

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 786 OF 2022

PETITIONER : XYZ, (Victim)
Informant/Complainant
(Masked as per Court's
Order Dt. 28/04/2023) Crime No.50/2019
P.S.O. Gadchiroli,
Tah & Dist. Gadchiroli

//VERSUS//

RESPONDENT : The State of Maharashtra through
Police Station Officer, Police Station,
Gadchiroli, Tah. & District-Gadchiroli.

Mr. S.D. Chande, Advocate for the Petitioner.
Mr. S.A. Ashirgade, APP for the Respondent/State.

CORAM : **G. A. SANAP, J.**
DATED : **16th MARCH, 2023.**

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties.

02] In this criminal writ petition challenge is to the order dated 13th October, 2022 passed by the learned Sessions Judge, Gadchiroli, whereby the learned Sessions Judge, Gadchiroli

dismissed the revision filed by the petitioner-accused against the order of the learned Chief Judicial Magistrate, Gadchiroli dated 26th February, 2021. The learned Chief Judicial Magistrate, Gadchiroli had rejected the application for her discharge made at Exh.8 in Regular Criminal Case No.96/2020.

03] The facts relevant for the purpose of this petition may be stated in brief:

On the report of the informant, a Crime bearing No.50/2019 came to be registered on 22nd January, 2019 at Police Station, Gadchiroli for the offences punishable under Sections 419, 504 and 506 of the Indian Penal Code, 1860 (IPC) and Sections 66(C), 67 and 67(A) of the Information Technology Act, 2000.

04] It is the case of the prosecution against the petitioner-accused that she has created false email IDs in the name of the informant. She has committed the offence of identity theft and cheating by personation. Obscene messages and emails have been sent to the informant. The petitioner-accused spread and transmitted the obscene and objectionable material in public domain. Along with the report lodged by the informant, he produced the hard copies of the messages and emails. On the basis

of this report, the investigation was conducted and the same culminated into filing of charge-sheet for the above offences.

05] The petitioner-accused after reporting her appearance before the learned Chief Judicial Magistrate, Gadchiroli, made an application at Exh.8 under Section 239 of the Code of Criminal Procedure, 1973 for her discharge. It is her case that on the basis of a report dated 30th October, 2017, a Crime bearing No.1030/2017 has been registered against the informant for the offences punishable under Sections 376 and 417 of the IPC. The informant is serving as a Sub-Inspector in Police Department. The informant by misusing his post and position, with a view to take the revenge against the applicant and to harass her and thereby succumb to his wish and desire to compromise the criminal case filed against him has lodged a false report. There is no iota of material in the charge-sheet to presume that the petitioner-accused has committed any of the offences mentioned in the charge-sheet. The report lodged by the informant is by way of a counterblast to her report and the criminal case filed against the informant for the above offences. The said case is pending in the Sessions Court at Nagpur. It is submitted that there is no ground to presume that she has committed any crime. On the basis of the material compiled in the

charge-sheet, no case has been made out to frame the charge.

06] The Investigating Officer filed reply and opposed the application made by the petitioner-accused for her discharge. It is contended that after registration of the First Information Report, the investigation was conducted. During the course of investigation, the obscene and scandalous emails were recovered. The investigation further revealed the connection of those messages with the petitioner-accused. The matter is serious. The evidence cannot be appreciated at this stage. There is sufficient evidence.

07] The learned Chief Judicial Magistrate, Gadchiroli, on going through the record and proceedings, found that the application made by the petitioner-accused is without substance and the material on record is sufficient to frame the charge against her. Therefore, the learned Chief Judicial Magistrate rejected the application on 26th February, 2021.

08] The petitioner-accused being aggrieved by this order preferred a criminal revision in the Sessions Court at Gadchiroli. The learned Sessions Judge, on going through the material relied

upon in the case afresh, by his order dated 13th October, 2022 dismissed the revision.

09] I have heard Mr. S.D. Chande, learned advocate for the petitioner-accused and Mr. S.A. Ashirgade, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

10] The learned advocate for the petitioner-accused submitted that there is no iota of material to presume that the accused has committed any offence. The learned advocate submitted that the period of the alleged messages and the period actually mentioned in the report is different. The learned advocate further submitted that on the deleted email ID, the message or email cannot be forwarded. The learned advocate submitted that the false report was lodged by the informant to pressurize the accused to compromise the case filed against him for the offence punishable under Section 376 of the IPC. The learned advocate submitted that this report, which was lodged by way of a counterblast, is nothing but misuse of the process of the Court. The learned advocate submitted that the allegations made against the petitioner-accused are groundless. In order to substantiate his

submission, he has relied upon the decisions in the cases of *Joseph Salvaraj A. Vs. State of Gujarat and Others [(2011) 7 SCC 59]* ; *Sharat Babu Digumarti Vs. Government (NCT of Delhi) [(2017) 2 SCC 18]* and *Ravari Kirankumar Vs. Home Department and Others [2021 SCC OnLine Bom 4086]*.

11] The learned Additional Public Prosecutor for the State submitted that the Courts below have recorded a concurrent finding of fact. The learned Additional Public Prosecutor submitted that at the stage of framing of charge or deciding the discharge application, pros and cons of the matter and the facts cannot be tested on merits. The learned Additional Public Prosecutor submitted that the evidence compiled in the charge-sheet cannot be tested on the touchstone of credibility and based on the same, a finding one way or the other cannot be recorded. The learned Additional Public Prosecutor submitted that the material compiled in the charge-sheet is *prima facie* sufficient to conclude that the petitioner-accused has committed the offences mentioned in the charge-sheet. The learned Additional Public Prosecutor submitted that no interference is warranted in the concurrent finding of fact and particularly the well reasoned order passed by the learned Sessions Judge, Gadchiroli.

12] At the outset, it is necessary to mention that on the report of the petitioner-accused, the informant in this case has been prosecuted for the commission of offence under Section 376 of the IPC. It is undisputed that the informant and petitioner-accused met when they were preparing for the competitive examinations. It appears that their friendship blossomed into exchange of promises for their future. However, when the informant became a Police Sub-Inspector, the petitioner-accused realised that he started avoiding her. It needs to be stated that the petitioner-accused is also doing service. It seems that when their relations soured, it culminated into the litigation. It can be seen that there are unmindful acts and conduct which led them to face this situation. It is, therefore, necessary to state that the informant and the petitioner-accused cannot avoid the prosecution for the acts committed by them which are contrary to the law.

13] It is pertinent to note that the learned Chief Judicial Magistrate recorded the reasons in his order. The learned Chief Judicial Magistrate found that the evidence on record is sufficient to frame the charge. The learned Sessions Judge by examining the order passed by the learned Chief Judicial Magistrate in the teeth of the settled legal position, concurred with the view taken by the

learned Chief Judicial Magistrate.

14] It is to be noted that on the basis of the submissions of the learned advocate for the petitioner-accused, if a roving and fishing enquiry is made as to the credibility of the evidence relied upon by the prosecution as well as the merits of the case of prosecution, then it would be nothing short of holding a mini trial at this preliminary stage. It is not permissible. In this context, a useful reference can be made to the decisions of the Hon'ble Apex Court in the cases of *Tarun Jit Tejpal Vs. State of Goa and Another [(2020) 17 SCC 556]* ; *Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijjaya and Others [(1990) 4 SCC 76]* and *Sajjan Kumar Vs. Central Bureau of Investigation [(2010) 9 SCC 368]*, wherein it has been held that appreciation of evidence at the time of framing of the charge or while considering discharge application, is not permissible. The Court is not permitted to analyse all the material touching the *pros* and *cons*, reliability and acceptability of the evidence. In the case of *Tarun Jit Tejpal* (supra), it is held that at the time of consideration of the application for discharge, the Court cannot act as a mouth piece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are

groundless so as to pass an order of discharge. It is held that at the stage of consideration of application for discharge, the Court has to proceed with an assumption that the materials brought on record by prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offences. At this stage, the Court is not expected to go deep into the matter and hold that materials would not warrant a conviction. It is held that what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting accused has been made out. It is further held that the law does not permit a mini trial at the stage of deciding the discharge application or at the time of framing of charge.

15] It is equally necessary to consider the decisions relied upon by the learned advocate for the petitioner-accused to cull out the law laid down in the decisions. Perusal of the decisions in the cases of *Joseph Salvaraj A.* (supra) ; *Sharat Babu Digumarti* (supra) and *Ravari Kirankumar* (supra), would show that in these decisions the issue of discharge, the nature of the material and the scope of enquiry at the stage of framing of charge or deciding the discharge

application, has not been considered. Therefore, in my view, the decisions relied upon by the learned advocate for the petitioner-accused are not applicable to the case on hand.

16] It is a specific case of the prosecution that the petitioner-accused has been creating false email IDs in the name of the informant. She, therefore, committed an offence of personation and identity theft. It is also stated that she has spread and transmitted the obscene and objectionable material. The relevant material, which has been pointed out to me in the form of the messages, would clearly indicate that the case in question is not a fit case to allow the discharge application made by the petitioner-accused.

17] The Courts below have taken into consideration the case of the prosecution and the material compiled in the charge-sheet. It is true that while appreciating the submissions advanced on behalf of the petitioner-accused, the fact that the informant was prosecuted on a report lodged for commission of offence under Section 376 of the IPC has to be given some weightage. However, only because of that prosecution, the contention of the petitioner-accused that she is entitled for the benefit of doubt at the stage of

the proceeding cannot be accepted.

18] The material compiled in the charge-sheet and filed in the Court has to be analysed *prima facie* to see whether the same is sufficient to presume that the accused has committed the alleged offence. Even at the stage of framing of charge the Court is not required as well as expected to record a finding that the material is *prima facie* sufficient to convict the accused. The accused can be discharged, if the Court on analysis of material relied upon by the prosecution is in a position to conclude that the unrebutted material will not lead to the conviction of the accused. If this is demonstrated on the basis of the material, then certainly Court can consider the discharge application and allow the same. In this case, on the basis of the material it is not possible to conclude that even if the material goes unrebutted, the case in question would not result into conviction.

19] In my view, in the background of the legal position as above, the scope of the enquiry at the stage of discharge cannot be expanded, as expected by the learned advocate for the petitioner-accused. If it is so expanded, in my view, it would be nothing short of holding a mini trial at this preliminary stage. As such, I conclude

that there is no substance in the petition. The petition stands **dismissed**. Rule stands discharged.

20] It is made clear that whatever observations made in this order are for the limited purpose of deciding the discharge application. The learned Judge of the Trial Court shall not in any manner get influenced by the observations made in this order at the time of deciding the matter on merits.

(G. A. SANAP, J.)

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