

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2201 OF 2022**

Kalpesh Tulsidas Rukhana ... Petitioner
V/s.
State of Maharashtra And Anr. ... Respondents

Mr. Karansingh B. Rajput, for the Petitioner.
Mr. G.P. Mulekar, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : 06TH OCTOBER, 2022.

P.C:-

1. By this Writ Petition under Article 227 of the Constitution of India, the petitioner is challenging rejection of an application for discharge in relation to First Information Report No.100/2018 filed under sections 341, 351, 509 read with 34 of Indian Penal Code. According to the prosecution, on 23rd April, 2018 while the complainant was returning from her dance class, the petitioner accompanied by unknown persons inquired with the complainant about her salary. Thereafter, asked the petitioner to visit office on the next day. According to the prosecution, the petitioner wrongfully restrained her and abuse her in filthy language. When complainant tried to escape the classroom, the petitioner pushed her from front side. It is alleged that the complainant thereafter contacted her Manager who sent watchman of the building who came to the rescue of the complainant. It is alleged

that it is due to intervention of the watchman and another women that the complainant was rescued. The Complainant, therefore, filed First Information Report on the same day with the respondent No.1 Police Station.

2. The accused filed an application for discharge, contending that there is no *prima facie* material to frame charge against the petitioner. The material on record is not sufficient to even raise suspicion against the petitioner for commission of offences alleged against him. Learned Magistrate by the impugned order rejected the application for discharge. While rejecting the application, the learned Magistrate has considered the allegations in the First Information Report and recorded finding that the allegations are sufficient to frame charge against the petitioner.

3. The learned Advocate for the petitioner submitted that the material placed on record by the prosecution in the form of statement of witnesses and C.C.T.V record do not show that the petitioner had even touched the complainant. He submitted that the C.C.T.V. footage shows that the petitioner was present at the time of incident but there is no evidence to support allegation of offending modesty of the complainant. The statement of witnesses do not support the case of the prosecution and, therefore, he submitted that the learned Magistrate was not justified in rejecting the discharge application.

4. Learned A.P. P. supported the order by stating that the lack of record is *prima facie* sufficient to frame charge against the petitioner. Learned Magistrate is not supposed to conduct mini

trial at this stage and, therefore, the impugned order is passed in accordance with law.

5. These considered the submissions on behalf of the both the sides and having considered the material on record. The record before the learned Magistrate discloses that the petitioner had not touched the complainant. The C.C.T.V record supports the contentions of the petitioner that the petitioner had not done any act which can remotely be said to be an act of offending modesty of a women. Mere presence of the petitioner as reflected from the C.C.T.V footage and the statements of the employees present at the time of incident is not sufficient to frame charge against the petitioner as witnesses have not attributed any role to the accused to constitute ingredients of offences alleged against the petitioner. Learned Magistrate, only on the basis of allegations in the report, recorded a finding that the allegations in the report are *prima facie* sufficient to frame charge against the accused.

6. An overall perusal of the material on record in the form of C.C.T.V. record and the statements of witnesses, I am satisfied that the material is not sufficient to raise even suspicion against the petitioner of the offences alleged against him. The petitioner, therefore, made out a case for discharge. Hence, following order:

(a) The impugned order passed by the Additional Metropolitan Magistrate 40th Court, Girgaum, Mumbai dated 10th November, 2021 is quashed and set aside;

(b) The application below Exhibit-17 in Case No.298/PW/2018 is allowed.

(c) Petitioner stands discharged.

7. The criminal writ petition is disposed of in these terms. No costs.

(AMIT BORKAR, J.)