

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 550 OF 2022

Priti Vijay Khambal ...Applicant
Versus
Manish Bahaduramal Jain And Anr. ...Respondents

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Mr. Vikas Kolekar, Advocate for the Applicant.

Mr. Ashok Mundargi, Senior Advocate i/by Ms. Swarali Joglekar,
Advocate for Respondent No.1.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 29th AUGUST, 2022.

PER COURT:

1. The applicant filed complaint OMA No.572 of 2019 for offences punishable under Sections 354, 376, 323, 307, 499, 504 & 506 of Indian Penal Code (for short “IPC”) against respondent No.1.

2. The learned J.M.F.C., 4th Court, Kalyan, vide order dated 2nd March, 2020 directed Police Inspector of Vishnu Nagar Police Station to register First Information Report (for short ‘FIR’) against the accused and submit report within 3 months from the date of the order. While passing the said order it was observed that the documents filed on record prima facie shows that there was some relationship between the complainant and accused. The alleged

accusations are against the modesty of women and of very serious in nature. It prima facie appears that the consent of the complainant for physical relationship was obtained by giving false promises of marriage. The alleged accusations prima facie shows happening of serious cognizable offence. The learned Magistrate has relied upon the decision of the Hon'ble Supreme Court in the case of **Lalita Kumari Vs State of UP**.

3. The order dated 02.03.2020 was communicated to the Senior Police Inspector, Vishnu Nagar Police Station vide communication dated 04.03.2020. Offences were registered vide FIR No.65 of 2020 with Vishnu Nagar Police Station on 07.03.2020 under Sections 354, 376, 323, 307, 499, 504 & 506 of IPC. Statement of complainant was recorded on 07.03.2020.

4. The respondent No.1 preferred Criminal Revision Application No.45 of 2020 before the Sessions Court challenging order dated 02.03.2019 passed by learned J.M.F.C. The revision application was finally heard and disposed of vide order dated 22nd April 2022. The order dated 2nd March, 2020 issuing directions of registration of FIR vide Section 156(3) of Cr.P.C. was set aside. Paragraph Nos.17 & 18 of the order dated 22nd April, 2022, refers to the fact that the FIR was registered pursuant to the directions issued by the

learned Magistrate vide order dated 2nd March, 2020. Reference is made to decision of the division bench of this Court in the case of **Kailash Dattatray Jadhav V/s. State of Maharashtra** (Criminal Application No.152 of 2015 decided on 4th May, 2016). It is observed that, in a case where an order made under sub Section 3 of Section 156 culminates into the registration of FIR the revisional Court is powerless to pass an order of quashing the charge-sheet filed on the basis of FIR and therefore in a case where on the basis of order under Sub-Section 3 of Section 156 of Cr.PC., FIR is registered the remedy of revision under the Code for challenging the order will not be an efficacious remedy at all on the ground that the revisional Court cannot quash the FIR. However in Paragraph – 19 it is stated that since there is no averment in the complaint that there is compliance of sub-section 3 of Section 154 of Cr.PC. as complainant has not filed any document in support of the same, it was not proper on the part of Magistrate to issue directions under Section 156(3) of Cr.PC. Therefore, the said order suffers from illegality and liable to be set aside. In Paragraph-20 it is observed that, considering the fact that, prayer clause of complaint mentions that, complainant has prayed for issuance of process and alternatively for passing order under Section 156(3) of Cr.PC. directing police to investigate, the

impugned order should be set aside and matter should be remanded to Magistrate for passing order as per law. The reasons assigned by Sessions Court to set aside order dated 02.03.2020 passed by learned J.M.F.C., reflects complete non application of mind by the Sessions Court.

5. Learned Advocate for the applicant submitted that the order dated 22nd April, 2022 is contrary to law. The FIR was registered immediately after the directions issued by the Court of learned Magistrate vide order dated 2nd March, 2020. Thereafter investigation proceeded and it was completed. In compliance of order dated 2nd March, 2020, charge-sheet/report was submitted to the Court of learned Magistrate and the case has been committed to the Court of Sessions and pending in the Court of Sessions at Kalyan. The Revisional Court could not have entertained revision application, since FIR was already registered. In the complaint it was averred that complainant had approached the Police and submitted complaint. The Police did not take cognizance. Hence, there was compliance of Section 154(3) of Cr.P.C.

6. Learned counsel for the respondent No.1 submitted that the revision application was preferred immediately after the impugned order dated 2nd March, 2020 passed by the Court of learned

Magistrate directing investigation. However, during the pendency of the said application, the FIR was registered on 7th March, 2020. The accused had challenged the order directing the investigation under Section 156(3) of Cr.P.C.

7. The learned Magistrate issued directions under Section 156(3) to register an FIR and submit the report within stipulated time. The FIR was registered on 7th March, 2020. It is not in dispute that the order dated 2nd March, 2020 passed by the learned Magistrate was not stayed by the Court of Sessions and there was no impediment for registration of FIR and proceed with investigation. The report was submitted to Court and case is then committed to the Court of Sessions.

8. On perusal of order dated 22nd April, 2022 it is apparent that the sessions Court was aware of the fact that the FIR is already registered and in view of the decision of the division bench of this Court, in the case of **Kailash Dattatray Jadhav V/s. State of Maharashtra** (supra) the sessions Court cannot entertain the said application. Surprisingly, the sessions Court has erroneously opined that the complaint was not filed before the Police before seeking directions under Section 156(3) and set aside the order dated 2nd March, 2020 and remanded the complaint to Court of

Magistrate for disposal as per law. In fact in the complaint it is averred that complainant had approached Police. The order of learned Sessions Judge washed out the direction under Section 156(3) of Cr.P.C., FIR and charge-sheet. The order is without jurisdiction and contrary to law. The impugned order dated 22nd April, 2022 deserves to be set aside.

9. Learned counsel Mr. Mundargi submitted that, since the proceedings are now pending before the concerned Court and the respondent No.1 has remedy in law to challenge the said proceedings. The right to challenge the proceedings pending before the Court may be reserved.

10. In the light of the above, I pass the following order :-

ORDER

- i. Impugned order dated 22nd April, 2022 passed by the learned Additional Sessions Judge, Kalyan is set aside.
- ii. The Sessions Court seized with the proceedings after committal shall proceed with the case in accordance with law.
- iii. It is clarified that this application is not adjudicated on merits and all the contentions of respondent No.1 on merits of the case are kept open.

- iv. It is open to the respondent No.1 to challenge the proceedings pending before Sessions Court in accordance with remedy available under law.
- v. Criminal Application is disposed off.

(PRAKASH D. NAIK, J.)