

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO. 27 OF 2015

Rajsingh S/o Sudansingh Rathi,
Aged about : 53 years,
Occupation : Service.
Resident of India Bulls Colony,
Additional MIDC, Nandgaon Peth,
Near Mahuli Jahangir,
Tah & Dist. Amravati.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
Through the Police Station Officer,
Police Station, Mahuli, Jahagir,
Amravati.
2. Smt. Megha W/o Nilkanthrao Bansod,
Age : 34 years, Occupation : Service,
R/o Benoda Jahagir,
Tah. & Dist. Amravati.
3. Sub-Divisional Police Officer,
Amravati (Rural).

(Amendment carried out
as per Court's order
dtd.16.7.15)

... **NON-APPLICANTS**

AND

CRIMINAL APPLICATION (APL) NO. 35 OF 2015

1. Bipul S/o Anirudha Dubey,
Aged about : 32 years,
Occupation : Service.
Resident of Kalbande Plot,
Rathi Nagar, Amravati.
2. Vijay S/o Purshottam Ishwarkar,
Aged about : 29 years,
Occupation : Service,
Resident of Yawli Shahid,
Dist. Amravati.

... **APPLICANTS**

VERSUS

1. State of Maharashtra,
Through the Police Station Officer,
Police Station, Mahuli, Jahagir,
Amravati.

2. Smt. Megha W/o Nilkanthrao Bansod,
Age : 34 years, Occupation : Service,
R/o Benoda Jahagir,
Tah. & Dist. Amravati.

3. Sub-Divisional Police Officer,
Amravati (Rural).

(Amendment carried out
as per Court's order
dtd.16.7.15)

... **NON-APPLICANTS**

Shri Shyam Dewani, Advocate for applicants.

Ms. Mayuri Deshmukh, Additional Public Prosecutor for non-applicant Nos.1 and 3.

Shri A. B. Mirza, Advocate for non-applicant No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 05/03/2021.

ORAL JUDGMENT : (PER : AMIT B. BORKAR, J.)

1. By way of these two applications under Section 482 of the Code of Criminal Procedure, the applicants have challenged registration of First Information Report No.137/2014 registered with the non-applicant No.1 - Police Station for the offences punishable under Sections 376-D and 506 of the Indian Penal Code r/w Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The First Information Report came to be registered against all three applicants in these applications with the accusations that the non-applicant No.2 was working as Security Supervisor with Indiabulls Power Plant, MIDC, Nandgaonpeth,

Amravati. It is alleged that on 04/07/2014 when the non-applicant No.2 was waiting for transportation for reaching the place of employment, accused Nos. 2 and 3 came there and asked the non-applicant No.2 to come to the house of accused No.1. It is alleged that the non-applicant No.2 refused to go to the house of accused No.1. The accused Nos.2 and 3 persuaded non-applicant No.2 to visit the house of accused No.1. It is alleged that when the non-applicant No.2 went to the house of accused No.3, all the three accused forcibly committed forcible sexual intercourse with the victim and after 04/07/2014 till the filing of First Information Report, they continuously abused sexually the non-applicant No.2. It is alleged that since the victim was in the fear that she will be defamed in the society, she did not file First Information Report and ultimately, on 27/12/2014, she filed report with the non-applicant No.1 - Police Station.

3. The accused Nos.1 and 2 have filed Criminal Application (APL) No.35/2015 and accused No.3 has filed Criminal Application (APL) No.27/2015. This Court on 22/01/2015 in Criminal Application (APL) No.27/2015 and on 23/01/2015 in Criminal Application (APL) No.35/2015 issued notice and directed to submit investigation report. On 02/09/2015, this Court noted order dated 22/01/2015 passed by this Court wherein it is recorded that it is a specific case of the

applicants / accused that the conversation between the victim, the accused and the other officers are already submitted to the Investigating Officer.

4. On 23/09/2015, this Court recorded that the non-applicant No.2 is not co-operating with the Investigating Officer and the affidavit to that effect is filed by the non-applicant No.1 - State. On 14/10/2015, this Court prima facie observed that the non-applicant No.2 is not willing to cooperate with the investigation by giving her voice sample to verify whether the conversation on which the applicants are relying is one in which the non-applicant No.2 had participated. It is observed that perusal of the said conversation would at least prima facie reveal that the allegations made by the non-applicant No.2 do not constitute the offences alleged in the First Information Report.

5. The non-applicant No.1 has filed reply on 13/07/2015 stating that there is prima facie substance in the allegations made by the non-applicant No.2. The non-applicant No.1 has filed additional reply dated 15/09/2015 wherein it is specifically stated that the applicants have relied upon voice conversation between the non-applicant No.2 and accused. The Investigating Officer visited to the house of the non-applicant No.2 for taking sample but the non-applicant No.2 was not present in

the house. It is submitted that the brother of the non-applicant No.2 told the police officials that she is not residing with him. It is also said that the non-applicant No.2 has not given her voice sample for verification of conversation relied upon by the applicants.

6. Today, when the matter is called out, Shri A.B.Mirza, learned Advocate for the non-applicant No.2 submitted that he has no instructions from non-applicant No.2 about voice samples. The non-applicant No.2 has not filed reply countering the voice conversation relied upon by the applicants in the present applications.

7. Having considered the allegations in the First Information Report, reply filed by the non-applicant No.1 and the material produced by applicants, it appears that the non-applicant No.2 is not cooperating with the Investigating Agency. Though the non-applicant No.2 is aware about the voice conversation produced by the applicants in the present applications and there are orders passed by this Court expressing its displeasure about non-applicant No.2 for not cooperating with the Investigating Agency and for not giving her voice sample. The applicants have relied upon the complaint filed by the accused No.2 dated 26/09/2014 registered with Special Officer, Mahuli Jahangir

wherein it is stated that the non-applicant No.2 is working as Security Guard and is threatening the accused No.2, as false case under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and offending modesty on woman shall be filed against them and were officials of the company. The accused No.2 also filed another complaint with the Commissioner of Police, Amravati on 30/09/2014 wherein the accused No.2 has stated that the non-applicant No.2 is threatening to file false report against the applicants.

8. On consideration of the material produced by the applicants in the form of conversation between the non-applicant No.2 and accused persons, the complaint filed by the accused No.2 before registration of First Information Report and the conduct of non-applicant No.2 not to co-operate with the investigation to give her voice sample in relation to the conversation relied upon by the applicants in the present applications, we are satisfied that the prosecution launched by the non-applicant No.1 against all the three accused is not legitimate prosecution. We are satisfied that the continuation of prosecution against all the accused persons would amount to an abuse of process of Court.

9. We, therefore, pass the following order :-

First Information Report No.147/2014 registered with the non-applicant No.1 - Police Station for the offences punishable under Sections 376-D and 506 of the Indian Penal Code r/w Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed and set aside.

10. Rule is made absolute accordingly.

JUDGE

JUDGE

Choulwar