

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 **CRIMINAL WRIT PETITION NO.406 OF 2021**

XYZ C/O. VIMAL ANGAD CHAVAN

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

..RESPONDENTS

...

Advocate for Petitioner : Mr. A.A. Nimbalkar

APP for Respondent-State: Mr. K. S. Patil

....

**CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR,JJ.**

DATE : 23-03-2021

PER COURT :-

1. This matter was heard extensively on 22-03-2021, and was posted today for the learned Additional Public Prosecutor to make a statement as regards an incorrect provision being attracted by the police authorities. It is the contention of the victim that the accused had repeatedly committed an offence punishable under Section 376(2) (n) of the Indian Penal Code. However, the Investigating officer has invoked Section 376-A of the Indian Penal Code.

2. The learned prosecutor submits, on instructions, that the Investigating Officer is now invoking Section 376(2)(n) of the Indian Penal Code and as such the grievance of the informant/ victim is taken care. We therefore, record the said

statement and we take it that the Investigating Officer would now be invoking Section 376(2)(n) of the Indian Penal Code with regard to the F.I.R registered on 16.01.2020, by following the due procedure in law.

3. The learned advocate for the victim submits, in pursuance to prayer clause (B), that her entire story was not recorded in the F.I.R. She desires to inform the Investigating Officer that the accused had secretly taken her photographs when she was in intimate positions with the accused and had also videographed her act of sexual intercourse with the accused. Though, the cell phone of the accused was confiscated and Investigating Officer noticed that such material was deleted from the cell phone, the Investigating Officer could have investigated as to whether the accused has preserved the said recordings/ clips on any portable hard-disk/ his Personal Computer/ his Laptop or with any other friend or acquaintance.

4. In so far as the contention of the petitioner that the entire statement of the informant was not recorded by the Investigating Officer in the F.I.R is concerned, we are not taking cognizance of the same in view of the effect of the law of evidence, as well as in view of the effect of Section 154 of the Cr.P.C. The trial is yet to commence and we do not intend to

monitor the trial. Suffice it to say that, Section 173 (A) of the Code of Criminal Procedure would not preclude the Investigating Officer from investigating into the missing photographs and the video clips. There would be no embargo on his powers under the said provision and he is at liberty to proceed under the said provision.

5. With the above observations and directions, this petition is disposed off.

(B.U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

YSK/