

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

CRIMINAL APPLICATION NO. 1262 OF 2021

Ashwini Maganlal Wagh @ Ashwini
Manoj Borse ...Applicant
Versus
The State of Maharashtra and Anr. ...Respondents

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Mr. Gajendra K. Jadhav, Advocate for the Applicant.

Mr. Prasannan Namboodiri, Advocate for Respondent No.2.

Mr. Y. Y. Dabake, APP for the Respondent No.1 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 21st JULY, 2023

PER COURT:

1. The applicant has challenged the order dated 27.08.2021 passed by the learned District and Sessions Judge, Nashik in Cri. Misc. Application No.91 of 2020 accepting “B-Summary Report” submitted by the Police in respect to First Information Report (for short ‘FIR’) lodged by applicant.

2. The impugned order dated 27.08.2021 indicate that, “B-Summary Report” submitted by Police shows that the Police had recorded statements of 33 witnesses and despite that nothing substantial evidence could be collected against the accused and only on the basis of statement of complainant, matter cannot be

proceeded. There is delay of 4 to 5 months in lodging the complaint which gives scope to doubt complainant's case. Hence, "B-Summary Report" is accepted.

3. The FIR was registered at the instance of applicant on 27.01.2020 vide C.R. No.9 of 2020 for offences under Sections 354, 354-A, 506 of IPC, Section 3(1)(w), 3(2), 3(2)(v) of Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, alleging that, the complainant belongs to Scheduled Caste. On 16.09.2019 at about 8.00 to 8.30 p.m., the accused came to the quarters/room of the complainant. He hugged and touched her. When she started shouting, she was threatened that she would be removed from the service. The accused left the room. She did not inform the incident to any person. However, the accused continued to harass the complainant. On 16.12.2019 she lodged the complaint with the school authorities against the accused. Enquiry was conducted. School Committee meeting was held on 28.12.2019. Some persons advised her to withdraw the complaint. The accused orally tendered his apology. Representation was given for complainant's transfer. She was transferred. Mr. Patil had made enquiry with her but she did not inform him about sexual assault. She lodged the complaint to Police Station on 24.01.2020. Enquiry was

conducted. Letter was issued to her. FIR was registered on 27.01.2020.

4. Pursuant to registration of FIR, investigation was conducted. Statements of about 33 witnesses were recorded. CDR locations of the applicant and witnesses were collected and for lack of evidence “B-Summary Report” was submitted to the Court which has been accepted. The order indicate that the complainant was heard.

5. Learned Advocate for the applicant submitted that there was delay in lodging the complaint since initially the applicant had made a complaint to the school committee and on the apology tendered by Respondent No.2, the complaint was withdrawn. Subsequently, she lodged the FIR and police took the cognizance of her complaint and registered the FIR for offences punishable under Sections 354, 354-A, 506, of Indian Penal Code and Sections 3(1)(w), 3(2), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST (Prevention of Atrocities) Act”). It is submitted that the statements of two witnesses viz. Suresh Kishor Bhor and Kishor Shivram Devre were recorded on 03.02.2020 needs to be considered. The report indicate that the Respondent No.2 was not present at the scene of offence at the relevant point of time. However, the version of

witnesses is contradictory with regards to the time when the respondent No.2 was present at the place of incident. The CDR location of witness Anil Sudam Waghmare indicate that he was at some other place whereas he claimed that, he dropped the Respondent No.2 at about 6.00 p.m at Satpur. The version of complainant cannot be disbelieved at this stage. The learned Sessions Judge has mechanically accepted the report submitted by the Police.

6. Learned Advocate for Respondent No.2 submitted that, pursuant to registration of FIR, investigation was conducted by the Police which is evident from the fact that the statements of 33 witnesses were recorded. None of the witnesses has supported the allegations made by complainant. There is no infirmity in the statement of Mr. Waghmare as contended by the learned counsel for applicant. The statements of witnesses which shows that the Respondent No.2 was not present in the premise, where the alleged incident had occurred. Statement of witness viz. Smt. Anita Shankar More was recorded which indicates that no such incident had occurred. The statement of Sunita Sanjay Soslade recorded on 10.04.2020 refers to the earlier complaint made by applicant, wherein there is no reference of sexual harassment at the instance of Respondent No.2. The complaint is false and the trial Court has

rightly accepted “B-Summary Report” submitted by the Police.

7. Perused “B-Summary Report”. The alleged incident had occurred on 16.09.2019. The complainant had approached the Police on 24.01.2020 and the FIR was registered on 27.01.2020. The applicant/victim was a teacher in the school, whereas Respondent No.2 was a Principal of school.

8. The contents of the FIR indicate that, in the enquiry conducted by School Committee, she had withdrawn the allegations, on apology being tendered by Respondent No.2. The police have taken efforts to investigate the crime which is evident from the fact that the statements of about 33 witnesses were recorded during the course of investigation. None of the witnesses supported the allegations. The witnesses have categorically stated that, such incident had not occurred. Statements of some of the witnesses have indicate that, Respondent No.2 was at different place and could not have been present at the place of alleged incident. Statement of Anita More indicates that, no such alleged incident had occurred, whereas statements of other witnesses shows that Anita More and the complainant were together. While submitting “B-Summary Report” the police have also analyzed the CDR location. I do not find any infirmity in the statements of the

witnesses on the basis of CDR location. In the light of report submitted by Police and the order passed by the Court, I do not find any reason to interfere in the impugned order.

ORDER

Criminal Application No.1262 of 2021 stands rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)