

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2376 OF 2016

Komal Gopal Sinha ..Petitioner
Versus
The State of Maharashtra and Anr. ..Respondents

....

Ms. Komal Gopal Sinha, Petitioner in person present.

Mr. Arfan Sait, APP for the State.

Adv. Lucy Massey a/w Adv. Amita C. for Respondent No.2.

....

CORAM	: PRAKASH D. NAIK, J.
DATE OF RESERVATION OF ORDER	: 4 th MARCH, 2022.
DATE OF PRONOUNCEMENT OF ORDER	: 7 th JUNE, 2022.

ORDER :

1. The petitioner has prayed that the remarks of character assassination of petitioner reproduced in paragraph no.3 of order dated 14th June, 2016 passed by the Sessions Court be expunged. The petitioner has appeared in person. Although several other prayers are urged in the petition, the petitioner has stated that she would not press prayer clauses 'a' and 'b' in the petition.
2. The petitioner has submitted that, she is the practicing Advocate since 22.08.2015. Criminal Revision Application No. 187

of 2014 was preferred by the petitioner before the Court of Additional Sessions Judge at Thane challenging order dated 13th July, 2014 passed by Learned J.M.F.C. Vashi, Navi Mumbai in M.A. No.787 of 2014, the said Revision Application has been dismissed by the Sessions Court Thane vide order dated 14th June, 2016. However, in paragraph No.3 of the said order, the learned Sessions Judge has reproduced the averments which amounts to character assassination of the petitioner. In paragraph No.3 it is stated that, it appears from said application that petitioner became friendly with applicant and she revealed that, she had such relationship with other professor against whom, she had levelled allegations of sexual intercourse with promise to marry. The applicant kept the distance from her. The petitioner submits that, it was not necessary to reproduce whatever contended by opponent in application preferred before Lower Court. The Revision Application was preferred by petitioner challenging the order passed by the Lower Court in an application for return of the vehicle preferred by respondent which was allowed by the Lower Court. While deciding Revision Application, it was not necessary to make any observations casting aspersions on the character of the

petitioner. It is further submitted that in similar situation the petitioner had preferred Writ Petition No. 4171 of 2014 for expunging certain observations made by Additional Sessions Judge, Thane in the application preferred by the accused seeking anticipatory bail in connection with First Information Report (for short "FIR") registered by the petitioner. Learned Sessions Judge while allowing the applications preferred by the accused made certain observations, which were *per se* defamatory. The petitioner in the said petition has submitted that such observations should be expunged from the said order. The accused has no right to resort to character assassination by making baseless and groundless allegations against the petitioner and that the same should not have been reproduced by the Sessions Court while deciding the application of anticipatory bail. This Court by order dated 18th November, 2014 had expunged such remarks. It is submitted that the observations reproduced in paragraph No.3 are required to be expunged. FIR was registered by petitioner against respondent No.2. Externment proceedings were initiated against him. Action was taken against respondent No.2 by Disciplinary Committee of Bar

Council of India vide order dated 13.02.2016. Anticipatory bail granted to respondent No.2 was cancelled by Supreme Court.

3. Learned Advocate for respondent No.2 submitted that the petition is devoid of merits. Whatever reflected in the order dated 14th June, 2016 is part of record. Petitioner had lodged three different FIR's. Externment order issued against respondent No.2 has been revoked by appellate authority. The petitioner is filing false cases. Learned Counsel for respondent No.2 produced the copy of Criminal Application No. 787 of 2014 preferred before the Court of Learned J.M.F.C. for return of vehicle. She has also produced the evidence of the petitioner in Sessions Case No.477 of 2014, order revoking the externment order, order passed by this Court granting anticipatory bail to respondent No.2 in C.R. No.4 of 2014. Reliance is placed on order dated 19th April, 2012 passed by High Court of Delhi in the case of Ravinder Kumar Tyagi V/s. State wherein it is observed that there is no principle or rule of law that the statement in the Court by police personnel has to be necessarily disbelieved. It may or may not be believed no Court can assume that every statement of Policeman is necessarily false.

4. Criminal Revision No.187 of 2014 is preferred by the revision applicant (petitioner) before the court of Additional Sessions Judge at Thane challenging order dated 13th July, 2014 passed by learned J.M.F.C. Vashi, Navi Mumbai in M.A. No.787 of 2014. The respondent No.2 herein was respondent No.1 in the Revision Application. M.A. No.787 of 2014 was preferred by the respondent No.2 before the Court of Learned J.M.F.C. The said application was allowed. On perusal of the copy of Criminal Revision Application No.787 of 2014, it is apparent that the said application was preferred by respondent No.2 for return of property under Section 451 of Cr.PC. In the said application it was the contention of respondent No.2 that he is an advocate by profession. The application contends certain allegations against the petitioner. It appears that during the investigation of the FIR, the car was seized. The annexures to this petition refers to order dated 26th February, 2014 passed by this Court granting anticipatory bail to respondent No.2 in C.R. No. 4 of 2014. The said order was challenged before Apex Court. Vide order dated 21.08.2015 the Supreme Court had observed that the respondent is accused of offence punishable under Section 376 of

Indian Penal Code (for short “IPC”) and it appears that he has been convicted for offence under Section 302 of IPC. The very fact that the respondent has not appeared in the Court, though served, indicates that he is not interested in complying with any orders passed by Court or any other judicial authorities. Under the circumstances, his bail is cancelled. The State will take immediate steps to have respondent No.1 arrested. The petitioner has annexed the order dated 18th November, 2014 passed by the Division Bench of this Court in Writ Petition No. 4171 of 2014 to this petition.

5. It appears that the observations reflected in order dated 14th June, 2016 passed by Additional Sessions Judge Thane are outcome of Miscellaneous Application No.787 of 2014 preferred by respondent No.2 before the Court of Learned J.M.F.C., CBD Belapur seeking return of property. In the said application several allegations were made against the petitioner, which was the contention of applicant in the said application i.e. the respondent No.2 herein. Assuming that such allegation were reflected in the application, reproduction of such allegations which was the contention of respondent No.2 was not warranted. The application before the

Lower Court was preferred by respondent No.2 for return of property and the order passed in the said application was challenged by the petitioner before the Sessions Court by preferring Revision Application No.187 of 2014. Hence, observations relating to character of petitioner were uncalled for.

6. The petitioner has preferred Writ Petition No.4171 of 2014 for similar prayers. The order dated 18th November, 2014 mentions that the petitioner was aggrieved by certain observations made by the Additional Sessions Judge, Thane in an order in the application filed by the accused seeking anticipatory bail for offences punishable under Sections 376, 406, 419, 420, 439, 352, 509 and 354 (A) (B) r/w Section 34 of IPC which was registered at the instance of the petitioner. The Sessions Court while allowing the application filed by the accused against whom, the petitioner filed complaint has made certain observations which are *per se* defamatory and these observations therefore, should be expunged from the said order. It was also submitted that the accused did not have right to resort the character assassination by making baseless and groundless allegations against the petitioner and the same

should not be reproduced by the Sessions Court while deciding the application for anticipatory bail. Reliance was placed on the judgments of the Apex Court in the case of Dr. Raghubir Saran Vs. State of Bihar and Anr. [AIR 1964 Supreme Court 1] & Niranjan Patnaik Vs. Sashibhushan Kar and Anr. [1986, 2 Supreme Court Cases 569]. The Division Bench after perusing the application and the impugned order observed that there is much substance in the submissions of the petitioner. The accused in his application had made certain allegations against the petitioner, which are *per se* defamatory. Those allegations were found in paragraph Nos.3, 4 and 7 of the order passed by the Sessions Court. Therefore, the Court is of the view that while exercising its writ jurisdiction under Article 226 of Constitution of India and inherent power under Section 482 of Cr.P.C. Such unwarranted findings which are recorded by the Sessions Court while considering application for anticipatory bail can be quashed. It was further observed that, it is settled position of law that while deciding the application for anticipatory bail, Court is not expected to make any observations on the character of the complainant and pass such order on the basis of such allegations.

The ratio of the decision relied upon by the petitioner is squarely applicable to the facts of the case. It is quite well settled position in law that while granting the application for anticipatory bail, the Court is not expected to indulge in character assassination of the complainant particularly, when the complainant is not before the Court to refute the allegations which are made in the application for bail. The Sessions Court should refrain himself from reproducing such kind of defamatory and scandalous allegations which are made against the complainant in the application filed by the accused. The Writ Petition was allowed and the observations made in the order passed by Learned Sessions Judge were expunged.

7. I have perused order dated 14th June, 2016 which is subject matter of this petition. In paragraph No.3, it is observed that “It appears from said application that Komal Sinha became friendly with applicant and she revealed that she had such relationship with other professor against whom she had also levelled allegations of sexual intercourse with promise to marry. The applicant kept distance from her.” Assuming that the said observations were reflected in the application preferred before the Trial Court by

respondent No.2, it was not necessary to incorporate them in order dated 14th June, 2016. The observations are sourced from application preferred by respondent No.2 and allegedly those were his contentions. The Sessions Court should have refrained from reproducing such kind of observations in the order rejecting Revision Application preferred by petitioner before the Sessions Court.

8. Considering the aforesaid circumstances the observations reflected in paragraph No.3 of order dated 14th June, 2016 with regards to the character of the petitioner, stands expunged.

9. In the light of the aforesaid observations this petition stand disposed of accordingly.

(PRAKASH D. NAIK, J.)