

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2604 OF 2019

Satrajeet Subrato Banerjee	]	
Age : 31 years, Occupation : Business,	]	
Residing at B/705, Benazir Building,	]	
Second Cross Lane, Lokhandwala,	]	
Andheri (West),	]	
Mumbai – 400 053.	]	... Petitioner

V/s.

1. The State of Maharashtra	]	
(Oshiwara Police Station)	]	
	]	
2. Puja Sudarshan Ray	]	
Age 29 years, Occupation Actor,	]	
Residing at 3/15/17,	]	
Marol Bhavani Nagar, Andheri East,	]	
Mumbai – 400 059.	]	... Respondents

Ms.Drishti Khurana for Petitioner.
Mrs.M.M. Deshmukh, A.P.P for Respondent No.1-State.

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

DATE : 5th June 2023.

P.C. :

1. By the present Petition under Article 226 of the Constitution of India, the Petitioner, original accused in CR No. 279 of 2018, dated 6th June 2018, under Sections 354-B, 509, 323 & 506 of the Indian Penal Code (*for short, "I.P.C."*) registered with Oshiwara Police Station, Mumbai, now

culminated into CC No. 2352/PW/2018, has prayed for quashing of the said case.

2. Heard Ms.Khurana, learned counsel for Petitioner and Mrs.Deshmukh, learned A.P.P. for Respondent No.1-State. Perused record.

3. At the outset, it is to be noted that, in view of the fact that the police have submitted chargesheet and the Petitioner is having a substantive alternate remedy by filing an application for discharge before the Trial Court, we brought the said fact to the notice of the learned counsel for the Petitioner. She on instructions insisted this Court to adjudicate and decide this Petition on merits and further made a statement that, the Petitioner is waiving his substantive alternate remedy available under Section 239 of Criminal Procedure Code (*for short, "Cr.PC."*), of filing an application for discharge before the Trial Court.

The statement of the Petitioner that, herein after he will not file an application for discharge before the Trial Court is accepted as an undertaking given to this Court.

4. Respondent No.2, victim, has lodged present crime under Sections 354(B), 509, 323, 506 of I.P.C.. It is the prosecution case that, the marriage of Respondent No.2 with Petitioner was decided to be performed in the month of June-July 2018 with the consent of the family members of both of them. The victim was residing at the house of Petitioner along with his mother, since 19th May 2018. On 23rd May 2018 at about 7.30 am Petitioner

abused Respondent No.2 in filthy language and therefore the Respondent No.2 went to her mother's place. At about 12.00 noon Petitioner went to the house of Respondent No.2, tendered his apology and took her to his house. It is alleged that, on 25th May 2018 Petitioner consumed substantial quantity of beer. At about 2.30 am on 26th May 2018 he started bickering with Respondent No.2, assaulted her on her cheek, back and thigh and banged her head on the wall. It is further alleged that, the Petitioner thereafter torn the T-shirt of Respondent No.2 and again threatened her. Respondent No.2 somehow managed to rescue herself from the clutches of the Petitioner and came on the ground floor of the said building. She told the said fact of assault to the watchman by name Mr.Prabhu. She thereafter went to the house of her friend by name Mr.Hardik Saraiya and told him all the said facts. Respondent No.2 subsequently went to her place at Kolkata, narrated the said incident to her parents and took treatment at Shambhunath Pandit Government Hospital. She thereafter returned to Mumbai on 2nd June 2018 and lodged present crime. In this brief premise Respondent No.2 has lodged present crime.

5. Ms.Khurana, learned counsel for Petitioner submitted that, the Petitioner and Respondent No.2 were residing in 'Live-in-Relationship' and therefore tearing of her T-shirt by Petitioner would not amount to and attract an offence under Section 354-B of I.P.C.. She submitted that, there is no evidence to indicate that, the Petitioner infact torn T-shirt of Respondent

No.2 in the wee hours of 26th May 2018. That, there is delay in lodging F.I.R.. She further submitted that, the allegations made against the Petitioner are *prima-facie* not genuine and therefore the present case may be quashed.

6. Per contra Mrs.Deshmukh, learned A.P.P. for Respondent No.1-State drew our attention to the statements of Mr.Hardik Saraiya (friend of Respondent No.2) and Mr.Prabhu Paswan (Watchman) and submitted that, there is sufficient corroboration to the statement of Respondent No.2. That, a strong *prima-facie* case against the Petitioner is made out by the prosecution and therefore the present case may not be quashed and the Petition be dismissed.

7. The facts narrated in para No.4 above are deduced from the First Information Report (for short, "F.I.R.") of Respondent No.2.

7.1 The Hon'ble Supreme Court in the case of *Bharwada B. Hirjibhai Vs. State of Gujarat, reported in AIR 1983 SC 753*, has held that, while considering the testimony of prosecutrix, corroboration is not a sine qua non for a conviction in a rape case. That, in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of a girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated Society.

7.2 The Hon'ble Supreme Court in the case of *Aman Kumar & Ors. Vs. State of Haryana*, reported in AIR 2004 SC 1497, has held that, the prosecutrix evidence stands at higher pedestal than injured witness and needs no corroboration.

7.3 The Hon'ble Supreme Court in the case of *State of H.P. Vs. Shree Kant Shekari*, reported in AIR 2004 SC 4404 : (2004) 8 SCC 153, has held that, the prosecutrix is not accomplice in a crime of sexual assault. That mere delay in lodging F.I.R. per se is not a mitigating circumstance for accused when there was accusation of rape. Mere delay in lodging F.I.R. does not render prosecution version brittle.

7.4 The Hon'ble Supreme Court in the case of *State of Punjab Vs. Ramdev Singh*, reported in (2004) 1 SCC 421, has held that, the Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children. That, it is a crime against basic human rights; is violative of victim's fundamental right under Article 21 of the Constitution of India and therefore the Courts should deal with cases of sexual offence sternly and severely.

8. It is the settled position of law that, at the stage of discharge and/or quashing of the Criminal proceedings while exercising the powers under Section 482 of Cr.P.C. and/or under Article 226 of the Constitution of India, the Court is not required to conduct a mini trial. Reliance is placed on

a decision of the Hon'ble Supreme Court in the case of Central Bureau of Investigation Vs. Aryan Singh, dated 10th April 2023 passed in Criminal Appeal No. 1025-1026 of 2023 (@ SLP (CRL.) NOS. 12794-12795 of 2022).

9. In the present case, apart from the statement of Respondent No.2, victim, the witness Mr.Hardik Saraiya, i.e. friend of victim, duly corroborates her version with respect to the fact of her going to his house immediately after the incident. He had noticed torn clothes (T-shirt) on her person. The prosecutrix had narrated the ordeal suffered by her at the instance of Petitioner to the said witness immediately after the incident. Other witness namely Mr.Prabhu Paswan, who was the watchman of the building where the Petitioner was residing, duly corroborates the version of prosecutrix pertaining to the fact that, he heard the screams of prosecutrix, seeking help and her narration of ordeal to him immediately after getting down from the staircase of the building. According to us, the Respondent No.2 has also properly explained delay in lodging F.I.R..

9.1 The First Information Report inspires confidence in the mind of this Court, as it appears to be true and correct version of the incident in question. It further appears to us that, the Respondent No.2 has not exaggerated her version of alleged incident. If it would have been so, she would have easily made allegations against the Petitioner as contemplated under Section 376 of I.P.C., which she has not done and therefore her version appears to be genuine and *bonafide*. There is more than sufficient material

available on record to show clear complicity of the Petitioner in the present crime.

10. After applying the principles laid down by the Hon'ble Supreme Court as noted above, to the present case, this Court is of the considered view that the prosecution has put forth a strong *prima-facie* case.

11. In view of above, we are of the opinion that, there are no merits in the Petition.

Petition is accordingly dismissed.

[SHIVKUMAR DIGE, J.]

[A.S. GADKARI, J.]

OMKAR
SHIVAHAR
KUMBHAKARN
Digitally signed
by OMKAR
SHIVAHAR
KUMBHAKARN
Date:
2023.06.08
16:17:41 +0530