

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

CRIMINAL APPLICATION (APL) NO. 297 OF 2016

1. Virendra Singh S/o Rajendra Singh,
Aged about : 42 years,
Occupation : Service.
2. Manoj Singh S/o Arjun Singh,
Aged about : 36 years,
3. Sourabh Singh S/o Rajendra Singh,
Aged about : 24 years,
Occupation : Service.

All residents of Shiv Nagar,
Wadgaon, Chandrapur, Tahsil
and District Chandrapur.

... **APPLICANTS**

.VERSUS.

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Chandrapur City,
Tahsil and District Chandrapur.
2. Mrs. Basanti Ramen Mandal,
Aged about : 28 years,
Occupation : Woman Security Guard
(C.S.T.P.S. Project 8 and 9)
Chandrapur, Resident of Ganapati
Chowk, Sham Nagar (Sanjay Nagar-9),
Chandrapur.

... **NON-APPLICANTS**

...

Shri S. P. Bhandarkar, Advocate for applicants.

Shri T. A. Mirza, APP for non-applicant No.1 - State.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATED : 10.3.2021

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

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants have challenged registration of the First Information Report No.245/2015 dated 9.11.2015 registered with the non-applicant no.1 - Police Station for offences punishable under Section 376-D, 376 (2)(c) (n) and 506 read with Section 34 of the Indian Penal Code against the applicants.

2. The First Information Report came to be registered against the applicants with the accusations that the non-applicant no.2 was working as Security guard from 1st January 2015 till March 2015. It is alleged that the applicant no.1 committed forcible sexual intercourse with the non-applicant no.2 for a period of four months prior to April 2015. It is further alleged from April 2015, the applicant no.1 along with the applicant nos.2 and 3 had forcible sexual intercourse with the non-applicant no.2. It is alleged that since the applicants threatened the non-applicant no.2 that they will terminate the employment of the non-applicant no.2, the applicants did not make complaint about the forcible sexual intercourse on

7th November 2015. But, on 7th November, 2015 when the non-applicant no.2 was removed from service , the non-applicant no.2 on 9.11.2015 filed First Information Report.

3. The applicants have, therefore, filed present application challenging registration of the First Information Report. This Court on 25.4.2016 issued notice against the non-applicants and in the meantime, it was directed that Charge-sheet shall not be filed against the applicants. On 27.7.2016, this Court issued Rule and confirmed ad-interim relief granted earlier.

4. The non-applicant no.1, in pursuance of the said notice, filed reply and stated that the applicants have misused their position and have committed sexual intercourse with the non-applicant no.2 under the pretext of protecting her employment. It is stated that there is sufficient material available with the prosecution, which shows the involvement of the applicants alleged against them.

5. The non-applicant no.2 was working as Security Guard from 1st January 2015 till March 2015. It is alleged that the applicant no.1 committed forcible intercourse with the non-applicant no.2 for a period of four months prior to April 2015. It is further alleged that from April 2015, the applicant no.1 along with

applicant nos.2 and 3 had forcibly committed intercourse with the non-applicant no.2. It is alleged that since the applicants threatened the non-applicant no.2 that they will terminate the employment of the non-applicant no.2, the applicant did not make complaint of forcible intercourse. On 9.11.2015, the non-applicant no.2 filed the First Information Report.

6. We have carefully considered the allegations in the First Information Report and the statements of witnesses recorded by the prosecution. From the First Information Report, it appears that the applicants had sexual intercourse with the non-applicant no.1 from 10.11.2014 till the filing of report i.e. till 9.11.2015. It , therefore, appears that for period of one year before filing the First Information Report, the non-applicant no.2 had sexual intercourse with the applicants.

7. The learned Advocate for the applicants invited our attention to the application filed by the non-applicant no.2 with the Superintendent of Police, Chandrapur, stating that in the First Information Report, which is the subject matter of the present application, she has not stated the name of the applicant no.3. In the said application, it is stated by non-applicant no.2 that at the time of registration of the First Information Report, she has stated

before the police officials that the applicant no.3 had only offended her modesty and had never committed sexual intercourse but, the police officials have wrongly typed in the First Information Report that the applicant no.3 had sexual intercourse with the non-applicant no.2.

8. We have carefully considered the statements of the witnesses, which are recorded by the prosecution. The witnesses have stated that they have never seen the applicants along with the non-applicant no.2 nor they have heard anything about it.

9. the application filed by the non-applicant no.2 with the Superintendent of Police, Chandrapur dated 19.11.2015 wherein she herself doubted accusations stated in the First Information Report and the statements of the witnesses recorded by the prosecution, which do not support the case of the prosecution. From the accusations in the First Information Report, it appears that the non-applicant no.2 was in relationship with the applicants for more than period of one year, which raises inference of consensual intercourse, we are satisfied that the prosecution filed by the non-applicant no.2 is not legitimate prosecution. We are satisfied that continuation of prosecution against the applicants would amount to abuse of process of the Court. We, therefore, pass the following

order:

ORDER

First Information Report registered against the applicants bearing 245/2015 dated 9.11.2015 registered with the non-applicant no.1 - Police Station for offences punishable under Section 376-D, 376 (2)(c) (n) and 506 read with Section 34 of the Indian Penal Code against the applicants is quashed and set aside.

Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE

Ambulkar