



Judgment

apl1237

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

CRIMINAL APPLICATION [APL] No. 1237 OF 2021.

Neeraj s/o Omprakash Shrivastva,
Aged 53 years, Occupation – Editor,
resident of at Plot No.1, Flat No.103,
Bramhavidya Society, Sonegaon,
Nagpur.

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APPLICANT.

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Police Station Pratap Nagar,
Nagpur.

2.XYZ [Complainant]
in Crime No.430/2021,
Police Station Ranapratap Nagar,
Nagpur, District Nagpur.

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NON-APPLICANTS.

Mr. Anil S. Mardikar, Senior Advocate with Shri A.D.Tote, Advocate
for the Applicant.

Mr. S.V. Narale, A.P.P. for Non-applicant No.1 – State.
Ms S. Phaltankar, Advocate [Appointed] for Non-applicant No.2.

**CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.**

DATE : MARCH 13, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

By consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. This is an application seeking to set aside the charge sheet registered as Special Case No.594/2022 arising out of first information report bearing Crime No.430/2021 registered with Ranapratap Nagar Police Station, Nagpur for the offence punishable under Sections 376, 506 read with Section 34 of the Indian Penal Code and Section 3[1][w][i], 3[1][w][ii] and 3[2][va] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act.

3. The learned Counsel for the applicant straneously argued that the very lodgment of the first information report is actuated with malafides and has been lodged out of vengeance. It is argued

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that the applicant has lodged a report on 02.10.2021 against the informant alleging offence of extortion, in which after investigation charge sheet has been filed. According to the applicant in order to pressurize him and to take him to the knees, existing false report has been lodged.

4. Per contra, the learned A.P.P. as well as the learned counsel appointed for non-applicant no.2 resisted this application. It is submitted that the informant lady has specifically alleged about the act of forcible sexual intercourse against the applicant. According to the informant prima facie material exists which cannot be marshaled at initial stage to stifle the prosecution.

5. At the instance of report lodged by the informant lady aged 32 years, the aforesaid crime has been registered. The informant was working as a computer operator-cum-data processor. She was in need of the job, hence, in the month of July, 2021 she has joined Zen Solutions IT Company as a computer operator on monthly salary of Rs.50,000/-. She has been shifted to Star Solution

Company in the month of August, 2021 as data processor. The informant has stated that several illegal betting and hawala activities have been conducted in the said company. She came to know about the illegalities, however, did not raise voice.

6. It is the case of informant that on 30.08.2021, while she was in the washroom, a female employee of the company checked her purse in which her old identity card about working in the media was found. This was informed to the Chief Editor of the company who gave offer of hike in the salary. The informant stated that the applicant Neeraj was serving as an Editor in the company and was looking after the magazine published by the company. The applicant use to threaten her of committing sexual atrocities. She was also threatened by other co-employees.

7. The informant specifically alleges that on 12.09.2021, she was asked to shift her working place in the company office at Gopal Nagar, Nagpur which was of one Advocate Sandeep Pande. On 17.09.2021 in the afternoon at about 3.30 p.m. to 4 p.m. when she

alone was working in the office, at the relevant time the applicant arrived, closed the door, took out a mattress and committed forcible sexual intercourse. The applicant also threatened her, hence she maintained silence. The informant stated that on 27.09.2021 and 29.09.2021 the applicant called her for settlement and then also gave her threat and therefore, the belated report dated 07.11.2021.

8. Strikingly it is brought to our notice that the applicant had already lodged a report of extortion against the informant lady on 02.10.2021. Copy of the report has been filed along with charge sheet. We find said material quite relevant therefore, it necessitates us to make brief reference of the report lodged by the applicant Neeraj to that effect.

The applicant - Niraj was an Editor of a Magazine namely "Power of One". In second week of September 2021, the informant was employed in the Office run by said concern. Since the informant was not properly doing the work, she was reprimanded. On 23.09.2021, in the afternoon, the informant-lady barged in to the magazine Office with her three associates, started to threaten the

Office employees by saying that they had prepared a project report about illegal activities run by the Office. Moreover, they threatened that the project report would be published, if the demand of Rs.50 lakhs has not been complied. They also started to videograph the things. The applicant stated that the informant stated that they are running a You Tube channel and if the amount is not paid, they would publish the project report exposing the illegalities.

It is the case of applicant that some how they have pacified the informant and asked her to go away. On the following day, report was handed over to the Police. On 29.09.2021, the informant again met the applicant and by reducing the demand insisted to pay Rs.12 lakhs, which was on negotiation, reduced to Rs.8 lakhs. Then on 01.10.2021, again the informant telephonically asked one of the employee to pay the amount. The entire affair was came to be audio and video graphed. The informant posing herself to be a Journalist, tried to extort money by giving threats, hence the report was lodged by the applicant. On the basis of said report, police have registered an offence against the informant. Pertinent to note that the informant/lady has applied for pre-arrest bail, which

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came to be rejected right upto the Supreme Court. The learned Senior Counsel for the applicant has produced copy of bail application which is totally silent about her grievance of allegations of rape. In said context, it has been submitted that only out of vengeance, as well as to pressurize the applicant, existing report has been lodged.

9. In the above background we have examined the entire material. The learned Counsel for the applicant has attracted our attention to the statement of Sandeep Pande who owns the office premises. He has specifically stated that at the relevant time, the informant was in the office and then left peacefully. Precisely, he stated that he has not seen any objectionable thing on said date. It is submitted that the CCTV has been installed in the said office premises. The learned Counsel for the applicant has attracted our attention to the transcript of the CCTV footage of relevant time. It does not support the case of the informant. Moreover, the transcript was handed over to the police during investigation. The learned public prosecutor is unable to make any statement that the CCTV

footage bears incriminating material.

10. Notably, the alleged incident took place on 17.09.2021. Admittedly, even thereafter the informant continued to work in the office which is something unusual. Pertinent to note that despite the allegations of forcible sexual intercourse, the report has been lodged on 07.11.2021 i.e. after a period of near about 2 months. It requires to be noted that the informant is a well educated lady working as a computer operator as well as media person. In the circumstances, it is difficult to digest that despite serious allegations of forcible sexual intercourse, she continued to work in the same office and has not ventilated her grievance for near about 2 months.

11. Taking all the circumstances together, it reveals that already a crime of extortion has been registered against the informant at the instance of the present applicant. In said crime her urge for pre-arrest bail was turned down right upto the Supreme Court. The informant has not uttered a single word about said crime, but, after lapse of considerable period filed a case of sexual

assault. There is no other material to support her contention.

12. The learned Senior Counsel appearing on behalf of the applicant placing reliance on the decision in the case of **Prashant Bharti .vrs. State (NCT of Delhi) – [2013] 9 SCC 293**, would submit that at this stage, the Court can consider the defence material if found sound, reasonable and indubitable. We see no difficulty in considering the prior first information report which is a matter of record as well as the transcript of CCTV footage, which is not challenged.

13. A three Judge Bench in **State of Karnataka vs. M. Devenderappa and another, 2002 (3) SCC 89**, has occasion to consider the ambit of Section 482 Cr.P.C. By analysing the scope of Section 482 Cr.P.C., the Supreme Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. Further it is held that Court would be justified to quash any proceeding if it finds that

initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice.

14. The inherent powers of this Court are unlimited which are to be exercised with an object of advancement of justice. One of the object of vesting of inherent powers with higher Court is to save the malafide and uncalled prosecution, resulting into harassment for no reason. It necessitates us to refer to the guidelines laid down by the Supreme Court in case of **State of Haryana .vrs. Bhajan Lal – 1992 Supp [1] SCC 335**, which reads as under.

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

15. We have tested the material on above parameters and find that the case in hand squarely falls in category No.7 which states that if the criminal proceeding is manifestly attended with malafide, it is the reason for quashing the prosecution to prevent the abuse of the process of the Court. On the background of prior crime of extortion against the informant, the material is tested. Moreover, there is unexplained delay of two months in lodging the first information report. In absence of any other material the strong probability of concoction arose to settle the score. Taking the stock of the matter, we are satisfied that a case for quashing has been made out. In view of above, following order is passed.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The Charge Sheet registered as Special Case No.594/2022 arising out of first information report bearing Crime No.430/2021 registered with Ranapratap Nagar Police Station, Nagpur for the offence punishable under Sections 376, 506 read with Section 34 of the Indian Penal Code and Section 3[1][w][i], 3[1][w][ii] and 3[2][va] of the

Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act is hereby quashed and set aside.

- (ii) Fees of the appointed Counsel for non-applicant no.2 be quantified as per rules.

JUDGE

JUDGE