

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

CRIMINAL WRIT PETITION NO.303 OF 2020

1.Manish Kirtibhai Patel

Age 42 years, Occ-Business

2.Shital Manish Patel

Age 42 years, Occ.Housewife

Both residing at 2401,

Ekta Meadows,Siddarth Nagar, Borivali(East)

Mumbai-400 066.

... Petitioners.

Versus

1. The State of Maharashtra

2. Bhavana Sandeep Kar

Age Adult, Occ-Nil

resident of – C/2402 Ekta

Medows, Siddarth Nagar, Borivali(East)

Mumbai-400 066.

.... Respondents.

Ms Rupali Shirke, Advocate for the Petitioner.

Mr V. B. Konde-Deshmukh, APP for the Respondent-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 23 JANUARY, 2023.

Judgment (Per R.N.Laddha,J.) :-

. Heard learned Counsel for the parties.

2 Rule. The Rule is made returnable forthwith with the

consent of and at the request of the learned Counsel for the parties.

3. By this petition, under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the Petitioners seek the quashing of the FIR No.38 of 2019, dated 20.1.2019, registered against them at Kasturba Marg Police Station, Borivali, Mumbai and the proceedings arising therefrom, on the ground that the ingredients of Section 79 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') are not at all satisfied on the basis of the allegations made in the said complaint and the material placed on record.

4. It revealed from the record that the Petitioners are the husband and wife, and the Complainant/Respondent No.2 is their neighbour. It revealed from the record that the mother of the alleged victim girl was working with Respondent No.2 as a maidservant. Further, it revealed from the record that on completion of investigation, a charge sheet was filed against the Petitioners, being CC No.5392 of 2019, pending before the learned Metropolitan Magistrate, 68th Court at Borivali, Mumbai.

5. Ms Rupali Shirke, learned Counsel appearing on behalf of the Petitioners took us through the FIR as also the statement of the

witnesses and submitted that there is absolutely nothing on record to show that the Petitioners either ostensibly engaged the victim girl and kept her in bondage for the purpose of employment or withholds her earnings or used such earnings for their own purposes.

6. It is submitted that the allegations made against the Petitioners that they engaged the victim girl and kept her in bondage was nothing but the Complainant's figment of imagination.

7. It is submitted that at the relevant time the victim girl was 16 years old and had appeared for 10th Standard examination. Hence, the victim used to accompany her mother to the residence of the Complainant. The Petitioners came in contact with the mother of the victim through her sister Asha who used to work with them. Sayabai/the mother of the victim girl approached the Petitioners for monetary help for the education of her victim daughter. The victim used to come to the petitioner's house to spend time and to play with the Petitioner's minor children.

8. It is submitted that the bare reading of complaint alongwith the statement of the mother and the alleged victim girl shows that no offence is made out against the Petitioners under Section 79 of

the Act. It is submitted that the consequential investigation, too, does not impute any criminal act to the Petitioners. It is submitted that even if, the allegations in the charge sheet are taken as gospel truth, no offence can be said to have been made against the Petitioners to warrant their prosecution. The alleged victim girl has stated that she was neither harassed nor was subjected or forced to do any hazardous work. The mother of the alleged victim girl also stated that her daughter used to play with the minor children of the Petitioners. The learned Counsel for the Petitioners invited our attention to the affidavit filed by the mother of the alleged victim girl stating that the Petitioners never harassed her alleged victim daughter nor forcibly made to do work in their house. It has been submitted that the present complaint was filed against the Petitioners out of some vengeance and to settle some personal grievance by the complainant/Respondent.

9. Mr Konde Deshmukh, the learned Additional Public Prosecutor conceded that there is nothing on record to make out the case under Section 79 of the Act against the Petitioners. He fairly admitted that the ingredients of Section 79 of the Act are absent in this case. He, however, submitted that all these aspects should have been gone into the trial. According to him, even though the inherent powers of the High Court under Section 482 of the Cr.P.C., to interfere with the criminal proceedings are wide,

such powers have to be exercised with circumspection and only in exceptional cases. According to him, the instant case can not be said to be a fit case to exercise extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India and Section 482 of the Cr.P.C. Further, he submitted that the petition for quashing of FIR is untenable since the proceedings have gone post the stage of FIR and have resulted in a charge sheet. In his view, the offence committed by the Petitioners is a crime against the Society and not the Complainant alone. Further, he submitted that the Petitioners can not insist that this Court ought minutely to examine the allegations made in the complaint to ascertain as to whether all the ingredients of the offence are present therein or not.

10. We have given anxious consideration to the rival contentions and examined the record with reference to the applicable law.

11. It is settled position of law that while exercising the powers under Section 482 Cr.P.C., the allegations made by the witnesses against the accused persons are to be scrutinised on their face value, taking them to be true and it is not permissible for the Court to go into the aspect of reliability or credibility or trustworthiness of the witnesses.

12. In State of *Orissa Vs. Saroj Kumar Sahoo*¹, it was observed that when a report is sought to be quashed, it is permissible to look into the material to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

13. Similarly, in State of *Haryana Vs. Bhajan Lal*², it was enunciated that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then it is permissible for the High Court to exercise its inherent powers under Section 482 of the Cr.P.C.

14. Again, in *Pepsi Foods Limited Vs. Special Judicial Magistrate*³ it was observed that summoning of accused, in a criminal case, is a serious matter and criminal law can not set in motion as a matter of course. The accused can approach the Court, u/s 482 of the Cr.P.C. to have the proceedings quashed when the Complaint does not make out any case against him and he is still required to undergo the agony of a criminal trial, as the provisions of Section 482 of the Cr.P.C. are devised to advance justice and not to frustrate it.

15. We need not further multiply the authorities. Suffice it to say

1 (2005)13 SCC 540.

2 1992 Supp(1) SCC 335.

3 (1988) 5 SCC 749.

that the High Court can very well exercise its inherent powers u/s 482 of the Cr.P. C., if the allegations made in the First Information Report or complaint or the charge sheet, do not make out any case against the Accused.

16. The essential ingredients of the offence u/s 79 of the Act, are that, the person accused of the offence should have ostensibly engages a child and keeps him/her in bondage for the purpose of the employment or withholds his/her earnings or uses such earnings for his own purposes.

17. On perusal of the charge sheet, it is seen that there is absolutely nothing to show that the Petitioners either ostensibly engaged the victim girl and kept her in bondage for the purpose of employment or withheld her earnings or used such earnings for their own purposes. Hence, the ingredients of offence u/s 79 of the Act, are not made out in this case. Moreover, as stated above, the learned APP has also considered this position. It is settled law that if allegations made in the charge sheet do not constitute any offence, the continuance of prosecution in such matters amounts to abuse of process of law.

18. As regards the contention of the learned Additional Public Prosecutor that since a charge sheet has been filed, the

Petitioners have an alternate remedy before the trial Court and this Court may not exercise its jurisdiction under Section 482 Cr.P.C. is concerned, it is settled position of law that the High Court can exercise the jurisdiction under Section 482 of Cr.P.C. even when discharge application is pending with the trial Court.

19. In *Anand Kumar Mohatta Vs. State (Government of NCT of Delhi)*⁴ it was held in para 17 that,

“There is nothing in words of this Section which restricts the exercise of the powers of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C. even when the discharge application is pending with the trial Court. Indeed, it would be travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialised into a charge sheet. On the contrary, it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any Court.”

20. In view of this, even if the alternate remedy is available to the Petitioners, they are entitled to invoke the powers of this Court u/s 482 of Cr.P.C.

4 (2019) 11 SCC 706.

21. Given the above, we are of the considered view that the continuation of the prosecution against the Petitioners would be an abuse of the process of law and compelling them to undergo the trial would cause grave injustice. Considering these facts and circumstances, the petition deserves to be allowed. Hence, the present criminal writ petition is allowed in terms of prayer clause (a) which reads thus :

“(a) This Hon’ble Court be pleased to quash charge sheet filed in FIR No.38 of 2019 dated 16.9.2019 registered at Kasturba Marg Police Station, Borivali, Mumbai.”

22. The Rule is made absolute in the above terms without any order for costs.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]