



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

CRIMINAL APPLICATION NO.1123 OF 2019

Pushkar s/o Sureshrao Dhawale, aged
about 37 years, Occupation –
Business, r/o Siddhi Bhawan, Behind
Khandelwal Mangal, Karyalaya, Alsi
Plots, Akola, Tq. And Dist. Akola.

...APPLICANT

VERSUS

1. State of Maharashtra, through
its Police Station Officer, Police
Station, Civil Lines, Akola, Tq. And
Dist. Akola.
2. Sau. Snehal w/o Sameer Dhawale,
aged about 39 years, occupation – r/o
Shrikunj Banglow, behind Tamhane
Hospital, Kirti Nagar, Akola, Tq. And
Dist. Akola.

... NON-APPLICANTS

Shri Zeeshan Z. Haq, Adovcate for the applicant.
Shri Ved Deshpande, Advocate for non-applicant no.2
Shri M.K. Pathan, Addl. P.P. for the State.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 10.10.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. By this application under Section 482 of the Code of Criminal Procedure ('the Code'), the applicant (accused) seeks to quash the charge-sheet arising out of Crime bearing First Information Report ('FIR') No.368 of 2019 registered with the Civil Lines Police Station, District Akola for the offence punishable under Sections 354A(1)(iv) of the Indian Penal Code, 1860.

4. Learned Counsel for the applicant would submit that reading of the FIR and the material collected during the course of investigation does not make out a *prima facie* case to constitute the offence charged. The prosecution is manifestly

attended with *mala fide*, maliciously instituted with ulterior motive to pressurize the applicant for settling the partnership dispute. It is submitted that the allegations made in the FIR, even if they are taken at their face value, does not constitute the offence punishable under Section 354A(1) of the IPC as there are no allegations of making remarks of any kind to amount sexual harassment.

5. *Per contra*, learned Counsel appearing for the informant would submit that the informant has made specific allegations, which may attracts at least the offence punishable under Section 354-C or Section 509 of the IPC, which are cognizable offences. According to him, the applicant's indecent gestures and the act of taking photographs and video of a woman intending to insult her modesty would constitute the offence.

6. The parties are related to each other. The informant is a wife of the applicant's real brother namely Sameer. There was a (family) partnership business, which was run by the

informant's husband Sameer, applicant Pushkar with their father Suresh. A notice for dissolution of partnership was issued on which dispute arose between two brothers. The informant was looking the business along with her husband. In such a background, it is the informant's case that on 05.08.2019 around 10.45 a.m. she was seated in the office cabin. The office of her father in law and the applicant, was on the lower floor. At the relevant time, while the informant was alone in her cabin, the applicant arrived and made indecent gestures towards her as well as took her photographs without her consent. The applicant also did video-graphy of the informant and thus, committed the offence.

7. Learned Counsel for the applicant would submit that the contents of FIR are totally false. The applicant would submit that though incident allegedly occurred on 05.08.2019, report has been lodged after three days i.e. on 08.08.2019. The delay itself discloses that it is an after-thought step for taking revenge. The applicant took us through the copy of the complaint filed by the Suresh (Father) against the informant's husband Sameer

dated 06.08.2019. In said complaint, Suresh stated about earlier incident dated 03.08.2019, wherein the informant's husband Sameer along with the informant barged into the house and gave threats. Particularly, our attention has been invited to the portion of the complaint, wherein Suresh specifically stated that on 03.08.2019, the informant's husband gave threats that they would make false allegations about outraging modesty against applicant Pushkar. It is argued that already on 06.08.2019 Suresh reported to the Police about the threats given by the informant, which was reported prior to the FIR i.e. on 06.08.2019 itself. On that basis, it is canvassed that as threatened by the informant, after two days i.e. on 08.08.2019, she lodged false report.

8. To counter said submission, learned Counsel for the informant would submit that though the police report was lodged on 08.08.2019 however on the very day i.e. on 05.08.2019 the informant made a written report to the Police of which a copy with endorsement has been filed on the record. It is stated that though on the very day written report was lodged,

the police did not take cognizance therefore, on 08.08.2019 again report was lodged. The informant has also produced a copy of E-mail sent on the intervening night of 05.08.2019 to 06.08.2019 to the Police informing about the occurrence. In view of said material on *prima facie* basis, it cannot be said that merely because the informant gave threats to file false complaint, existing report has been lodged.

9. The informant has produced several photographs showing the informant sitting in a glass cabin and the applicant standing at the glass door with his mobile. The photographs *prima facie* discloses that either the applicant was taking photographs or video-shooting in the cabin where the informant lady was seated. Learned Counsel for the applicant has not denied the photographs but submitted that the applicant was making videography of glass cabin and not of the informant lady. It is argued that videography of the cabin may not constitute the offence of sexual harassment.

10. The informant lady has specifically stated that the

applicant was making gestures in indecent manner as well as she was videographed by the applicant without her consent. During the course of investigation, statements of two witnesses have been recorded, who supported the informant's contention. The lady stated that the applicant was looking to her with evil intent. The said aspect requires to be appreciated in trial. Learned Counsel for the applicant would submit that the said material *prima facie* makes out essential ingredients to constitute the offence at-least under Section 509 of the IPC.

11. The applicant's learned Counsel has relied on the decision of the Supreme Court in the cases of *Umesh Kumar vs. State of Andhra Pradesh and anr. (2013) 10 SCC 591* and *State of Karnataka and M. Devendrappa and anr. (2002) 3 SCC 89* to contend that the scope of Section 482 of the Code is quite limited. The Court cannot look into the merits nor can appreciate the worth of material at this stage. If there exists some substance in the allegations supported by the material then the case is to be examined in full dressed trial.

12. Reverting back, we find that the informant lady has stated about the act of the applicant, which is evident from the photographs tendered on record. Two witnesses gave a statement supporting the informant's contention. It is not in dispute that at relevant time the applicant went to cabin and took photos where lady was seated. At this stage, we cannot assess the worth of said material but can surely say that *prima facie* case is made out to put the applicant on trial. Obviously, during the trial, it would be tested whether the contents would constitute the offence. In the circumstance no case is made out for exercising the inherent powers, hence the criminal application stands rejected.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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