

GRM

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

CRIMINAL REVISION APPLICATION NO. 287 OF 2017

Vaibhav Prabhakar Sonar ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Pradeep J. Thorat a/w Aditi S. Naikare, Adv. for the Applicant.

Mr. A. R. Patil, APP for the State/Respondent.

Mr. Marmik Shah, Appointed Adv. by the Court for Respondent No. 2.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 15, 2023

P.C. :

The challenge in this revision application is to order dated 03/02/2017, passed below Application Exhibit-14 in Sessions Case No. 307 of 2014. Vide impugned order, the Court of Additional Sessions Judge, Nashik, refused to grant the applicant discharge.

2. Pursuant to the First Information Report lodged by the Prosecutrix "X" (name not disclosed), crime vide C. R. No. I-200/2014 came to be registered against the applicant for offences punishable under Sections 376, 323 & 506(2) of Indian Penal Code, 1860 and under Sections 3/25 of the Arms Act.

3. On investigation of the crime, the charge-sheet came to be filed. Learned Magistrate committed the case to the Court of Sessions. The applicant moved an application Exhibit-14 for

discharge. The same came to be rejected.

4. Heard.

5. Learned Advocate for the applicant would submit that reading between the lines would indicate that it was a consensual relationship. Both the Prosecutrix and the applicant, were emotionally involved. The relationship lasted for about three years. The Prosecutrix was little over 20 years of age at the material time. Except for afterthought averments in the FIR, there is nothing to suggest the applicant to have been involved in the crime. As such, it is a case of there being no sufficient ground for proceeding against the applicant. He, therefore, urged for grant of the application.

6. Learned APP supports the impugned order. Since the Prosecutrix did not mark her appearance in response to the notice issued by this Court, Advocate Mr. Marmik Shah was appointed to assist the Court in this matter. He would submit that the averments in the FIR are sufficient to frame the charge against the applicant. He took this Court to the medical examination of the Prosecutrix to submit that she was subjected to sexual intercourse. The applicant refused to undergo medical examination. Statements of parents and all other material on record, *prima-facie* make out a case to frame the charge and take the case to its logical conclusion. He, therefore, urged for rejection of the application.

7. Considered the submissions advanced. Perused the police-papers.

8. For better appreciation, Section 227 of Code of Criminal Procedure, 1973 is reproduced hereinbelow :-

“227. **Discharge.** - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

9. In case of **Dilip s/o Purushottamrao Pathak vs. The State of Maharashtra & Anr.** reported in **2008 5 AIR(Bom)(R) 781**, this Court has observed in para 14 of his judgment as under :-

“14. The Apex Court, in the case of **Dilawar Babu Kurane V. State of Maharashtra**, reported in **AIR 2002 SC 564** observed thus;

"In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima-facie* case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally

possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (See *Union of India v. Prafulla Kumar Samal and another* (1979 (3) SCC 5))."

10. Let us examine the police-papers. The FIR has been lodged on 17/07/2014. The Prosecutrix was 23 years of age, when she lodged the FIR. It is her case that the applicant was a friend of her maternal uncle. Both of them were partners in hotel business. She got acquainted with the applicant. The applicant started contacting her through cell-phone calls. Gradually, the applicant developed intimacy with her. He even proposed her. She initially declined. Having realized the Prosecutrix to have not been giving positive response, the applicant started giving her threats. Such things continued for about 1 & ½ years. Even once the applicant threatened the Prosecutrix with a fire-arm. He gave threats to life of her parents. She therefore gave nod to his proposal. He once took her to Holiday Cottage. He had sexual relations with her there. The applicant thereafter continued to sexually exploit the Prosecutrix, claiming to have a video of their compromising position. She even therefore consented to

marry the applicant, clandestinely. It is further her case that the applicant had developed acquaintance with her friend-Pratiksha only with a view to keep watch on the movements of Prosecutrix. When everything became unbearable, the Prosecutrix related the same to her parents. The applicant therefore agreed to not trouble her any longer. It is further her case that in July 2014, her marriage was fixed with one person. The applicant played spoilsport. He met with that person and showed him the photographs and video. He therefore refused to marry the Prosecutrix.

11. Based on the aforesaid FIR, the crime came to be registered. The statements of persons acquainted with the facts and circumstances of case, were recorded. The Prosecutrix was medically examined and then the charge-sheet was laid.

12. It is reiterated that the Prosecutrix was 23 years of age while she lodged the FIR. True, her Medical Examination Report indicate that she might have been subjected to sexual intercourse. The Investigating Officer appears to have not seized the Cell-phone of applicant. As such, for want of collection of evidence, the allegations in the FIR that the applicant sexually exploited the Prosecutrix on the basis of a video and the same was also shown to the person with whom the Prosecutrix was to get married, would remain unsupported. Moreover there is no statement of the person, with whom the marriage of Prosecutrix was to take place.

13. There is a statement of one Ajay on record. He in his statement stated that there was a marriage proposal from the parents of Prosecutrix. He and his parents therefore visited the house of Prosecutrix. He had interaction with the Prosecutrix. He did not approve the proposal. He denied to have been shown the photographs and video of Prosecutrix.

14. There is a statement of the friend of Prosecutrix on record. Her statement suggests that the Prosecutrix was emotionally involved with Vaibhav (the present applicant). Her statement in noway supports the prosecution case. There is also the statement of a person, who was serving with Holiday Cottage. He too denied to have ever seen the applicant to have been to the lodge along with a lady.

15. As such, except the averments in FIR, there is nothing to proceed against the applicant. The alleged fire-arm has not been recovered. Although Sections of Arms Act have been invoked, no sanction for prosecution of the applicant for offence under the Arms Act, has been obtained.

16. It is reiterated that the averments in the FIR indicate that the applicant and the Prosecutrix had a consensual relationship for about 3 years. The reason of break-up is not obtainable from the prosecution material. It is reiterated that there is no material on record that would support the allegations in the FIR against the applicant. As such, it is a case wherein two views are equally possible. The averments in the FIR do not make out a grave suspicion against the

applicant. Thus there is no sufficient ground to proceed against the applicant herein. The Trial Court ought to have granted the applicant discharge. Since the same has not been done, interference is warranted with the impugned order. The revision application thus succeeds.

17. The applicant is hereby discharged of the case bearing Sessions Case No. 307 of 2014 (C. R. No. I-200/2014) registered for offences punishable under Sections 376, 323 & 506(2) of Indian Penal Code, 1860 and under Sections 3/25 of the Arms Act.

18. A sum of Rs. 25,000/- deposited with this Court, be paid immediately to the Advocate appointed to represent the Prosecutrix in this case.

(R. G. AVACHAT, J.)