

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.176 OF 2023

Nitin Krishnappa Kotian, Age 49 years,
R/o.M-5, A-Wing, 504, Palm Acre,
Pratiksha Nagar, Sion (East),
Mumbai-400 022.

Applicant

versus

The State of Maharashtra

Respondent

MrAdithya R. Iyer with Mr.Advait Helekar and Mr.Jayesh Bhosale,
Advocate for Applicant.

Ms.PN.Dabholkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th July 2023

PC :

1. The applicant is aggrieved by order passed below Exhibit-3 in Sessions Case No.1153 of 2019 dated 22nd November 2022 passed by learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay rejecting application for discharge.

2. The FIR relating to the present case was registered on 5th July 2018 for offences under Sections 354(B), 452, 376 of Indian Penal Code. The victim has alleged that she had joined Yoga Classes at Chembur where accused was Yoga instructor. During the period from November-2016, accused had visited house of victim and committed the act as alleged in the FIR amounting to offence u/s.376 of IPC. Statements of witnesses were recorded. Charge sheet is filed.

3. Applicant had preferred an application for discharge before Trial Court which has been rejected vide order dated 22nd November

2022. Learned counsel for applicant submitted that case registered at the instance of complainant is false. Prior to registration of subject FIR, complainant had lodged FIR No.324 of 2017 on 11th November 2017 with Chembur Police Station for offences under Sections 509, 504 r/w 34 of IPC. The period covered in the said FIR for the alleged acts attributed to the applicant includes the period which is subject matter of present FIR. In the event applicant had committed alleged act, certainly it could have reflected in the earlier FIR dated 11th November 2017. It is submitted that applicant was tried in connection with earlier FIR No.324 of 2017 and the case has now resulted in acquittal. The statements of witnesses recorded during the course of investigation did not support prosecution case. No ground is made out to proceed against applicant by framing charge. There is no plausible explanation for lodging the FIR belatedly and for keeping silence for not incorporating said allegations in the previous FIR. He pointed out the statements of witnesses including other persons who attended Yoga class and submitted that there is no corroboration to the allegations spelt out in the FIR. The Trial Court has committed an error in rejecting the application for discharge. Statement of Investigating Officer itself indicate that complainant had deliberately not referred to the incident which is subject matter of present FIR. Hence, order passed by Sessions Judge may be set aside and applicant may be discharged from the case.

4. Learned APP pointed out the allegations in the FIR and statement of witness Usha Sharad Karnik and other witnesses. It is submitted that first informant has categorically stated the nature of act committed by accused. The submissions advanced by counsel for applicant will have to be considered during trial and this is not the stage to accept the defense of applicant. The version of complainant

cannot be discarded at this stage.

5. I have perused the documents which forms part of charge sheet as well as impugned order passed by learned Sessions Judge while rejecting application for discharge. Learned Sessions Judge has observed that alleged offence is a sexual offence committed against the woman. A victim would not come forward to make false allegations only with an intent to implicate a person with false charge. This observation is assailed by learned advocate for applicant on the ground that in the facts of the case such observation was not warranted. It is pertinent to note that statement of victim was recorded u/s.161 as well as u/s.164 of Cr.P.C. Said statements spell out alleged offence committed by accused. Grounds urged by applicant on the basis of previous FIR and statements on record and delay in lodging FIR, will have to be considered during trial. At the stage of discharge the Court is not called upon to embark upon detail inquiry. What is required is prima facie case to proceed against accused. Learned Sessions Judge has rightly rejected the application for discharge. No case is made out to set aside the order.

ORDER

(i) Revision Application No.176 of 2023 is rejected and disposed off.

(PRAKASH D. NAIK, J.)

MST