



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL WRIT PETITION NO. 1094 OF 2024

XYZ

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Chatterji Joydeep, Advocate for the Petitioner

Mr. V. M. Chate, APP for Respondent State

CORAM : Y. G. KHOBRADE, J.

Dated : 17th October, 2024

PER COURT :-

1. Heard at length Mr. Chatterji, the learned counsel for the Petitioner and Mr. V. M. Chate, the learned APP for the Respondent State.

2. By the present Petition, the Petitioner put forth prayer clause (B) as under:

(B) The Judgment & order dated 07.03.2024 of the learned Additional Sessions Judge, Dhule, in Criminal Revision Application No. 13 /2023 and the order dated 10.01.2023 of learned Judicial Magistrate First Class, Sakri, in Summary Register No.131/2022 may kindly be quashed & set aside and the "B" Summary Summary Report No.131/2022 filed by the I.O. of Sakri Police Station may kindly be rejected and the learned Judicial Magistrate First Class, Sakri, may kindly be directed to

take cognizance under Sections 190, 200, 204 Cr.PC. and issue process [summons/warrant] against the accused - Respondents No.2 to 7 under sections 376, 416, 419, 464, 465, 496, 498, 313, 328, 344, 350, 504, 506,120[B], 166[A][C] r/w 34 of the Indian Penal Code and they may be tried for the aforesaid offences.

3. Mr. Chatterji the learned counsel for the Petitioner canvassed in vehemence that, the Petitioner victim had approached Sakri Police Station to lodge a FIR against present Respondent Nos. 2 to 7 for committing rape and cheating her on pretext of false promise of marriage, however, the Police failed to register the FIR. Therefore, the petitioner victim filed a Criminal Misc. Application No. 269 of 2022 before the learned Judicial Magistrate First Class under Section 156(3) of the Criminal Procedure Code and prayed for further investigation in the crime. On 11.07.2022, the learned Magistrate passed an order and directed the Respondent No.1 to register crime. Accordingly, the Respondent no. 1 registered a Crime/ FIR No. 0261 of 2023 against the Respondent Nos. 2 to 7 for the Offences punishable under sections 376, 416, 419, 464, 465, 496, 498,

313, 328, 344, 350, 504, 506, 120[B], 166[A][C] r/w 34 of the Indian Penal Code.

4. After due investigation, the Investigating Officer filed "B" Summary Report. The Petitioner/ Victim protested said "B" Summary Report on various ground raised in protest petition. After hearing both sides, on 10.01.2023, the learned JMFC passed an order and accepted the "B" Summary Report and rejected the protest petition of the present petitioner. Being aggrieved by the said order, the petitioner filed Criminal Revision Application No. 13 of 2023 before the Sessions Court at Dhule. On 07.03.2024, the Sessions Court passed the impugned and observed in paragraph Nos. 19 to 30 which reads as under:

"19. Again the parents of accused No.1 arranged customary marriage of the first informant and accused No.1 in their house. It being Covid Pandemic Phase the marriage was performed in the house in presence of limited number of persons. The relatives of both the first informant and accused No.1 were present for the said marriage. To note it specifically, even the first informant's mother, her grand-mother, her grand-father and her brother were also present in the said marriage on 21.05.2021.

20. The statement of Priest namely Rameshwar Pathak also reveals that he being a Brahmin complied all the religious rites and rituals for said marriage and it was performed as per Hindu rituals. Witness Dhananjai Bhavar, Ravindra Shevale are the eye witnesses, who were

present when the marriage between the first informant and accused No.1 was performed in a temple at village Aamli. Witnesses Sampat Patil, Yogita Torvane, Chandni Devre, Poonam Khairnar, Rakesh Khairnar, Kalpana Khairnar were present when the marriage between the first informant and accused No.1 was performed on 21.05.2021 at the house of accused No.1. Considering statements of all these witnesses, it can be definitely said that there being love relationship between the first informant and accused No.1, they firstly performed marriage in a temple at village Aamli on 14.03.2021 and later in presence of the family members and relatives they performed marriage on 21.05.2021 at the house of accused No.1.

21. The Investigating Officer also collected photographs regarding the marriage at these two places. The same photographs are also placed on record. Having considered these photographs, it cannot be said that the marriage at these two places were performed by pressurising the first informant or by coercion. These photographs have been collected from the mobile phone of accused No.1. Certificate under Section 65-B of accused No.1 has been also submitted by the Investigating Officer. Although it is argued, on behalf of the first informant, that certificate under Section 65-B from an accused is not permissible; there is no such law. Since the mobile phone was belonging to accused No.1 and he was the custodian of the same, he is competent to give such certificate. Thus, the material collected in course of the investigation clearly negates the case of the first informant.

22. Also there is copy of notice issued by accused No.6 to the first informant. It was issued on 20.11.2021 that is much prior to the lodging of case by the first informant against accused No.1 alleging rape. Even in said notice accused No.6 had alleged that the first informant had love relationship with accused No.1. It cannot be said to be an after thought or after prepared material since the notice was issued much prior to the lodging of case by the first informant alleging rape. The over all material collected during the investigation unequivocally showed that the marriage between the first informant and accused No.1 was voluntary, they being in love relationship and thus the allegations made by the first informant regarding rape and forcible marriage are false.

23. Further, the case of the first informant is that accused No.3 used to leave her and accused No.1 alone, at house, so that accused No.1 can have intimacy with the first informant and thereupon accused No.1 forcibly used to have physical intimacy with her and established physical relations with her forcibly amount to rape. From the tenor of

the contentions of the first informant, it appears that it was a process of several different instances that accused No.1 had physical intimacy with her and repeatedly kept forcible physical relations with her. If it is so, it does not stand any reason as to why the first informant repeatedly kept on going to the house of accused No.1 to 3, why she did not approach the police immediately when first incident of having forcible physical intimacy with her took place or at least immediately when the first time accused No.1 had forcible physical relations with her. A lady who is being sexually harassed in a house will she repeatedly revisit such house? An answer will be definitely in the negative.

24. Indisputably, on 04.09.2021 accused No.6 had filed Criminal M. A. vide No.333/2021 against the first informant, under Section 97 of the Code of Criminal Procedure, praying to issue warrant for search of their son and to hand over his custody to him. In that application accused No.6 had alleged that the first informant has illicit relationship with present accused No.1. Said application was filed on 04.09.2021. The first informant appeared in that matter and filed her say, through Advocate, resisted the said application. Even in that say the first informant merely denied of having illicit relations with accused No.1. The point to be noted is that, if the first informant could appear and file say in that matter, she could have also reported to the police about the rape committed by accused No.1 on her and also about the forcible marriage and forcible termination of pregnancy. But the first informant did not, although she had the opportunity.

25. It may not be out of place also to note here that in the said say the first informant did not contend that the notarized divorce deed dated 07.06.2021 was got executed from her by taking undue advantage or by coercion i.e. false and fabricated. On the other hand, in the said say, the first informant admitted the execution of said deed and contended that it was executed by mutual consent after settlement. Certainly, whether such a notarized divorce deed can dissolve the marriage, would be a legal question, but that is not the jurisdiction of this Court. However, the contentions of the first informant in the said say unequivocally show that the said notarized divorce deed dated 07.06.2021 was executed with free consent of the first informant and it is not fabricated or forged. The statement of the concerned Notary Advocate before whom said divorce deed was executed and registered is also on the record. It shows that the said deed was executed by the parties voluntarily. These, circumstances falsify the first informant's contention that the divorce deed dated 07.06.2021 was got executed by coercion/pressure and it is forged and fabricated.

26. *The fact that the first informant appeared in said Criminal Miscellaneous Application No.333 of 2021 and filed her say also falsifies the first informant's contention that accused No.1 wrongfully confined her and did not allow to contact any one.*

27. *Regarding the allegation of forcible termination of pregnancy the statement of Dr. Kirankumar Devre and the treatment papers reveal that the first informant was taking treatment in his hospital regarding the pregnancy from 30.06.2021. Accused No.1 was also accompanying the first informant. It shows that accused No.1 was caring the first informant. Also statement of Dr. Kirankumar Devre reveals that on 13.08.2021 sonography was conducted and the fetus was normal. Also medicines were given for development of the fetus. The statement of Dr. Kirankumar Devre and the medical papers show that on 28.08.2021 the first informant was admitted in his hospital. The first informant told him that she consumed tablets for termination of pregnancy. Since the termination was not clear, Dr. Devre conducted the further process of termination. It is apparent that the first informant and accused No.1 consented for the termination. Having regard to the all material, the allegation of the first informant regarding forcible termination is not true.*

28. *Also in view of the statements of Devraj Kanade and Akshay Ahirrao, who are the witnesses of notarized deed (हमीपत्र) bearing No.3170/2022 dated 12.05.2022 between the first informant and accused No.1 and also the statement of Advocate Ajitrao Sadar, who drafted and notarized the said deed, it clearly reveals that the said deed was voluntarily executed by the first informant and accused No.1. Vide said deed the first informant stated that on 21.05.2021 she married with accused No.1 as per Hindu rites and rituals, cohabited for one year but thereafter their relations could not be cordial and therefore they decided to divorce each other and therefore executed said deed. Once it is found that the said deed was executed voluntarily by the first informant, the contents thereof are definitely acceptable showing that the marriage between the first informant and accused No.1 was not forcible and that the allegations of rape are untrue. It is also worth to note that on same date another deed namely; समजोता नामा vide No.3169 of 2022 was also executed between the first informant and accused No.1. Material to note that in the complaint application 269 of 2022, lodged before the Judicial Magistrate First Class, praying for directions to investigate under Section 156(3) of the Code of Criminal Procedure, grievance was raised only regarding the notarized deed No.3170 of 2022 and not the deed No.3169 of 2022. Even in the protest petition it is vaguely contended in para H(3) that the accused by criminal conspiracy and by pressurising the first*

informant prepared fabricated and illegal notarized deed. In other words, there is no specification that the deed bearing No.3169 of 2022 was fabricated. Thus, the deed bearing No.3169 of 2022 remains intact and unchallenged. The same deed No.3169 of 2022 also mentions substantially similar contents as that deed No.3170 of 2022. Thus, the deed No.3169 of 2022 again indicates that the allegations of the first informant regarding rape and forcible marriage are not true.

29. Regarding refusal to register the first informatio report, the record reveals that the first informant had lodged YO DHOS written report on 29.06.2022 at the Sakri police station. The material placed on record by the Investigating Officer shows that the said written report was accepted by the police station. It is not that there was refusal to accept the said report. It also reveals that it was endorsed as local application (स्थल. अर्ज) No.49/2022. The endorsement thereon of the Police Station Officer reveals that on same day he directed accused No.7 to inquire. It is apparent that accused No.7 was not the Police Station Officer to register the same. He was directed by the Police Station Officer to inquire into the said written report. Therefore, it cannot be said that accused No.7 refused to register the F.I.R. and was responsible for the same. The Judicial Magistrate First Class has also noted that accused No.7 kept the same report under inquiry being dispute of husband and wife. This Court agrees with the same observations. Although there are allegations regarding rape in the said written report of 29.06.2022, the whole material if considered, in the peculiar facts of the case, the Police Station Officer and accused No.7 must have been impressed that the dispute is between husband and wife and thereby it must have been kept under inquiry. They are justified in doing so.

30. It is apparent that the Investigating Officer i.e. respondent No.8 did not complete the investigation within two months, though the first information report was registered on 14.07.2022. The "B" summary report appears to have been filed on 19/20.10.2022 before the Judicial Magistrate First Class. However, it is evident that statements of number of witnesses were recorded by the Investigating Officer, he also caused to record statements of witnesses under Section 164 of the Code of Criminal Procedure before the Court, collected several documents and photographs. It is also apparent that after conclusion of investigation the "B" summary was required to be submitted by him before the Sub Divisional Police Officer and Additional Superintendent of Police for it's approval and after the approval given by the said authority, the Investigating Officer - respondent No.8 filed the "B" Summary before the Judicial Magistrate First Class. Meanwhile, it is also apparent that he had sought extension of time from the Judicial Magistrate First Class and it was granted in view of the reasons in the

application. In this background, it cannot be said that respondent No.8 willfully disobeyed the direction of the law and also it is appropriate to note that no injury or prejudice was intended to be caused to the first informant."

5. Needless to say that, the Petitioner is a married lady having children. She is residing separately from her husband. Section 375 (d), fourth explanation/ description provides as under:

"With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married".

6. However, in case in hand, the victim herself having knowledge and very much aware that she is not legally wedded wife of the Respondent accused and the accused is not her legally wedded husband. However, the petitioner/victim with consent, developed relationship with the accused. It is not case of the petitioner accused that, though the accused was knowing that the victim is not his legally wedded wife but the petitioner victim-believed that the accused is a another person to whom she believed to be a lawfully married. Needless to say that, the Petitioner/victim herself lodged a report and during course of investigation statement,

the petitioner/victim stated that, on 21.05.2021 she married with accused No.1 as per Hindu rites and rituals. After marriage she cohabited with the Accused no. 1 for one year but thereafter their relations become strained. Therefore, she and Accused no. 1 decided to take divorce. Therefore she and accused no. 1 executed deed of divorce voluntarily. Therefore it prima facie appears that, the petitioner/victim was married with the Accused and with consent both of them indulged into physical relations. Therefore, it prima facie appears that, the physical relation between the petitioner/victim and accused does not fall within the ambit of fourth explanation of Section 375 (d) of IPC, so also, there is no dishonesty on part of the accused. Therefore, I do not find substantial grounds to interfere with the findings recorded by the learned Additional Sessions Judge, Dhule. Therefore, present Criminal Writ Petition is hereby dismissed.

(Y. G. KHOBRADE, J.)