Petition, the petitioner is challenging the revisional Order passed on 22/01/2019 by the learned Additional Sessions Judge, Pune thereby rejecting his Revision Petition and confirming the Order dated 09/03/2018 passed by the learned trial Magistrate rejecting the application below Exhibit 23 in Regular Criminal Case No.4140 of 2016 whereby discharge was claimed.

2 Heard the learned Counsel appearing for the
petitioner/accused. He argued that alleged incident is dated

21/04/2015, whereas the report thereof came to be lodged on 13/05/2015. According to the learned Counsel, statement of all other witnesses are absolutely silent about this incident and those are reflecting general conduct. There are many witnesses who have favoured the petitioner/accused. But those statements were not considered by the learned trial Magistrate and those statements were not even included in the compilation of the final report by the police. According to the learned Counsel for the petitioner, in their matters initiated at the instance of the First Informant, B Summary is already granted.

3 By relying on Judgment in the matter of ***Nitya Dharmananda @ K. Lenin & Anr. v. Gopal Sheelum Reddy also known as Nithya Bhaktananda & Anr.***¹, the learned Counsel for the petitioner argued that at the stage of framing of charge, the accused can invoke Section 91 of the Code of Criminal Procedure by satisfying the Court that the material of sterling quality available with the Investigator is not made part of the charge-sheet and such material has crucial bearing on the framing of the charge. He argued that the learned trial Magistrate ought to have invoked this jurisdiction for calling statement of witnesses who favoured the accused. By relying on Judgment of the Honourable Single Judge of this Court in the matter of ***Baburao Hari Pawar v. State of Maharashtra***², the learned Counsel argued that delay in

1 (2018) 2 Supreme Court Cases 93.

2 Decided on 22nd July 1986 at Mumbai.

filing an application for discharge can be overlooked because right to ask for discharge is always available to an accused at any stage of trial. Reliance is also placed on the Judgment of the Honourable Apex Court in the matter of ***Amit Kapoor v. Ramesh Chander & Anr.***³ for contending that presumption that the accused has committed the offence is not a presumption of law. Satisfaction of the Court in respect of the facts leading to the offence is necessary for exercise of jurisdiction for framing the charge. The petitioner further relied on Judgment of the Honourable Apex Court in the matter of ***Ajoy Kumar Ghose v. State of Jharkhand***⁴ and contended that the Magistrate is justified in framing the charge if he is of the opinion that there is ground for presuming that the accused has committed an offence.

4 The learned Additional Public Prosecutor opposed the application by drawing my attention to the FIR lodged by the victim of the crime in question so also on various statements of witnesses recorded during the course of investigation.

5 I have considered the submissions so advanced and perused the material placed on record including the charge-sheet.

6 FIR of the subject crime was lodged on 13/05/2015 by the First Informant, who happens to be the victim of the crime in question. Accordingly, Crime No.45 of 2015 came to be registered and on conclusion of investigation, the prosecuting agency has

3 (2012) 9 Supreme Court Cases 460.

4 (2009) 14 Supreme Court Cases 115.

filed the charge-sheet for offences punishable under Sections 354-A, 354-D, 504, 506 and 509 of the Indian Penal Code. The claim is for discharge from these offences in this matter.

7 Perusal of the FIR shows that the First Informant /alleged victim woman was residing at Flat No.C-12 in the Infinity Apartment, whereas the petitioner/accused is stated to be resident of Flat No.B-10 of the same Apartment. It is averred by the First Informant that as she was residing alone in the Apartment, the petition/accused started making unwelcome advances towards her and he was insisting for having sex with her. She has spoken about obscene gestures of the petitioner/accused in April 2015 with utterances "I will fuck you". Apart from abuses, she is very categoric in respect of the incident dated 29/04/2015. As per version in the FIR, at about 6.30 p.m. of that day, she was proceeding from a lane of Koregaon Park, Pune and the petitioner/accused started following her. He accosted her, gave abuses to her and flashed at her by opening chain of his full pant. The First Informant further stated that the petitioner/accused uttered "Can we sleep together to night. You are alone I am also alone. Let us have sex together". She stated that thereafter she was threatened by the petitioner/accused. She has also stated about jamming lock of her outer door of her apartment by inserting Fevi Quick liquid by the petitioner/accused so also adulterating petrol in her vehicle.

8 For framing the charge what is required to be considered is whether the material collected by the Investigating Officer is sufficient for presuming that the offence has been committed. It is not necessary that such a material is sufficient to convict the accused. There was statements of witnesses, who have corroborated the First Informant in material particulars. The witness has stated that the First Informant had, soon after the incident, had disclosed the incident which took place on 21/04/2015 to her.

9 It is not case of the petitioner that he has moved an application under Section 91 of the Code of Criminal Procedure and the same was not considered. Non-consideration of statements of favourable witnesses or non-filing of those statements shall have bearing during the course of trial and not at the state of discharge. For deciding the claim for discharge, those are not relevant as weighing the evidence would result in mini trial before the Court.

10 No infirmity can be found in the impugned Order in the light of foregoing discussion. The petition, as such, fails and the same is dismissed.

(A.M.BADAR, J.)

Raju D.
Gaikwad

Digitally signed
by Raju D.
Gaikwad
Date: 2020.01.20
18:34:49 +0530

Gaikwad RD