

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.33 OF 2023

Mr Keith Crasto, aged 45years, resident of
32, Bachitar Apts, Church Road, Near St.
John School, Marol, Andheri (E), Mumbai,
Maharashtra

...Petitioner

Versus

1. State
through the P.I. Calangute Police Station.
2. Public Prosecutor
High Court of Bombay at Goa, Porvorim,
Goa
3. Shri Ganesh Patil, aged 41, R/o. Tuff
Security Service, Para Bardez – Goa.

... Respondents

Mr M.B. D'Costa, Senior Counsel with Mr A. Monteiro and Mr Abbasi
Rehan Ahmad Nafees, Advocates for the petitioner.

Mr Devidas J. Pangam, Advocate General with Mr Pravin Faldessai,
Additional Public Prosecutor for respondent Nos.1 and 2.

Mr Arun Bras De Sa with Mr Alphy D'Souza and Mr Franco Cuburn
Freddie Joseph, Advocate for respondent No.3.

**CORAM: M.S. SONAK &
BHARAT P. DESHPANDE,JJ.**

DATE : 3rd JULY, 2023

ORAL JUDGMENT: (Per Bharat P. Deshpande,J)

1. Rule. The rule is made returnable forthwith. With the consent of the parties matter is taken up for final disposal at the stage of admission itself.

2. The petitioner who is an accused in FIR No.99 /2019 and the chargesheet bearing No.222/2019 registered as Criminal Case No. IPC 525/S/2019/D preferred the present petition for quashing of FIR and the chargesheet under Section 482 of Cr.P.C. r/w. Article 226 of the Constitution of India.

3. Heard Mr M.B. D'Costa, learned Senior Counsel with Mr A. Monteiro and Mr Abbasi Rehan Ahmad Nafees, Counsel for the petitioner, Mr Devidas J. Pangam, learned Advocate General with Mr Pravin Faldessai, learned Additional Public Prosecutor for the respondent Nos.1 and 2 and Mr Arun Bras De Sa with Mr Alphy D'Souza and Mr Franco Cuburn Freddie Joseph, Counsel for respondent No.3.

4. Learned Senior Counsel Shri M.B. D'Costa for the petitioner would submit that the FIR as well as the statement of the victim is an entirely false and concocted story and allegations made therein are so absurd and inherently improbable on the basis of which no prudent man could ever reach a conclusion that there is sufficient ground for proceeding against the accused. He would submit that allegations against the accused are that he trespassed in the property in broad daylight at around 10.30 hours and allegedly molested the victim. He submits that no prudent person would commit such an offence except he is mentally imbalanced. He then submitted that such allegations are absurdly incorrect and made only to settle the things between the parties in view of the property dispute.

5. Mr D'Costa placed heavy reliance in the case of *Neeharika Infrastructure Pvt. Ltd. v/s. State of Maharashtra and others* [2021 SCC Online SC 315] and more specifically paragraph No.17 wherein the case of *Bhajan Lal* is concerned. He then relied upon the case of *State of Karnataka v/s. L. Muniswamy and others* [(1977) 2 SCC 699], *Madhavrao Jiwajirao Scindia and other v/s. Sambhajirao Chandrojirao Angre and others* [(1988) 1 SCC 692] and finally on *Laishram Premila Devi and others v/s State and others* [2021 SCC OnLine Del 1323].

6. The learned Public Prosecutor for the State and learned Counsel Mr Arun Bras De Sa appearing for respondent No.3 would submit that there is sufficient material which the prosecution had collected and since the chargesheet is filed, no case is made out exercising extraordinary jurisdiction.

7. We have considered the allegations made in the FIR and more specifically the statement of the victim recorded under Section 161 of Cr.P.C. as well as under Section 164 of Cr.P.C. before the J.M.F.C.

8. The complaint was lodged by the Manager of the said property/respondent No.3 on 17/04/2019 stating that the lady security staff posted on the gate duty of Club69, Calangute was instructed not to open the gate for any unauthorised person without the permission of the Security Chief. On 17/04/2019, at around 10.30 hours one person came and started knocking the security gate and continued to push it forcefully.

When the victim tried to stop the said person from entering the property, he held her hand and pushed her forcibly away and started going inside. The victim/security guard ran behind him in order to restrain him but he again held her very forcefully and was not leaving her from his grip. In the meantime, some more staff members came to her rescue as she shouted. At that time the said person left her and went away. The name of the said person is also disclosed in the FIR i.e. the petitioner herein. The scene of offence panchanama was conducted on the same day as the FIR was registered for the offence punishable under Sections 447 and 354 of IPC. Similarly, the statements of the witnesses were recorded which prima facie corroborated with the state of the complaint.

9. We have gone through the state of the victim and the one recorded before the Magistrate under Section 164 of CrPC. The victim has narrated the instance and claimed that the accused when tried to enter in to the property was told not to do so but he caught hold of her hand, hugged her and was not allowing her to leave. She also stated that the accused inserted his hand inside her shirt and touched her breast.

10. With these details given by the victim, it is difficult for us to consider the submission advanced by the learned Senior Counsel that such allegations are patently false, specifically when the statement of the victim was recorded on oath before the Magistrate under Section 164 of CrPC.

11. The submission that it is not possible for a person to commit such an offence in broad daylight, is again unacceptable for a simple reason that the victim categorically stated as to why the accused behaved with her and more particularly allegations regarding molestation.

12. The parameters which required to be considered for the purpose of exercising extraordinary jurisdiction under Section 482 of Cr.P.C. were succinctly laid down by the Hon'ble Apex Court in the case of *State Of Haryana And Ors vs Ch. Bhajan Lal* [992 Supp(1)SCC 335]. These parameters are again considered by the Hon'ble Apex Court in the case of *Neeharika Infrastructure Pvt. Ltd.*(supra) and more particularly in paragraph No.37. The contentions of the petitioner is not at all covered under the parameters which are found in paragraph No.102 of the case of *Bhajan Lal*(supra). Though the learned Senior Counsel tried to submit that the case is covered under clause 5, we are unable to accept such contention on the basis of specific allegations recorded in the statement of the victim. At this stage, it cannot be stated that allegations made in the FIR or the complaint are absurd and inherently improbable. The complainant only set the law in motion by filing a complaint since he was working as the Manager whereas the victim gave complete details of the incident. Therefore, such a statement of the victim must be tested during the trial and cannot be considered inherently improbable at this stage.

13. In the case of *L. Muniswamy and others*(supra), the Apex Court has observed in paragraph 8 that on asking the prosecution about any data or

material on the basis of which a reasonable likelihood of the respondents being convicted of any offence in connection with the attempted murder of the complainant could be predicated. However, no material was shown on record on which any tribunal could reasonably convict the respondents for any offence connected with the assault. The respondents/accused were nowhere near the scene of offence at the time of the assault. What was alleged against them was, that they had conspired to commit that assault. In those circumstances, the Apex Court agreed with the reasons given by the High Court in quashing the FIR. Therefore, the said case of *L. Muniswamy and others*(supra) is not helping the petitioner in the present case.

14. In the case of *Madhavrao Jiwajirao Scindia* (supra), though the legal position is considered in paragraph No.7, the said matter was in fact considered as a civil wrong and the ingredient of criminal offences were wanting.

15. The Apex Court clearly observed in paragraph 7 as under:

The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique

purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

16. It therefore needs to be considered that whether uncontroverted allegations as made, *prima facie*, establish the offence. The matter in hand clearly goes to show that statement of the victim is recorded under Section 164 of IPC. Thus, the decision in the case of ***Madhavrao Jiwajirao Scindia*** (supra) is in fact against the petitioner and supporting the case of the respondent.

17. In the case of ***Laishram Premila Devi*** (supra), the Delhi High Court while considering quashing of FIR, basically granted such prayer as the dispute between the parties was settled. Paragraph 5 of the said judgment show that with the intervention of common friends, relatives, and family friends, the parties settled their dispute and an oral settlement has been reached between the parties. Similarly, both parties realised their mistake and decided to compromise the matter. Similar is the observation in paragraph 9 and therefore such a decision is not helping the petitioner in any manner.

18. In the case of ***Neeharika Infrastructure Pvt. Ltd.***(supra), the Hon'ble Apex Court carved out the principles which emerges from earlier decisions. Such principles are found in paragraph 57 which reads thus:

10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

19. The principles clearly go to show that the police have a statutory right and duty to investigate in cognizable offences and that Court should not thwart any investigation into cognizable offences. Similarly, the power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. While doing so the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint. Criminal proceedings ought not to be scuttled at the initial stage.

20. In the present case, an attempt has been made to claim that the allegations made in the FIR and the statement of the victim are totally false

and unbelievable. Such contention if accepted would embark upon an enquiry by this Court as to the reliability or genuineness or otherwise of the allegations made in the FIR and the statement of the victim, which is not permissible.

21. It is also well settled that FIR is not an encyclopedia which must disclose all facts and details relating to the offences reported. It is during the investigation by the police, the merits of allegations in the FIR could be gone into in order to find out whether there is any corroboration or evidence to support it.

22. The present case is certainly having some material or allegations that *prima facie* show the ingredients of the offence under Section 354 of IPC as well as Section 447, which will have to be looked into by the Trial Court at the time of framing of charges.

23. The present case is certainly not the one which necessitated the exercise of extraordinary jurisdiction under Section 482 of CrPC. The petition, therefore, deserves to be rejected.

24. Rule stands discharged. The petition stands dismissed.

25. The parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.