

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3883 OF 2021**

Hemant Bakhru] **Petitioner**

Vs

1. The State of Maharashtra]

2. XYZ] **Respondents**

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Mr. Wesley Menezes a/w Mr. Waqar Pathan and Mr. Steven Anthony, for Petitioner.

Mr. J.P. Yagnik, A.P.P, for Respondent No.1-State.

Mr. Vrushabh Savla, for Respondent No.2.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 8th February, 2023.

ORDER: [Per Prithviraj K. Chavan, J.]:

1. Heard.

2. Rule.

3. Rule is made returnable forthwith. With the consent of the learned Counsel for the parties, the petition is taken up for final disposal.

4. Learned A.P.P waives notice on behalf of respondent No.1-State and Mr. Savla, learned Counsel waives notice on behalf of respondent No.2.

5. By this petition under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr. P.C"), the petitioner seeks quashing of the First Information Report registered vide C.R. No.0387 of 2021 with Bhoiwada Police Station, Mumbai for the alleged offences punishable under sections 376, 376 (2) (n), 420 and 506 of the Indian Penal Code (for short "I.P.C") and consequently, the proceeding pending before the learned Metropolitan Magistrate, 29th Court, Bhoiwada, Dadar, Mumbai being C.C. No.1235/PW/2021.

6. Briefly stated, facts are as follows.

7. Respondent No.2 - Original Complainant (hereinafter referred to as "respondent No.2") was working in the capacity of "Equity Research Associate" in the Union Bank of Switzerland (UBS) situate at Bandra-Kurla Complex since 11th December, 2017.

During her employment with the said Bank, she was acquainted with the petitioner who was an "Equity Research Analyst (Director)" in the same Bank. During the course of her employment, she was supposed to communicate and report to the petitioner.

8. Sometime in the month of March, 2018, when the respondent No.2 was working at the office situate at Bandra-Kurla Complex, the petitioner came very close to her and remarked "*Hi AAj tum Bahut Achi Dikh Rahi Hai. Ekdum Hot Girl*". The respondent No.2 did not like such behaviour of the petitioner and, therefore, she exhibited her disapproval with regard to his behaviour. The petitioner thereafter had apologized for the said behaviour and assured her that he would not repeat such mistake. The respondent No.2 accepted his apology and forgave him. Later on, they became friendly and used to meet in the Office as well as outside the office. The respondent No.2 would communicate with him on phone.

9. Sometime in the month of July, 2018, after completing a project, the petitioner suggested to celebrate the occasion. The respondent No.2 was reluctant, and, therefore, refused to celebrate

with the petitioner. The petitioner, however, was persistent on his request and, therefore, the respondent No.2 reluctantly agreed.

10. The petitioner had arranged a party at his residence at 'Om Residency', Parel, where he had procured beer for himself and orange juice for the respondent No.2. After consuming beer, the petitioner came close to the respondent No.2 and stated that he likes her very much and that he loves her and wanted to marry her. The respondent No.2 did not like such behaviour of the petitioner and, therefore, tried to get away from him. However, the petitioner had forced him physically upon her and had sexual intercourse with her, against her will.

11. After the said incident, the petitioner continued to force the respondent No.2 on the false pretext of marriage by stating that he would take care of everything after the marriage. He, *inter alia*, threatened her to terminate her from service, in case, she discloses the incident to anyone. He also threatened to defame her in public.

12. The respondent No.2 was scared and terrorized due to such behaviour and threats of terminating from the service of the Bank.

Taking disadvantage of her gullible nature, it is alleged that the petitioner continued in his activities of molesting her.

13. On 30th April, 2019, without giving any reason, the respondent No.2 was removed from service of Union Bank of Switzerland. She had, thereafter, discontinued communication with the petitioner. However, the petitioner relentlessly tried to contact her on phone and used to ask her to meet him, to which, she refused. Due to such threats and fear, the respondent No.2 had been to the petitioner's house on 23rd February, 2020. The petitioner was inebriated at that time. He tried to touch her, however, she pushed her away. Thereafter, he committed sexual intercourse with her against her will.

14. It is alleged that even after leaving his job from Union Bank of Switzerland and joining another company viz. "Jubilant Life Sciences" at Nodia, Uttar Pradesh, the petitioner tried to contact the respondent No.2 repeatedly on her mobile number. Ultimately, she lodged a report, as above.

15. We heard learned Counsel for the petitioner at length as well as the learned A.P.P. Perused the First Information Report as well as the record running into numerous pages. Learned A.P.P has taken us through the entire record including the correspondence via email with the Chairman of the Company as well as with Medical Council of India against the petitioner in respect of his criminal conduct. It is needless to go into the minute details of the record which speaks for itself. *Prima facie*, we are in full agreement with the submission made by the learned A.P.P in light of the First Information Report and other material placed on record.

16. The petitioner has not only committed the offence punishable under sections 376, 376 (2) (f) and (n) and 506 of the I.P.C but also threatened the respondent No.2 of dire consequences. The statement of the respondent No.2 as well as the First Information Report recorded by the Investigating Officer on 21st July, 2021 spells out under what circumstances, the respondent No.2 was compelled to submit to the petitioner in light of the fact that she was literally threatened by the petitioner that she would be terminated from the Office and forced her to succumb to his all illegal acts.

17. The allegations made in the First Information Report as well as the Final Report filed under section 173 of the Cr.P.C, at its face value, *prima facie*, constitute the offences under sections 376, 376 (2) (f) and (n) and 506 of the I.P.C.

18. It is pertinent to note that the petitioner at page No.27-A of the petition contends that the Final Report submitted by the Investigating Officer under section 173 of the Cr. P.C discloses a consensual relationship between two matured adults who are fully aware of their acts and the consequences of the same. This essentially demonstrates that the petitioner has impliedly admitted such relationship between him and the respondent No.2. This aspect can only be discerned during the course of the trial as to whether the relations between the petitioner and the respondent No.2 were consensual or whether consent of the respondent No.2 was obtained by putting her in fear of death and also whether it was against her will. Allegations in that regard as depicted in the record unquestionably make out a case as alleged against the petitioner and, therefore, in view of the ratio laid down in the case of **State of Haryana and others Vs. Bhajanlal and others**¹, we do not find that

¹ 1992 Supp (1) SCC 335

the case warrants invoking writ jurisdiction of this Court as well as powers under Section 482 of the Cr. P.C.

19. Corollary of the aforesaid discussion is that the petition needs to be dismissed and as such, stands dismissed. Rule is discharged.

20. All the parties to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]