



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3481 OF 2022

Sundar Sadoramal Nagdev,
Age:Adult, Occ.:Business,
R/at:Karande Mala, Shahu Colony,
Kolhapur.

...Petitioner

Versus

1. The State of Maharashtra
(through Shahupuri Police Station).
2. Ms. XXX,
Age:27 years, Occ.:Service,
R/at:Shanivar Peth, Kolhapur.
3. Sr. Inspector of Police,
Shahupuri Police Station,
Shahupuri, Kolhapur.
4. Mr. Rajesh Gawli,
Inspector, Shahupuri Police Station.
5. Mrs. Smita Patil,
PSI, Shahupuri Police Station.
6. Superintendent of Police,
Office of Superintendent of Police,
Kolhapur.

...Respondents

Ms. Swarali Joglekar for the Petitioner.
Mrs. Anamika Malhotra, Addl.P.P. for the Respondent-State.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.

RESERVED ON : 18th JUNE 2024
PRONOUNCED ON : 28th JUNE 2024

JUDGMENT (Per Dr. Neela Gokhale, J.) :-

- 1) **Rule.** Rule made returnable forthwith. With consent of the parties, the Petition is forthwith taken up for final hearing.

2) The Petitioner seeks quashing of FIR No. 258 of 2022 registered with Shahupuri Police Station, Kolhapur on 28th March 2022 for the offences punishable under Sections 376 and 341 of the Indian Penal Code, 1860 (IPC).

3) The Respondent No.1 is the State, the Respondent No.2 is the original complainant and the Respondents No.3 to 6 are police officials attached to Shahupuri Police Station, Kolhapur.

4) The case of the Complainant as discerned from the FIR is that she is married to one Ajit Nimbalkar and resides at House No. 990, E-Ward, Bhar Galli, 8th Lane, Shahupuri, Kolhapur with her husband. She is friends with Geeta Bhosale from 2017. On 7th February 2021 Geeta called the complainant on her mobile phone and invited her to meet at Pearl Hotel at 12.00 noon. The complainant reached the hotel at about 1.30 p.m. where Geeta joined her. Geeta had come in an autorickshaw. While both were waiting at the door of the hotel, the Petitioner came in his car. The Petitioner invited Geeta and the complainant to chat at the premises of hotel 'Shri Saisut' of his friend. The complainant declined on the pretext that she was under stress since she had quarreled with her husband. Despite her reluctance, the Petitioner insisted that she and Geeta should accompany him to his friend's hotel and then all of them reached the hotel in his car. The Petitioner had already booked a room in that hotel where he took the complainant and her friend Geeta. He ordered two bottles of beer and he and Geeta drank the

same. When Geeta went to use washroom, the Petitioner locked it from outside and forcibly established sexual relations with the complainant. It is the case of the complainant that she strongly resisted but the Petitioner overpowered her and raped her. After sometime, the Petitioner unlocked the bathroom door. When Geeta realised what had happened, she started to quarrel with the Petitioner. Hearing sound of the quarrel, waiter of the hotel came there. When the Petitioner opened the door of the hotel, surprisingly, the husband of the original complainant was also present at the door of the hotel. The complainant saw him. The complainant's husband also started arguing with her and abused her physically. The complainant's husband warned the Petitioner that he will file a police complaint. The Petitioner then tried to convince the complainant's husband and herself that since he is a reputed member of society, they should not take this matter to the Police as he will be defamed. He offered the complainant and her husband an amount of ₹2 lakhs to settle the matter. It is further stated in the FIR that, the complainant's husband got very angry with the complainant and started beating her and abusing her once again. Unable to bear the trauma, the complainant tried to slash her veins with a blade. The Petitioner somehow took the complainant, her husband, her friend Geeta and rickshawala to another hotel at Ambewadi. It is the allegation of the complainant that, the Petitioner raped her by forcibly establishing sexual relations with her without her consent

and hence she has filed the impugned FIR.

5) Notice was issued to the Respondents. None appeared for the Respondent No. 2 despite service. By an Order dated 1st April 2024, this Court had restrained the trial Court from framing charges till the next date of hearing. Ms. Swarali Joglekar learned counsel appears for the Petitioner and Smt. Anamika Malhotra, learned Additional PP appears for the State. Even today, the Respondent No.2, Original Complainant remains absent.

6) We have heard the parties and perused the record with their assistance. Ms. Joglekar essentially denies the entire contents of the FIR. She has tried to establish a probable defence of the Petitioner by contradicting complainant's story regarding Geeta and herself being dropped by the auto driver and later on stating that all three together went to the hotel with the Petitioner in his automobile. She submitted that, there is no explanation given by the complainant regarding how the auto rickshaw driver knew where the Petitioner had taken the complainant and Geeta. She also makes allegations against the other respondents, namely the police officials of Shahupuri police station that they failed to seize the CDR and the CCTV records of the hotel. Ms. Joglekar denies the contents of the FIR and submitted that, in fact it is the complainant and her associates, who are habitual criminals having cheated the present Petitioner as well as other people in the society. She thus urges us to quash the FIR and allow the petition.

7) Ms. Malhotra, learned APP supports the case of the complainant. Drawing our attention to the Affidavit in reply dated 27th February 2024 filed through Police Inspector Rajesh G. Gawli and the charge sheet filed on 31st May 2022, before the concerned Court along with relevant documents she contends that the complainant has reiterated the contents of the FIR in the statement under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) recorded before the Judicial Magistrate First Class, (**JMFC**) Kolhapur on 6th April 2022. She also points to the Affidavit dated 29th February 2024 filed by Smita Patil, Police Sub Inspector, who was posted at Shahupuri Police Station at the relevant time. Ms. Malhotra has denied the allegation of the Petitioner that, the Police were only helping the complainant and not investigating the crime fairly. She submitted that, the Mercedes-Benz car of the Petitioner was seized under Panchanama. She also points to the statements recorded of witnesses Vijay Kamble, Tanaji Shinde, Vijay Pawar, and, Chandrakant Shinde, the staff of Sai Suit Hotel and Ajit Nimbalkar, the husband of the complainant to contend that these statements clearly establish the presence of the Petitioner along with the complainant and her friend Geeta in the hotel room and also corroborates the quarrel that took place between them on account of the incident in question. The APP also submitted that, on 5th January 2022, one Gautam Patel had made a complaint in Shahupuri Police Station contending that the complainant herein had developed an acquaintance with him and

invited him to a hotel room in Rajat hotel on 4th January 2022 in the evening and offered sexual relations with him. She thereafter demanded a sum of ₹2,50,000 from Gautam Patel. Gautam Patel refused the demand and directly came to the Police Station to lodge a complaint against the complainant. Learned APP has further denied the allegations of the Petitioner against the police officials regarding their malafide intention of favoring the complainant.

8) The statement of the complainant recorded under Section 164 of the Cr.P.C. clearly indicates that the complainant has not deviated from the story stated by her in the FIR. Furthermore, the statement of Geeta also corroborates the complainant's statement that when she went to bathroom, the Petitioner locked the door from outside and when the door opened, she found the complainant lying on the bed in a half undressed state and the Petitioner in the process of wearing his clothes. She also corroborates the statement of the complainant that the Petitioner offered money to the complainant to close the matter. The statements of the hotel staff also corroborates the incident having taken place in the hotel. Although there is a reference in the Affidavit of Shri Rajesh Gawali, Police Inspector regarding another person, namely Gautam Patel making a complaint against the present complainant regarding inducing him to have sexual intercourse with her and demanding huge sum from him, etc., the incident *per se* does not affect the credibility of the allegation made by the complainant against the present Petitioner. The incident

with Gautam even if true has no bearing on the present FIR. It is settled law that a woman's sexual history is wholly immaterial while adjudicating whether an accused raped her. The Apex Court in the case of *State of Jharkhand versus Shailendra Kumar Rai @ Pandav Rai*¹ observed as under:

“62. Whether a woman is “habituated to sexual intercourse” or “habitual to sexual intercourse” is irrelevant for the purposes of determining whether the ingredients of Section 375 of the IPC are present in a particular case. The so-called test is based on the incorrect assumption that a sexually active woman cannot be raped. Nothing could be further from the truth – a woman’s sexual history is wholly immaterial while adjudicating whether the accused raped her. Further, the probative value of a woman’s testimony does not depend upon her sexual history. It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active.”

9) Principles of exercising jurisdiction under Section 482 of the Cr.P.C. have been laid down by the Apex Court in the catena of judgments. It is settled legal position that the power of quashing the FIR should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases where the FIR. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted

1 2022 SCC Online SC 1494

therewith *prima facie* establish the offence or not. It is only if the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. It is also a settled legal position that no meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of the charge. This Court in its extraordinary jurisdiction under Article 226 of the Constitution of India has a duty to balance the charges framed against the person and the right of the complainant or the prosecution to investigate or prosecute the offender. It is neither necessary nor is the Court called upon to hold a full fledged enquiry or to appreciate the evidence collected by the Investigating Agencies to find out whether it is a case of acquittal or conviction.

10) Even in the present case, the allegations made in the FIR supported by the statements of the complainant recorded before the Magistrate, make out a strong *prima facie* case against the Petitioner. Although we need not have noted the statements of witnesses as filed by the State along with the charge sheet however, we deemed it necessary to do so as they vividly corroborate the statement of the complainant. The factual foundation of the offence is made out in the charge sheet hence, we find ourselves reluctant to hasten to quash the proceedings in our writ jurisdiction.

11) Ms. Joglekar has raised a defence to the allegations in the FIR by pointing to the arrival of the auto rickshaw driver as circumspect. She has also questioned the credibility of the story and has tried to sully the character of the complainant herself. According to us, it is the probable defence of the Petitioner in the trial which he will have to prove. However, it is not for us in our extra-ordinary writ jurisdiction to embark on a mini-trial nor to test the defence of the Petitioner. The Hon'ble Supreme Court in the case of *Priyanka Jaiswal v. The State of Jharkhand and Others*², while dealing with the similar issue, has held as follows:

“13.This Court in catena of judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the Court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini-trial, nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside....”

12) In the case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*³, the Hon'ble Supreme Court has observed that

“In an Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as

2. Criminal Appeal No. 2344 of 2024 dated 30th April 2024 (neutral citation 2024 INSC 357).

3. 1983 Vol.-III SCC 217.

a rule, is adding insult to injury. Viewing the evidence of the girl or the women, who complains of rape or sexual molestation with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion, is to justify the charge of male chauvinism in a male dominated society.”

13) Considering the circumstances in the case, the allegations in the FIR, the statement of Complainant and the statements of the witnesses, we find no justification to quash the FIR impugned herein. In view of the same, the Petition is dismissed. Rule is discharged accordingly.

13.1) The Interim Order dated 1st April 2024 stands vacated. The Trial Court is directed to proceed with the trial.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)