



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1768 OF 2024

X.Y.Z.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through Police Station, Jamkhed,
Tq. Jamkhed, Dist. Ahmednagar.
- 2 Bhaskar @ Bhaskarrao Rambhau More,
Age 48 yrs., Occ. Business,
R/o Ratndip Hospital, Nagar Road,
Jamkhed, Tq. Jamkhed, Dist. Ahmednagar.
- 3 Varsha Shankar Jadhav,
Age 45 yrs., Occ. Service (PSI),
R/o Police Station, Jamkhed,
Tq. Jamkhed, Dist. Ahmednagar.
- 4 Mahesh Vishnu Patil,
Age 50 yrs., Occ. Service (PI),
R/o Police Station, Jamkhed,
Tq. Jamkhed, Dist. Ahmednagar.

... Respondents

...

Mr. S.N. Bora, Advocate for petitioner

Mr. A.R. Kale, APP for respondent No.1

...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

RESERVED ON : 23rd JANUARY, 2025

PRONOUNCED ON : 29th JANUARY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Taking into consideration the contents though petitioner has not masked her name; yet, taking into consideration her own prayer and contentions we would like to mask her name in our order.

2 Present petition has been filed by original informant for following reliefs :

“b. That, charge sheet filed by Jamkhed Police Station, Jamkhed in FIR No.104/2024 registered by Jamkhed Police Station, Jamkhed under Section 354, 354(A) of Indian Penal Code which was number as R.C.C. No.61/2024 and pending before learned Judicial Magistrate First Class, Jamkhed may kindly be quashed and set aside.

c. That, Hon’ble Court may kindly pass writ of mandamus, writ or order of like nature, wherein respondent No.1 may kindly be directed to conduct *De Novo* investigation in FIR No.104/2024 registered under Section 354, 354(A) of IPC by Jamkhed Police Station, Jamkhed by female Police Officer who is at least of Superintendent of Police rank and file fresh charge sheet as per law.

d. That, Hon'ble Court may kindly pass writ of mandamus, writ or order of like nature, wherein respondent no.1 may kindly be directed to conduct department enquiry against respondent Nos.3 and 4 for conducting and filing charge sheet which completely biased, without application of mind, without complying with procedure laid down by law and after conducting said enquiry take appropriate action as per law against respondent Nos.3 and 4.

e. That, Hon'ble Court may kindly pass writ of mandamus, writ or order of like nature, wherein respondent No.1 may kindly be directed to keep true identity of petitioner hidden from official records so that true identity shall not be revealed so that petitioner's rights to privacy shall not be infringed."

3 Heard learned Advocate Mr. S.N. Bora for petitioner through video conferencing and learned APP Mr. A.R. Kale after waiving notice for respondent No.1. No necessity to issue notice to respondent Nos.2 to 4.

4 Informant has lodged First Information Report against respondent No.2 with Police Station, Jamkhed, Dist. Ahmednagar, for the offence punishable under Sections 354, 354(A) of the Indian Penal Code, 1860 vide Crime No.104/2024 on 08.03.2024. The matter has been investigated by respondent Nos.3 and 4 and charge sheet has been filed before learned Judicial Magistrate First Class, Jamkhed bearing Regular Criminal Case No.61/2024. According to petitioner, Investigating Officer has not invoked proper sections. Investigation has been done with bias.

Investigating Officer ought to have registered the offence under Section 375(c) of the Indian Penal Code, as respondent No.2 has committed rape on the petitioner. If the offence would have been registered under Section 375 (c) of the Indian Penal Code, the investigation ought to have been conducted from that angle and the charge sheet ought to have been then produced before Special Judge. At the time of bail respondent No.2 had taken a ground that petitioner was not present in the college on the alleged day of incident. A supplementary statement is definitely taken but the Investigating Officer has not collected the material. Petitioner was having examination on that day and, therefore, her presence could not have been disputed by respondent No.2. It appears that the investigation has been done to support the defence of respondent No.2. Electronic evidence in the form of CCTV or any other device has not been tried to be collected. All these acts are infringing her right to fair trial. The call records or the mobile location of respondent No.2 has also not been collected by getting CDR from the appropriate mobile company.

5 In order to appreciate submissions on behalf of petitioner we would like to take note of important aspects from her First Information Report and we would like to try to see that her identity is not so easily disclosed. Informant is a girl of 20 years of age and taking education in Third

Year of B.Pharmacy from a college at Jamkhed. Respondent No.2 is a founder president of the college and he sits in Principal's office of college, where the informant is taking education. Informant was having her paper on 20.10.2022 between 2.30 to 4.00 p.m. Before the beginning of paper when she was standing outside the class, respondent No.2 went near her and said something, which she could not understand, but then she went in the class room. After the examination was over, the informant was along with her friends on the college ground. When another Lecturer gave message to her that respondent No.2 is calling her in Principal's office, she went to Principal's office. Respondent No.2 was eating some fruit. He offered one wedge (फोड) of the fruit and told her that if she wants leave at the time of Diwali, then she should give application to him. Respondent No.2 still insisted that she should eat the fruit and put the seed of fruit in dustbin of anti chamber of Principal. She then ate the fruit and went in anti chamber of Principal's office. At that time, respondent No.2 went behind her, locked the door of anti chamber and by catching her hands he kissed her, pressed her breast and put hand from her pant and touched the private part. Informant says that because of the said act it, which amounted to outraging of her modesty, she became frightened. Thereupon, when it was found that some girls were coming towards the office, respondent No.2 left her and sat in the chair of Principal. Informant went from said office. Girls had come to give application and

along with them she went outside and told the incident to her friends. Friends had then told her that she should make complaint to her parents, but due to fear she had not disclosed anything to her parents. She went to her house for Diwali vacation and after resuming the college, respondent No.2 was trying to call her by giving message from others, but she never went. She says that all the students of college had then taken march against respondent No.2 on 05.03.2024 and, therefore, she could get courage to lodge report and accordingly, she has lodged report by coming to Police Station along with her friends.

6 By taking into consideration the facts we are of the opinion that ingredients of Section 375(c) of the Indian Penal Code as contended by learned Advocate for petitioner are not made out. We reproduce Section 375(c) of the Indian Penal Code i.e. the relevant part only for further discussion :

“375(c) - manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person.”

Here, manipulation of any part of the body of a woman should be with an intention to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other

person would amount to rape. Here, the informant has not stated that either she was disrobed or respondent No.2 had disrobed himself. Though there is statement about manipulation of the private part of informant, but the further act to cause the penetration has not been stated and, therefore, we repeat that the ingredients are not made out. Now, the entire investigation is over and charge sheet is filed. The contents of entire charge sheet including the supplementary statement of petitioner do not reflect any such ingredients to attract Section 375(c) of the Indian Penal Code. When those ingredients are not attracted, there is no question of conducting investigation from that point of view. Further, a legal misstatement has been made though the petitioner is well represented by an Advocate that the charge sheet has not been filed under the offence before Special Judge. For even the offence under Section 376 of the Indian Penal Code which is the punishable Section for Section 375(c) of the Indian Penal Code, the charge sheet would be filed firstly before Judicial Magistrate First Class and then the case would be committed to the Court of Session. Petitioner is an adult and, therefore, no other Section of any special enactment is attracted in the present case, of which the jurisdiction is with the Special Court. Statements of friends of informant have also been recorded, to whom it is alleged that it is immediately disclosed. The facts have also stated the same act alleged to have been done by respondent No.2 with the informant.

7 As regards the defence that has been taken by respondent No.2 in his bail application is concerned, respondent Nos.3 and 4 – the Investigating Officers need not collect any material. The informant as well as her friends have specifically stated that it was the examination on that day and, therefore, informant was present in the college. The Investigating Officer is not supposed to record statement of each and every student of college. If respondent No.2 wants to raise a plea of *alibi*, then the burden is on him to prove that he was not present. Therefore, no case is made out for *de novo* investigation. In fact, prayer clauses say that investigation that is already done should be quashed and set aside and charge sheet filed thereupon and then directions be given to *de novo* investigation. As regards the electronic evidence in the form of CCTV is concerned, it can be seen that First Information Report itself is belated. There is always a limited back up facility for any CCTV and, therefore, each and every time it is not possible to collect the CCTV footage. Further, the petitioner has not come with a case that there is a CCTV camera installed in the cabin of Principal. Therefore, taking into consideration the fact from all angle none of the reliefs can be considered under the constitutional powers of this Court under Article 226 of the Constitution of India or under the inherent powers under Section 482 of the Code of Criminal Procedure.

8 One more aspect that is required to be noted is that in view of decision of the Supreme Court in **Vinubhai Haribhai Malaviya and others vs. The State of Gujarat and another** [AIR 2019 SC 5233], petitioner could have approached learned Judicial Magistrate First Class, Jamkhed, but instead of going there under Section 173(8) of the Code of Criminal Procedure the petitioner has directly come to this Court. We are also taking note of the fact that at the time of taking cognizance of the offence the Magistrate is empowered to take cognizance of all the offences which are arising out of the facts of the case, which might not have been mentioned by police. We are also taking note that Sections 354 and 354(A) of the Indian Penal Code are triable by Court of Magistrate in the State of Maharashtra. But, still, if the Magistrate is of the opinion that at the time of commencement of the inquiry or trial Magistrate finds that the case should be committed to the Court of Sessions, then Section 323 of the Code of Criminal Procedure empowers him to take such step. Therefore, no case is made out for exercise of any such power. Writ Petition stands dismissed.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)