

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 999 OF 2021

Jai Rawat

.. Petitioner

Versus

State of Maharashtra and Anr.

.. Respondents

-
- Mr. Kayval P. Shah for the Petitioner
 - Ms. A.S.Pai, P.P. for Respondent - State
 - Ms. Anandini Fernandes for Respondent No.2
-

CORAM

: S.S.SHINDE &
MILIND N. JADHAV, JJ.

RESERVED ON

: JUNE 08, 2022.

PRONOUNCED ON

: JUNE 15, 2022.

ORDER : (PER : MILIND N. JADHAV, J.)

1. By the present Petition the Petitioner has prayed for the following reliefs.

“(a) That this Hon’ble Court may be pleased to quash and set aside the Charge Sheet No. 107 of 2018 dated 20.07.2018 as filed in FIR No. 458 of 2016 dated 16.06.2016 under Sections 376, 354, 504, 506 read with Section 34 of the Indian Penal Code pending before the Ld. Sessions Court Pune in Sessions Case no. 185 of 2020.”

2. Petitioner is accused No. 4 in FIR No. 458 of 2016 dated 10.06.2016 under Section 376, 354, 504, 506 read with Section 34 of the Indian Penal Code ("IPC") in Sessions Case No. 185 of 2020 pending before the Sessions Court, Pune. The chargesheet has been filed in the present case.

3. Mr. Kayval Shah, learned counsel appears for the accused No. 4 submits that the present Petitioner is a friend of the accused No.1. He submits that before filing the report, there arose a dispute between the accused No.1 and the victim and the victim had physically assaulted the accused No.1; therefore the accused No.1 filed a N.C. complaint against the victim with Kharadi Police Station, Pune. This incident occurred on 14.06.2016. He submits that 2 days thereafter i.e. on 16.06.2016 the victim filed the present FIR No. 458 of 2016 against the accused wherein the Petitioner is arraigned as accused No.4.

4. It is alleged in the FIR that the accused No.1 in the month of June 2016 administered some substance in the food consumed by the victim due to which she became unconscious and ravished her; and also took out her nude photographs and blackmailed her with threats to upload the photographs on the internet and also threatened that her husband shall be informed. It is further alleged that on 13.06.2016 the victim was once again called by the accused No.1 at his flat in Wagholi, Taluka Haveli, District Pune and the victim was ravished. On the morning of 14.06.2016 at 7:00 a.m. the accused Nos. 2, 3 and 4 (present Petitioner) were present in the flat and on seeing the victim laughed at her and stated that they were aware about her acts during the night and seen everything. It is further alleged that accused No.4

(present Petitioner) sought sexual favours from the victim as it is the age of free sex and told her that he shall not inform anyone about the same; due to this there was a verbal altercation between the accused No.1, the victim and the Petitioner after which the victim slapped the accused No.1 and left the flat.

5. Mr. Shah, learned counsel submits that in the entire episode the role of the accused No. 4 (present Petitioner) at the highest can be attributable to the offence under Section 509 IPC and nothing more; he submits that the addition of the charge under Section 34 IPC against the accused No. 4 is completely illegal as there is no allegation of the offence under Section 376 and 354 attributable to the Petitioner; that the entire complaint is false and is directed only towards the accused No.1. He has therefore prayed for quashing of the chargesheet and FIR *qua* the Petitioner.

6. Ms. A.S.Pai, learned P.P. appearing on behalf of Respondent State submits that the FIR lodged by the victim / prosecutrix reveals that she is a married lady having a son aged 9 years; that she had a dispute with her husband and the accused No.1 gave her shelter and thereafter she had joined the company in which accused No.1 was employed; that she was blackmailed and threatened by the accused

No.1 of having her nude photographs because of which he kept on ravishing her; that on 13.06.2016 she was called at his flat by accused No.1 in Pune and on that night she was once again ravished by the accused No.1; but at 7:00 a.m. on the following morning she confronted the other 3 accused who were also present in the said flat and proposed to her to consider them as this was the age of free sex and these were the utterances which hurt the prosecutrix. She therefore submits that the present Petition be dismissed.

7. We have perused the papers and it is seen that the subject flat wherein the prosecutrix and the 4 accused came face to face is the flat shared by the 4 accused together. Further though it is pleaded that the present Petitioner has his independent flat in Pune, it is confirmed from the statements recorded by the Investigating Officer that the subject flat was used as residence by the 4 accused together; that all the 4 accused are from outside Maharashtra and for the purpose of their employment were living in the subject flat at Pune; that the FIR reveals that the present Petitioner alongwith the other accused Nos. 2 and 3 told the prosecutrix that they had witnesses and seen her acts in the intervening night between 13.06.2016 and 14.06.2016 with the accused No. 1 and therefore proposed to her to consider them also upon which they would not inform any person.

After reading the pleadings, we are of the considered opinion that the presence of the present Petitioner (accused No.4) at 7:00 a.m. in the morning is itself testimony of the fact that he was residing in the same flat / sharing the same flat with the accused No.1. At this stage, when the chargesheet is filed we do not wish to interfere and would require the law to take its own course. The present Petitioner is already out on bail and can therefore defend himself in the trial if he is not involved in the offence. The observations herein are *prima facie* in nature.

8. With the above observations and findings the Writ Petition stands dismissed.

[MILIND N. JADHAV, J.]

[S.S.SHINDE, J.]

SONALI
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KILAJE

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by SONALI
SATISH KILAJE
Date:
2022.06.15
11:22:15 +0530