

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1495 OF 2018

Tatya Shrirang Kumbhar

... Petitioner

Versus

The State of Maharashtra and Ors.

... Respondents

.....

Mr. Rajaram V. Bansode a/w. Ms. Sheetal M. Ubale, Advocates for the Petitioner.

Ms. Manasi Pawar i/b. Mr. Shivaji Masal, Advocate for Respondent No.3.

CORAM : R. M. JOSHI, J.

DATED : 20th AUGUST, 2024.

P.C. :

1. This petition filed under Article 226 of Constitution and Section 482 of Code of Criminal Procedure seeks quashment of criminal proceeding bearing R.C.C. No. 559 of 2017 to the extent of present petitioner.

2. The facts which led to filing of this application with this petition can be narrated in brief as under:

3. As per the case of the prosecution on 29.03.2011 husband of respondent No.3 filed missing complaint with Akulj Police Station that he went to Pune for his personal work on 27.03.2011 and on 28.03.2011 he received phone call from his neighbour that his house is closed since morning. After getting the said phone call, he came home and found the house to be locked. In this backdrop present missing complaint was lodged.

4. Respondent No.3 gave a written complaint to Akluj Police Station stating that co-accused i.e. brother of present petitioner had committed forcible sexual assault on her and she was compelled to keep physical relationship with him on threat of killing herself. In the said complaint, it is alleged against present petitioner that he advised her to obtain divorce from her husband and accordingly are divorced him. Thereafter co-accused on false promise of marriage maintained sexual relationship with her. Since for two years after she divorcing husband, co-accused did not marry her, complaint is lodged with J.M.F.C., Malshiras.

5. During the course of hearing of this petition, learned counsel for the petitioner has placed on record copy of order dated 07.12.2023 passed by the Additional Sessions Judge, Malshiras, District Solapur in Criminal R.C.S. No. 12 of 2018. The said application was filed by the co-accused challenging the order of issuance of process against him. The learned Additional Sessions Judge set aside the order passed by the J.M.F.C. of issuance of process against co-accused. It is the contention of learned counsel for the petitioner that since there is no offence pending against the co-accused against whom the allegation of commission of act of rape as contemplated under Section 376 of Indian Penal Code ("IPC") was alleged, there is no question of any proceeding remaining on the file against present petitioner as in absence of co-accused, sharing common intention

does not arise.

6. Since the said order was placed on record, learned counsel for respondent No.3 was called upon to take instructions as to whether respondent No.3 has challenged the said order. Statement is made before this Court by the learned counsel for the respondent No.3 on the instructions that there is no challenge to the order dated 07.12.2023 passed in R.C.S. No. 12 of 2018.

7. It is thus clear that the proceedings against main accused are set aside against whom the allegation of rape has been made by the respondent No.3. Even otherwise perusal of the complaint of victim indicates that the only allegation against present petitioner is that he advised her to obtain divorce from husband and told her that co-accused would marry her. On the face of it this allegation is not sufficient to indicate any common intention shared by the petitioner with co-accused for committing offence under Section 376 of I.P.C. Hence, there is no reason or justification to permit continuation of criminal proceeding against petitioner.

8. In view of the above, petition stands allowed in terms of prayer clauses (a) and (b).

(R. M. JOSHI, J.)