

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

CRIMINAL APPLICATION NO. 384 OF 2023

Abdul Gaffar Razak Subhedar And Ors. ...Petitioners

Versus

State Of Maharashtra And Anr. ...Respondents

....

Mr. Mubin Solakar a/w Mr. Tahir Hussain, Mr. Mateen Qureshi, Adv.
Anas Shaikh i/by Ms. Tahera Qureshi, Advocate for the Applicants.

Mr. Maitreya Shukla, Appointed Advocate for Respondent No.2.

Mrs. M. M. Deshmukh, APP for the Respondent – State.

S.R. Thorat, PSI, Kurla Police Station.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 14th FEBRUARY, 2024.

P.C.:

1. The Applicants are charge-sheeted for offences under Sections 323, 354, 504, 506, 509 r/w 34 of Indian Penal Code (for short 'IPC'). The Applicants are challenging the proceedings by involving inherent powers of this Court under Section 482 of Code of Criminal Procedure.

2. The First Information Report (for short 'FIR') was registered at the instance of Respondent No.2 on 1st January, 2023 vide C.R. No.1 of 2023 with Kurla Police Station. It was alleged that

the first informant is residing at the address mentioned in the FIR since last several years. The first informant and Accused are next door neighbours. There is a galli admeasuring three feet in front of the first informant's house and Applicant No.1 had allegedly obstructed access to the said galli by constructing a wall with an iron door and covered the same with a roof. The marriage of first informant's son was scheduled and hence she wanted to carry out plastering and repairs of her house. Request was made to Accused No.1 for the key of the iron door. He refused to hand over the key. On 24th December, 2022 the Accused went to his native place due to which the first informant was unable to carry out the repair work. On 1st January, 2023 the Accused returned with his family and hence the first informant asked him for the key of the iron door which was declined by him. At about 9:30 a.m. the workers of first informant were about to carry out the work of plastering and repairs of her house. The Accused came out of their house and told one of the labourer to come down and not to carry out the repair work. The first informant questioned the Applicant No.2 as to why he is stopping her repair work. At that time the Applicant No.3 pushed the first informant on her chest and climbed on the roof of her house and threw away the cement, plaster and other construction material. The other Accused abused the first

informant. On completing investigation, charge-sheet was filed.

3. Learned Advocate for the Applicants submitted that the FIR has been registered out of vendetta. There is dispute amongst both the families. The first informant and the Accused are neighbours. Offence under Section 354 of IPC is not made out. The assault or criminal force must be with intention or knowledge that the same would outrage her modesty. The FIR is counterblast to the online complaint made by Applicant No.1 to the Municipal Corporation of Greater Mumbai against the unauthorized construction carried out by Respondent No.2. Other offences under Sections 323, 504, 506 and 509 IPC are not made out.

4. Learned APP submitted that the role ascribed to the Accused in the FIR constitute the offences registered against the Applicants. Role has been attributed to the Accused. The complainant was pushed by the Accused by putting hands on her chest which resulted in outraging modesty. Statement of the first informant was recorded under Section 164 of Cr.P.C. It is in consonance with FIR.

5. Learned Advocate for Respondent No.2 submitted that *prima facie* case is made out against the Applicants in the FIR and the statements of the witnesses recorded during the course of

investigation. The statement under Sections 161 and 164 of Cr.PC. has to be considered at this stage. The version of the complainant clearly makes out the offence under Section 354 of IPC. The grounds urged by the Applicants have to be considered during trial.

6. We have perused the FIR and charge-sheet. From the tenor of the FIR and the other statements it is apparent that there was dispute amongst both the families who are neighbours on account of the construction being carried on by both the sides. The alleged incident had occurred on 1st January, 2023 at about 9:30 a.m. The FIR was registered at about 4:12 p.m. and the information was received by the Police at about 12:00 noon. The Applicant No.1 lodged the complaint with the Municipal Corporation at 11:03:39 on 1st January, 2023. The first informant has alleged that she was pushed by one of the Accused on her chest. It is pertinent to note that the said act has occurred during the quarrel between both the parties. Assuming the allegations to be true as spelt out in the FIR it is difficult to assume that there was an intention to outrage the modesty of the first informant. The offence under Section 354 of IPC is apparently not made out against the Accused. It does not appear that there was premeditation qua the alleged act committed by Applicant No.3. There was altercation between both the sides.

The incident had occurred at the spur of the moment. The statement of the first informant was recorded belatedly under Section 164 of Cr.P.C. In any case it is on par with what is spelt out in the FIR. The FIR is counterblast and registered out of vendetta.

7. The Supreme Court in the case of *State of Punjab vs. Major Singh*¹ has observed as under :

“4] I would first observe that the offence does not, in my opinion, depend on the reaction of the woman subjected to the assault or use of criminal force. The words used in the section are that the act has to be done "intending to outrage or knowing it to be likely that he will thereby outrage her modesty". This intention or knowledge is the ingredient of the offence and not the woman's feelings. It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence. Likewise, if the intention or knowledge was proved, the fact that the woman did not feel that her modesty had been outraged would be irrelevant, for the necessary ingredient would then have been proved. The sense of modesty in all women is of course not the same-, it varies from woman to woman. In many cases, the woman's sense of modesty would not be known to others. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the woman concerned, as otherwise, it could not be proved that he had intended to outrage "her" modesty or knew it to be likely that his act would have that effect. This would be impossible to prove in the large majority of cases. Hence, in my opinion, the reaction of the woman would be irrelevant.”

1 AIR 1967 SC 63.

“5] Intention and knowledge are of course states of mind. They are nonetheless facts which can be proved. They cannot be proved by direct evidence. They have to be inferred from the circumstances of each case. Such an inference, one way or the other, can only be made if a reasonable man would, on the facts of the case, make it. The question in each case must, in my opinion, be: will a reasonable man think that the act was done with the intention of outraging the modesty of the woman or with the knowledge that it was likely to do so? The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such a woman. The expression "outrage her modesty" must be read with the words "intending to or knowing it to be likely that he will". So read, it would appear that though the modesty to be considered is of the woman concerned, the word "her" was not used to indicate her reaction. Read all together, the words indicate an act done with the intention or knowledge that it was likely to outrage the woman's modesty, the emphasis being on the intention and knowledge.”

“16] I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman Possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under [s. 354](#). The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable

to appreciate the significance of the act, nevertheless, the offender is punishable under the section.”

8. In the case of *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill* *and Another*² the Supreme Court has observed that:

“17. It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. Since, however, in the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr. Gill by slapping Mrs. Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of [Section 354](#) IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr. Gill, which considered together, persuade us to hold that he had the requisite culpable intention. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society - as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by Mr. Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that, - apart from the offence under [Section 354](#) IPC - an offence under [Section 509](#) IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr. Gill were intended to insult the modesty of Mrs. Bajaj.”

² 1995 (6) SCC 194.

9. In the case of *Raju Pandurang Mahale vs. State of Maharashtra and Another*³, the Apex Court made following observations :

“12] What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a women, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in [IPC](#). The shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows:

"Decorous in manner and conduct; not forward or lowe; Shame-fast: Scrupulously chast."

“13] Modesty is defined as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patterson in *Rex v. James Llyod*, (1876) 7 C & P 817. In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault

3 AIR 2004 SC 1677.

is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her.”

“14] Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency, a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.), the meaning of the word 'modesty' is given as "womanly propriety of behaviour: scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions."

“15] [In State of Punjab v. Major Singh](#), AIR (1967) SC 63 a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question the majority view was that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of [Section 354](#) IPC. Needless to say, the "common notions of mankind" referred to have to be gauged by contemporary societal standards. It was further observed in the said case that the essence of a woman's modesty is her sex and from her very birth she possess the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh's case (supra) the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted in [Rupan Deal Bajaj \(Mrs.\) and Anr. v. Kanwar Pal Singh Gill and Anr.](#), [1995] 6 SCC 194. When the above test is applied in the present case, keeping in view the total fact situation, the inevitable conclusion is that the acts of accused appellant and the concrete role be consistently played from the beginning proved combination of persons and minds as well and as such amounted to

"outraging of her modesty" for it was an affront to the normal sense of feminist decency. It is further to be noted that [Section 34](#) has been rightly pressed into service in the case to fasten guilt on the accused-appellant, for the active assistance he rendered and the role played by him, at all times sharing the common intention with A-4 and A-2 as well, till they completed effectively the crime of which the others were also found guilty."

(emphasis supplied)

10. Applying the observations in the aforesaid decisions to the facts of this case, it can be seen that there was no intent to outrage and no knowledge that act would outrage modesty of victim. The FIR suffers from *mala fides*.

11. In the case of ***State of Haryana Vs. Ch. Bhajanalal and Others***⁴. The Supreme Court has held that in the exercise of the extra ordinary power under Article 226 of Constitution of India or inherent powers under Section 482 of the Code of Criminal Procedure. The High Court can quash the FIR or criminal proceedings in the categories given by way of illustration either to present abuse of the process of law or to secure ends of justice. Applying the principles enunciated in the said decision, the impugned proceedings are required to be quashed.

4 AIR 1992 Supreme Court 604

ORDER

- i. Criminal Application No.384 of 2023 is allowed;
- ii. The proceedings in C.C. No. PW/783/2023 arising out of C.R. No.1 of 2023 registered with Kurla Police Station pending before the Court of Learned Metropolitan Magistrate, 51st Court, Kurla are quashed and set aside.
- iii. Application stands disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)