

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 188 OF 2022

Edwin Parumotal Thomas. ... Petitioner.

V/s.

The State of Maharashtra and another. ... Respondents.

Mr.Vinay V. Nair for the Petitioner.

Mrs.S.D.Shinde, APP for the Respondent- State.

Mr.Vishal Patil for Respondent No.2.

Digitally
signed by
SANJAY
KASHINATH
NANOSKAR
Date:
2022.07.02
12:30:22
+0530

CORAM : **NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATE : **23 June 2022.**

P.C. :

Heard the learned counsel for the parties.

2. By this petition, the Petitioner is seeking to quash the FIR No.I-184/2020 registered with Rabale Police Station, Navi Mumbai and the chargesheet filed in the matter.

3. The Respondent- Complainant lodged an FIR on the allegation that she stays with her mother where her mother is working in school bus whereas the Complainant works as a Cook. It is the case of the Respondent- Complainant that the Petitioner had come to stay next to her house in August 2019 and he had enquired

about availability of Cook. Since he was residing next door, according to the Complainant, she was ready and she joined accordingly. It is her case that on 25 August 2019 she joined the work and on 4 September 2019, in the afternoon, when she was working in the kitchen, the Petitioner forcibly committed sexual intercourse. Thereafter, since the Respondent- Complainant was financially weak she had to work and resumed the work wherein the Petitioner is alleged to have committed sexual intercourse on the ground that he will marry her. According to the Respondent, she became pregnant and thereafter foetus was aborted. It is stated that the Petitioner and Respondent were staying together where the Petitioner promised her of marriage and forcibly used to commit sexual intercourse. On these allegations that from 4 September 2019 to 20 May 2020 the Petitioner committed forcible sexual intercourse, an FIR was filed. It is stated that in June 2020, the Petitioner has alleged to physically assaulted the Respondent.

4. The learned counsel for the Petitioner submitted that the case of Respondent No.2 is entirely unbelievable. The learned counsel sought to contend that month before the FIR was lodged, Respondent No.2 on 11 May 2020 had lodged a complaint at Manpada Police Station where she has not stated about forcible sexual intercourse. The learned counsel submitted that the Respondent No.2 has changed her version regarding her marital status. At some places, she has stated that she is married, at one place she has stated that she is divorcee, at one place she stated that

she is unmarried and mother of Respondent No.2 has stated that she was living separately from her husband. Learned counsel submitted that Respondent No.2 has given different versions. It is further contended that the forensic report is inconclusive because the sample was sought to be collected with delay. It is further contended that in the statement under section 164 of the Code of Criminal Procedure, 1973, Respondent No.2 has stated that since she was to marry she does not wish to prosecute the matter further. Based on these facts and the decision of the Supreme Court in the case of *Prashant Bharati v. State (NCT of Delhi)*¹, the learned counsel for the Petitioner submitted that this is a fit case for quashing the FIR. The learned APP submitted that FIR clearly discloses cognizable offence and all the contentions that are raised are the defence of the Petitioner which will have to be established in trial.

5. Though it was indicated to the learned counsel that the Petitioner has remedy of applying for discharge, the learned counsel for the Petitioner submitted that his contentions be dealt with in the petition itself. In *Neeharika Infrastructure v. State of Maharashtra*², after taking review of the earlier case-laws, the Supreme Court has laid down certain parameters. First and foremost is that while examining an FIR, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. Finally the Court is

1 (2013) 9 SCC 293

2 2021 SCC OnLine SC 315

cautioned that FIR should be quashed in rarest of rare cases. Considering this test, we have noted the contentions of the learned counsel for the Petitioner.

6. We do not find any variance in the statements made before the Manpada Police Station. In this statement also there is reference to forcible intercourse on the ground of promise of marriage. As regards the continuing sexual intercourse, in the FIR itself the Respondent- Complainant has stated that because she was financially weak she had no option but to work with the Petitioner. As regards discrepancy of age sought to be contended by the learned counsel for the Petitioner, it is a matter to be considered at the time of trial and can be explained and it cannot be said that present FIR, on that basis, has to be quashed. In any case, we do not find any direct relevance to the age in the prosecution case. As regards the marital status is concerned, in the FIR Respondent No.2 has stated that she is a house wife. Though before the Manpada Police Station, Respondent No.2 stated that she had earlier got married, at other place she stated that she is a divorcee and her mother has stated that she was living separately from her husband, on these statements the Prosecution will lead evidence but, at this stage, it cannot be said that Respondent No.2 could not have been deceived on the promise of marriage. As regards statement under Section 164 wherein Respondent No.2 stated that in view of intention of marriage she does not wish to proceed with the prosecution, there is no retraction from the statement that the incident never happened. But the

statement of intent of marriage corroborates the fact that Respondent No.2 was unmarried and believed the promise of the Petitioner that he would get married to her. As regards the forensic report is concerned, this again, as rightly contended by the learned APP, is a matter of trial.

7. Considering these facts, we do not find any case is made for quashing of FIR. In fact this is a fit case which will have to be tried after full-fledged investigation.

8. Writ petition is rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)