

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.986 OF 2022

Amit Bagul, Age 38 years,
Occ.Social Worker, R/o.Plot No.12,
Shiv Sadan, Sahakar Nagar-2,
Pune-411 009.

Petitioner

versus

1. The State of Maharashtra
2. Pramila Mahankale,
Age 46 years, Occ.Nurse,
R/oShivdarshan, Sahakar Nagar-2,
Pune-411 043.

Respondents

Mr.Niranjan Mundargi with Mr.Yashvardhan Deshmukh i/by
Mr.Pariam Law Associates, Advocate for petitioner.
Ms.Ameeta Kuttikrishnan, Advocate for respondent no.2.
Mr.S.R.Agarkar, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.
DATE : 17th August 2022

PC :

1. The petitioner has challenged the legality and validity of order dated 18th December 2021 passed by Judicial Magistrate, First Class, Pune in Regular Criminal Case No.3250 of 2017 .

2. The first information report was registered with Dattawadi Police Station on 25th December 2015 vide CR No.340 of 2015 for offences under Sections 376, 294, 354, 506, 379 r/w 34 of Indian Penal Code.

3. The complainant has alleged that in December-2011 pilgrimage to Kashi was arranged by Corporator Aaba Bagul. The complainant approached Aaba Bagul and his son Amit Bagul

(petitioner) for participating in the pilgrimage. She was allowed to join. In the same month about 400 to 500 persons left for Varanasi by train. The first informant was working as Nurse and hence she was sitting in the bogie where the medical officers and nurses of Pune Municipal Corporation were travelling. The petitioner-accused approached her repeatedly and tried to get acquainted with her. He repeatedly took her in the bogie occupied by him. Accused was occupying the said bogie with his friends. Thereafter they reached Varanasi and went to Dharmashala. The premises were provided to all the participants. The complainant and others were provided room for occupation. The petitioner-accused was trying to divert her attention. Her aunt and sister were also with her. The accused tried to get close to her. While she was alone in the room, the accused entered in her room. The accused committed forceful sexual intercourse with the complainant. She tried to shout. She was threatened that she would be defamed in the society. From 2012 to 2014 under threats the accused had repeatedly molested her. Due to repeated harassment by accused, she lodged complaint to police on 16th November 2015. The accused approached the complainant and apologised to her, gave promise of marriage and persuaded her to withdraw the complaint. She was forced to state that there was no physical relationship between them. At the instance of accused (petitioner), one Mahadu called her from his mobile and told her that she should have physical relations with him and he would clock her photo and sent it to accused. On 19th December 2015 the accused called the complainant at his office and threatened her. In the presence of about 150 persons she was abused in vulgar language. She was told to have sex from others. The accused spit on her and kicked her. The complainant lodged complaint with

Dattawadi Police Station. On 24th December 2015 complainant received call from Nurse Tanuja Bhagwat. She told her that the accused wants to meet her. She took complainant to cafe Coffee Day. Petitioner and others were waiting for complainant. The brother of petitioner apologised for her suffering and tried to convince her emotionally to withdraw the complaint. She was told that house would be provided to her. Her demands would be fulfilled. One of them told her that he is advocate. The petitioner told her that he would look after her and would provide flat and permanent job. She was confused by them. She was given stamp paper and told to write whatever advocate tells her to write. She was threatened. She executed writing as told to her under coercion. She was offered money. She did not accept. She snatched the original stamp paper with writing and told them that she do not want to withdraw the complaint.

4. Investigation was conducted. Statements of witnesses were recorded. Documents were collected. Police submitted report u/s.173 before the Court on 17th May 2017. The charge sheet was filed for offences under Sections 354A(4), 354D(2), 294 r/w 34 of IPC. The summary of facts of the case appearing in the charge sheet mentions that the accused abused her and uttered words outraging complainant's modesty. Accused told complainant to marry two police witnesses. The other accused made repeated calls to complainant and told her that unless she has sexual relationship with him and he clicks open photographs and sends them to accused (petitioner), she will not be successful in getting him. Thus, no charge sheet was filed for offence under Section 376 of IPC.

5. The prosecution preferred an application before the Court of learned JMFC under Sections 209 and 323 of Cr.PC and prayed for committal of the case to the Court of Session. It was stated that on perusal of documents it is seen that the accused has committed offence u/s.376 of IPC. The said Court has no jurisdiction to try the offence under Section 376 IPC and hence case may be committed to Court of Session. The application was opposed by accused by filing say.

6. Learned Magistrate by order dated 18th December 2021 allowed the application. The case was committed to the Court of Session.

7. Learned advocate for petitioner submit as follows :

- (a) The impugned order dated 18th December 2021 is illegal;
- (b) The investigation was conducted by police and on the basis of material on record, the investigating machinery came to the conclusion that charge sheet can be filed for the offences under Sections 354A(4), 354D(2), 294 r/w 34 of IPC;
- (c) In the absence of charge u/s.376 of IPC, it was not open for the prosecution to prefer application to commit the case to Court of Session;
- (d) On perusal of charge sheet it can be seen that Section 376 of IPC is not made out. Section 376 of IPC requires forceful penetration without consent of woman;
- (e) From different presentations made to police that the first informant was in love with the petitioner which the petitioner was not aware;
- (f) While medical examination was conducted the informant had

provided history that she had love affair with petitioner-accused and there was consensual physical relationship;

(g) The complainant stayed in Math and accused was staying in hotel;

(h) There is no corroborative evidence to support version of complainant;

(i) The complainant keeps on changing her stnd. Earlier complaint was withdrawn;

(j) The complainant made representations to police that she is in love with petitioner. In her statement dated 15th December 2015, the complainant has stated that she is in love with petitioner;

(k) The affidavit was signed by complainant by her free will stating that she would withdraw all complaints against the petitioner. This fact is corroborated by statement of witness;

(l) There is huge delay in lodging FIR. The complainant has also stated that she was in love with petitioner and visited him from 2011-2015;

(m) The petitioner has filed complaints against complainant;

(n) Charge sheet was filed on 17th May 2017 for the aforesaid offences. The application for commital was filed on 29th September 2021. The Court had taken cognizance of charge sheet. There was no reason to pass impugned order subsequently;

(o) The statement of witnesses do not support version of complainant.

8. Learned APP submitted that the FIR itself makes out offence under Section 376 of IPC. There was sufficient material to invoke Section 376 of IPC. There is no infirmity in the impugned order passed by learned Magistrate. The Court has rightly taken

cognizance and committed the case to the Court of Session. The statements recorded during investigation supports the version of complainant.

9. Learned advocate for respondent no.2 submitted that first informant had categorically stated that she was subjected to physical relationship. The offence u/s.376 of IPC was squarely made out. The affidavit was executed under misrepresentation. On the basis of affidavit the averments in the FIR cannot be discarded. The contradiction in the version of complainant, as contended by the petitioner, cannot be considered at this stage. There was no reason for not filing charge sheet for the offence u/s.376 of IPC.

10. The FIR was registered on 25th December 2015. The complainant has categorically stated that she was subjected to forceful sexual intercourse by the accused. The complainant has also stated that under coercion she had represented to police about withdrawal of complaint. The contents of FIR makes out offence under Section 376 of IPC. The delay, contradictions etc. as urged by petitioner will have to be considered at appropriate stage. The version of complainant that affidavit was executed at the instance of accused is fortified by the fact that she has produced the affidavit on record vide panchanama dated 25th December 2015. She has stated that she was called in cafe Coffee Day. She stated that she took original affidavit as she did not want to withdraw complaint. She has also stated that affidavit was executed under coercion. The presence of complainant, accused and others at aforesaid place is fortified by CCTV footage which is on record. Assuming that charge sheet was filed for the offences as stated above, the Court is

empowered to examine material on record and commit the case to Session Court.

11. The learned JMFC vide order dated 18th December 2021 has rightly taken cognizance of offence under Section 376 of IPC and committed the case to Session Court. The learned Magistrate had observed that FIR refers to forcible physical relationship. Section 376 is attracted. The Court made reference to Section 323 of Cr.PC wherein it is provided that if any inquiry in to an offence or trial before Magistrate, it appears to him at any stage of the proceedings before signing judgment, that the case is one which ought to be tried by the Court of Session, he shall commit it to the Court under the provisions herein before contained. There is no ground to set aside the order.

ORDER

- (i) Criminal Writ Petition No.986 of 2022 is rejected and disposed of accordingly;
- (ii) The observations made in this order are prima facie for adjudicating this petition and the Trial Court shall not be influenced by the same during the trial;
- (iii) At this stage, learned counsel for the petitioner submits that the petitioner intend to challenge the order before higher Court and hence interim stay granted by this Court vide order dated 30th April 2022 may be extended by six weeks;
- (iv) Learned APP and learned counsel for respondent no.2 opposes the prayer for extension of interim stay. Considering the submission of Advocate for petitioner, interim relief is extended by four weeks.

(PRAKASH D. NAIK, J.)