

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

CRIMINAL APPLICATION NO.176 OF 2018

Sidhartha Basudevlal Srivastava ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Ashok Kumar Mishra i/by Solicis Lex for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent No.1.
Mr. T. N. Upadhyay for the Respondent No.2.

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

**Order reserved on : 20/02/2023
Order pronounced on : 05/06/2023**

P.C.:

1. Pursuant to the Criminal complaint lodged by the non-applicant no. 2/complainant with non-applicant no. 1, an offence being C.R. No. 465 of 2017 punishable u/s. 354 of IPC, sections 8 & 10 of POCSO Act came to be registered on 22/11/2017 against the Applicant of which he is seeking quashing of.
2. The prosecution story against the Applicant is as under:
3. The non-applicant no. 2/complainant at the relevant time was aged about 14 years. Her father was in the business of real estate whereas her mother is housewife, were acquainted to the

Applicant through Mr. Shail Sirohi. As such, the services of the Applicant came to have been hired by the parents of the non-applicant no. 2 for imparting tuition/lessons in the subject of mathematics and science to the non-applicant no. 2 since September, 2016.

4. The non-applicant no. 2/complainant claims that she has noticed difference in the behavior of the Applicant in the year 2017 as the Applicant started touching her legs by his legs at the time of imparting tuition and in September, 2014 when she went to fetch drinking water for the Applicant from kitchen, in absence of her parents the Applicant hugged her from behind and pressed her breast resulting into registration of the aforesaid offence.

5. According to the non-applicant no. 2/complainant though she has narrated the aforesaid incident to her parents, they have paid no heed to her complaint as they were at the relevant time of the view that the non-applicant no. 2 was not interested in the tuition. As such, the note of the same was not taken.

6. It is claimed that on 24/10/2017 there was differences between the Applicant and mother of the non-applicant no. 2/complainant resulted into the Applicant having stopped coming to the resident of the non-applicant no. 2 for imparting tuition.

Thereafter the complaint came to be lodged resulting into registration of the offence.

7. While trying to make out the case for quashing, learned counsel for the Applicant, Mr. Mishra would urge that the story narrated in the complaint is completely unbelievable. According to him, the story is based on vague narrations and the events narrated in the complaint are stale in nature. According to him, there is unexplained delay in lodging FIR. He would urge that it is an admitted position on record that the Applicant had differences with the mother of the non-applicant no. 2 and as such, the Applicant is falsely involved in the aforesaid criminal offence. So as to substantiate the aforesaid contentions, learned counsel for the Applicant as drawn support from the judgment of the Apex Court in the matter of **Vineet Kumar & Ors. vs. State of Uttar Pradesh & Anr.** reported in **(2017) 13 SCC 369, State of Haryana & Ors vs. Ch. Bhajan Lal & Ors.** reported in **1992 AIR SCW 237.**

8. According to learned counsel for the Applicant, it is an admitted position from the records that apart from the imparting tuition to the non-applicant no. 2, the Applicant was also arranging private tickets, visas and assisted the non-applicant no. 2's family

in obtaining passport. According to him, the mother of the non-applicant no. 2 has alleged that excess money was paid to the Applicant and as such after receiving Whatsapp message, the Applicant has transferred Rs.50,000/- from the bank account of his wife with HDFC Bank to the account of mother of the non-applicant no. 2 through NEFT. He would further urge that the exchanges of messages on Whatsup in between the Applicant and mother of the non-applicant no. 2 establishes the aforesaid fact as to the threats given by the mother of the non-applicant no. 2 of implicating the Applicant in the false offence. It is further claimed that there are differences between the Applicant and mother of the non-applicant no. 2 over the financial transactions, which has led to filing of the aforesaid false complaint.

9. Learned counsel for the Applicant would further urge that the Applicant has also lodged complaint about blackmailing by the mother of the non-applicant no. 2, which has led to registration of offence against the mother of the non-applicant no. 2 vide C.R. No. 311 of 2017. According to him, the C.R. No. 311 of 2017 came to be registered on 01/11/2017 whereas the criminal offence of which the Applicant is seeking quashing came to be registered after the period of 21 days form the registration of the C.R. No.

311 of 2017. As such, he has sought quashing of the FIR.

10. While countering the aforesaid submissions, learned APP, Mr. Kapadnis who was assisted by Mr. Upadhyay, learned counsel for respondent no. 2/Complainant claimed that the grievance of the allegations in the FIR cannot be gone into and appreciated at the stage of the proceedings.

11. My attentions is invited to the statement of the non-applicant no. 2/complainant u/s. 164 of Cr.P.C by learned Metropolitan Magistrate on 03/04/2018. It is claimed that the said statement recorded u/s. 164 of Cr.P.C of the victim girl has more evidencial value and the same is in tune with what has been stated in the complaint. As such, it is claimed that this Court should dismiss the Application preferred by the Applicant.

12. We have appreciated the above submissions.

13. The perusal of the FIR reflects that the allegations in the complaint are based on the incident which has occurred sometime September, 2017. The Applicant appears to be admittedly giving tuition to the non-applicant no. 2 from September, 2016 and she has no grievance about his conduct prior to the September, 2017. It is claimed that since September, 2017 there was change in the attitude of the Applicant and the Applicant was trying to outrage

the modesty of the non-applicant no. 2/complainant by not only caught holding of her but also by pressing her breasts.

14. The FIR speaks only of the incident which has occurred sometime in September, 2017. No specific date on which the said incident has taken place is disclosed in the FIR. Apart from above, the fact remains that the non-applicant no. 2/complainant herself has admitted that her mother had some differences with the Applicant on 24/10/2017.

15. The fact remains that pursuant to the complaint lodged by the Applicant as against the threats issued by the mother of the non-applicant no. 2, C.R. No. 311 of 2017 came to be registered on 01/11/2017. After 01/11/2017, the complaint in question came to be lodged by the non-applicant no. 2 on 22/11/2017. About the quarrels and differences between the Applicant and mother of the non-applicant no. 2 is also an admitted fact.

16. The exchange of Whatsapp messages in between the Applicant and mother of the non-applicant no. 2 is also an undisputed fact on record as no counter to effect is placed on record by the non-applicant no. 2. Apart from above, the said documents are in the form of electronic evidence and as such, there is no reason for the non-applicant no. 2 to dispute the same.

17. Apart from above, the records depicts that the differences between the mother of the non-applicant no. 2 and the Applicant are out of the transactions entered into towards travel of the non-applicant no. 2's family for which the excess payment received by the Applicant was shown to have been refunded as reflected from the bank records.

18. In the aforesaid background, what can be inferred is that the allegations made in the complaint against the Applicant are vague in nature and are moved at belated stage. Though it is claimed that the incident had occurred in September, 2017, there is no explanation as to why the complaint is lodged in November, 2017 i.e. after laps of almost two months of period that to after the offence was registered against the mother of the non-applicant no. 2. This conduct of the non-applicant no. 2 who is a minor of lodging of the complaint upon the persuasion by her parents apparently speaks of the story being set by the afterthought and the story narrated in the complaint can be termed as concocted one.

19. As such, it has to be inferred that not only the allegations made in the FIR are absurd and inherently improbable on the basis of which one cannot ever reach just a conclusion that there is sufficient ground for the proceedings against the Applicant. The

fact remains that the criminal proceeding initiated against the Applicant can be manifestly inferred to be with an malafide intention not only so as to overcome the differences between the mother of the non-applicant no. 2 and the Applicant but also to counter the offence being registered against the mother of the non-applicant no. 2 at the behest of the Applicant. As such, it has to be inferred that criminal proceedings initiated against the Applicant are maliciously instituted with motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

20. In this background, drawing support from the judgment of the Apex Court in matter of ***State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors (supra)*** and particularly paragraph no. 108 (5 & 7) we are of the view that the prosecution of the Applicant is with malafide intention as mentioned hereinabove.

21. As such, the criminal prosecution against the Applicant is not justifiable based on the available material on record.

22. As far as the statement of Respondent No. 2 recorded u/s. 164 of Cr.P.C is concerned, such statement of the victim girl has to be considered and lightly brushed aside. Such statement was required to be considered along with the

antecedents, facts and circumstances of each case. This Court has already considered the antecedents of the events, the facts and circumstances of this case as narrated hereinabove viz. the services of the Applicant being hired by the mother of the non-applicant no. 2/complainant for arranging passport, booking tickets and securing visa. Against the said commercial transactions in relation to which differences have already aroused in between the Applicant and the mother of the non-applicant no. 2. The mother of the non-applicant no. 2 is already subjected to criminal proceedings, she having been arraigned as an accused in the C.R. No. 311 of 2017.

23. In this background, even if the statement of the complainant is recorded u/s 164 of Cr.P.C., in the aforesaid given set of circumstances, we deem it appropriate to ignore the statement of the victim girl recorded u/s 164 of Cr.PC.

24. In support of aforesaid, reliance can be placed on the judgment of the Apex Court in the matter of **Vineet Kumar & Ors. vs. State of Uttar Pradesh & Anr. (supra)** particularly paragraph no. 39.

25. As such, we are of the view that the permission to continue the criminal proceedings against the Applicant would be an abuse

of the process of the Court. For the aforesaid reasons, present criminal application stands allowed in terms of prayer clause (b), which read thus:

"(b)Be pleased to quash the instant case FIR/C.R. bearing No. 465/2017 registered with the PS:Oshiwara, Mumbai filed under 354 of Indian Penal Code, 1860 and u/s. 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 and the consequential proceedings emanating there from."

26. The Criminal Application stand disposed of accordingly.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)