

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1723 OF 2019

Nikhil S/o. Subhash Nagarkar,
Age: 24 years, Occ. Education,
R/o Belapur, Tq. Shrirampur,
Dist. Ahmednagar..

... **Applicant**

Versus

1. The State of Maharashtra,
Through its Investigation Officer,
Tofkhana Police Station, Ahmednagar,
Tq. & District Ahmednagar.

2. Sakshi D/o. Babu Prathamshetty,
Age: 17 years, Occ. Education,
Through her Legal Guardian
Babu Prathamshetty
Age: 48 yearsd, Occu. Service,
R/o. Nawale Nagar, Gulmohar Road,
Savedi, Ahmednagar.

... **Respondents**

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Advocate for Applicants : Mr. S.B. Narwade
APP for Respondent No.1/State : Mr. A.S. Shinde
Advocate for Respondent No.2: Mr. S.R. Wakale

...

**CORAM : V.K. JADHAV &
M.G. SEWLIKAR, JJ.**

DATE : 09.03.2021

ORDER : (Per: *M.G. Sewlikar, J.*)

The applicant has knocked the doors of this Court for quashing of Crime No.I-355/2018 dated 12.07.2018 registered with Tofkhana Police Station, Ahmednagar for the offence punishable under

Section 354-A, 452 of I.P.C. and under Section 3, 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Respondent no.2 herein filed first information report (FIR) alleging therein that on 02.07.2018 at 2.45 am applicant jumped in to the compound of the respondent no.2 and knocked the door of the respondent no.2. When respondent no.2 opened the door, the applicant held her and pulled her towards him and thereby violated the modesty of the respondent no.2. FIR was lodged on 12.07.2018 on the basis of which offences as aforesaid came to be registered.

3. We have heard Shri Narwade learned counsel for the applicant, Shri Shinde learned APP for the State and Shri Wakale learned counsel for the respondent no.2.

4. Shri Narwade strenuously submitted that a false case has been registered against the applicant. He submitted that father of the informant stated in his statement under Section 161 of the Cr.P.C. that at about 2.45 am he woke up as he heard the voice of respondent no.2 saying that as to why he (applicant) came there. When he, his wife and son went to the door of the house he saw his daughter, one young boy were standing in front of the house. PSI Smt. Kale and her staff were also standing there. On inquiry applicant told his name. He argued that

similar is the statements of the mother and brother of respondent no.2. He submitted that at the instance of lady PSI Smt. Kale this FIR came to be registered. He submitted that statement of lady PSI Smt. Kale shows that she had asked the respondent no.2 to lodge the complaint and therefore this complaint has been filed. He further argued that there is delay of ten days in lodging the FIR for which no explanation is forthcoming. Respondent no.2 on the date of the incident was on the verge of attaining majority. He argued that on the relevant date she was ten days short of attaining the age of majority. He submitted that this clearly shows that she was capable of understanding the consequences of her act. He argued that applicant and respondent no.2 know each other because of elocution competition. Just to take revenge, this false complaint has been filed as on the date of the incident the applicant had given the script of elocution competition and lady PSI Smt. Kale had seen them. He submitted that the applicant is a student of second year B.A. and has a promising career ahead and, therefore, the FIR needs to be quashed. He further argued that from the entire charge-sheet, it is clear that no material is collected to indicate that offence under Section 354-A is made out.

5. Learned APP Shri Shinde submitted that bare reading of the FIR makes it clear that offence punishable under Section 354-A of the I.P.C. is clearly made out.

6. From the contents of the FIR, it is clear that the applicant had pulled the hand of the respondent no.2 and pulled her towards him. From the bare reading of the FIR it can be seen that the ingredients of Section 354-A of the I.P.C. are *prima facie* made out. Section 354-A of the I.P.C. reads as under:

“354-A. Sexual harassment and punishment for sexual harassment.

(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

Holding the hand of a girl especially a minor girl and pulling her towards him attracts Section 354-A (i) of the I.P.C. Therefore, *prima facie*

there is sufficient material to show that offence under Section 354-A is made out.

7. It is well settled that in a proceeding under Section 482 of the Cr.P.C. it is not permissible to consider the defence of the accused or to appreciate the evidence. In the case at hand, learned counsel for the applicant wants us to appreciate the evidence and at this stage record a finding that a false case is filed. Such a course is not permissible while exercising the powers under Section 482 of the Cr.P.C. It has been held by the Hon'ble Supreme Court in the case of Mohd. Alauddin V/s. State of Bihar and Others decided on 15.04.2019 as under:

“17. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short “Cr.P.C.”) because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case.”

8. In the case of **State of Haryana V/s. Bhajan Lal; AIR S.C. 604**, the Hon'ble Apex Court has enumerated seven categories of cases where power under Section 482 can be exercised. They are as under:

1] Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2] Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3] Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4] Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5] Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6] Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and

continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7] Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. Thus, FIR can be quashed only when from the bare reading of the complaint it appears that no cognizable offence is made out and continuation of prosecution would be an abuse of process of law. In the case at hand, this is not the fact situation. As stated earlier, holding the hand of a minor girl and pulling her towards him is *prima facie* an act of violating the modesty of a woman and it is an unwelcome sexual overture. Therefore, *prima facie* offence under Section 354-A of the I.P.C. is made out. Hence, the application is devoid of any substance and is, therefore, dismissed.

[M.G. SEWLIKAR, J.]

[V.K. JADHAV, J.]