IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.33 OF 2017

Mrs. Rizwana Akbar Shaikh … Applicant
Versus
The State of Maharashtra
And Others … Respondents

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Mr. Javed Khan for the Applicant.
Ms. M.H. Mhatre, APP for Respondent No.1-State.
Mr. Avnedra Kumar i/b Mr. Ajay Dubey for Respondent Nos.2 and 3.

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CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.

DATE : 14 MARCH 2022

P. C. :

. Heard Mr. Khan learned Counsel for the Applicant, Ms. Mhatre, APP for Respondent No.1-State and Mr. Kumar for Respondent Nos.2 and 3.

2. Normally, we come across the petition for quashing by the accused person, but herein there is a request for quashing of the prosecution by the victim-first informant. There are two accused persons, who are Respondent Nos.2 and 3. Respondent No.2-Sameena Memon is the sister of Akbar Shaikh and Akbar Shaikh is the husband of the Applicant. Whereas, Respondent No.3 Mohammed Yusuf Miya is the husband of Respondent No.2.

3 The Petitioner stays in Govandi, Mumbai along with two sons. Her husband Akbar is residing at Mauritius on account of his job. Both the Respondents-accused also stays with the Applicant. There was a quarrel in

between the first informant and the accused Sameena on 27 November 2014. It was on account of not making an inquiry on telephone by Akbar. In the afternoon at 1 O'clock, both the accused beaten the first informant. She was detained in a room and scuffled by Sameena. The accused Mohammed brought can containing kerosene and poured on the person of the first informant. When both accused were about to set the first informant on fire, she was successful in coming out of the house. She went to Deonar Police Station and lodged the complaint against the accused under Section 307, 323, 341 read with 34 of the Indian Penal Code. On completion of the investigation, the charge-sheet is filed and now the case is pending as Session Case No.153 of 2015 before the Sessions Court at Mumbai.

4 When this Application for quashing came before our earlier bench, there was direction to Respondent Nos.2 and 3 to transfer the amount of Rs.5,00,000/- in the account of the Applicant. By the affidavit dated 20 February 2017, the compliance affidavit was filed by the Respondents. On that, this Court on 1 March 2017, stayed the proceedings of Sessions Case and directed State Bank of India not to encash fixed deposit at premature stage without written permission of this Court. The detailed directions were given including expenditure on the education of children of the Petitioner by the Respondents. There were also directions to Deonar Police Station to submit a report about whereabouts of the husband of the Applicant.

5 Sub-Inspector of Police attached to Deonar Police Station filed an affidavit on 28 June 2017, thereby informing that husband of the Applicant has departed to Mauritius on 7 March 2016. It is on the basis of

information given by Airport Authority. When the matter came before us for final hearing, as per our Order dated 7 March 2022, we directed the accused persons to file a fresh affidavit thereby confirming the protection of interest of the Applicant and her sons and in compliance of that direction Respondent No.2 Mohammed Yusuf has reiterated his responsibility by filing an affidavit to take care of the first informant and his two children.

6 For the above discussion, we are inclined to allow the Application. It is important to note that the whereabouts of the husband of the Applicant are not traceable. Ultimately, the Applicant is not having any other shelter We tried to protect the interest of the Applicant in different ways. If the quashing could have been allowed without putting the conditions, the fate of the Applicant and her children was in hanging state. At least now, there is deposit of Rs.5,00,000/- in her name confirmed by the Affidavit of the husband of her sister-in-law. We think, certain amounts need to be kept in the name of two children. Their age is not clear, because their interest also need to be protected. Hence, Order.

: O r d e r :

(a) The Application is allowed.

(b) The proceedings of Sessions Case No.153 of 2015 registered at Deonar Police Station, Mumbai for the offences punishable under Sections 307, 323, 341 read with 34 of the Indian Penal Code pending before 21st Sessions Court at Mumbai are quashed and set aside against Respondent Nos.2 and 3.

(c) We direct Bank of India, Branch at Hill Road, Bandra, Mumbai to encash deposit and transfer that amount in Account No.00442710001709 belonging to the Applicant. If the Applicant is having fixed deposit receipt, she shall produce in bank.

(d) We direct Bank of India to make fixed deposit of Rs.50,000/- each in the name of two sons of the Petitioner for a period till they attains majority. The Petitioner is directed to give details of sons along with their age proof to the bank.

(e) We direct Bank of India to make a fresh deposit along with interest for a period of three years in the names of sons though the Applicant.

(f) If both sons have already attained majority, we direct Bank of India to invest Rs.50,000/- each in the individual name of two sons with nomination of their mother for three years.

(g) We direct Bank of India to release the amount standing after deducting Rs.1,00,000/- to the Petitioner.

RAJESH VASANT CHITTEWAN
Digitally signed by RAJESH VASANT CHITTEWAN Date: 2022.03.31 14:50:34 +0530

(S. M. MODAK, J.) **(PRASANNA B. VARALE, J.)**