



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

CRIMINAL APPLICATION NO.47 OF 2018

1. Bharat Namdeorao Banpurkar, aged about 50 years, Occu. Business, R/o Azad Ward, Kurkheda, Tq. Kurkheda, Dist. Gadchiroli.
2. Khomeshwar s/o Khushal Bhandarkar, aged about Major, occu. Private, r/o Rengepar, Tq. Lakhani, Distt. Bhandara.

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station Oficer, Kurkheda Police Station, Tq. Kurkheda, Dist. Gadchiroli.
2. XYZ, In Crime No.33/2017, Police Station Officer, Police Station Kurkheda, Tq. Kurkheda, Dist. Gadchiroli.

... NON-APPLICANT(S).

Shri U.P. Dable, Advocate for the applicants.
Shri Chutake, Addl.PP for the non-applicant/State.
Ms Neerja Chaubey, Advocate for non-applicant no.2. (appointed)

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE : 05.04.2025.

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

Heard.

2. The applicants have been chargesheeted for the offence punishable under Sections 376, 354(b)(c), 452, 506(2), 342, 336 read with Section 34 and 120B of the Indian Penal Code, Sections 66(e), 67(a) of the Information Technology Act, 2000 and under Sections 3(1)(e) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The applicants by way of present application have prayed for quashing of the said charge-sheet bearing No.33/2017 dated 28.12.2017.

3. It is the case of the prosecution, that on 05.03.2017, non-applicant no.2 lodged a report. It is the case of non-applicant no. 2 that on 06.02.2016, when non-applicant no.2 and her son were asleep, at around 12 O' clock, she heard a noise as a result she and her son woke up and when they reached at the gate of their house, four persons, aging between 40 to 45 years, who were hiding and had covered their faces with black cloth, came from

behind and two of them gagged non-applicant no.2 and her son and took non-applicant no.2 and her son inside the house. Thereafter, the said persons allegedly tied her son and threatened to kill non-applicant no.2 and her son, in case, her son makes any noise.

4. It is alleged that one of them started cutting the cloths of non-applicant no.2 with a pair of scissors and also cut the hair of non-applicant no.2. It is also alleged that one of them threatened non-applicant no.2 to withdraw the case filed by her. It is also alleged by non-applicant no.2 that the said persons also did several other acts and also allegedly clicked photos while non-applicant no.2 was nude. It is the case of non-applicant no.2 that thereafter, the said four persons fled from the spot in one white colour vehicle and they allegedly took the cloths and hair of non-applicant no.2 with them.

5. Further, it is the case of non-applicant no.2 that on 15.06.2016 at night hours, non-applicant no.2, at her door steps, found her obscene photographs which were allegedly clicked on 06.02.2016 along with a letter wherein threats were issued to

non-applicant no.2.

6. On the basis of the report lodged by non-applicant no.2, First Information Report bearing No.48/2017 for offences punishable under Section 376, 354(b)(c), 452, 506(2), 342, 336 read with Section 34 of the Indian Penal Code, Section 66(e), 67(a) of the Information Technology Act, 2000 came to be registered against four unknown/unidentified persons.

7. We heard the learned Counsel for the respective parties.

8. Learned Counsel for the applicants submits that except the suspicion, nothing is against the applicants to show their complicity in the alleged offence.

9. He further submits that earlier also, the complaint was made by the informant against the applicant no.1 for the offence punishable under Section 376 of the IPC, in which the applicant had been acquitted.

10. It is submitted that the applicants have been falsely implicated in the alleged offence. He has pointed out that the

alleged incident is dated 06.02.2016 whereas the complaint came to be lodged on 05.03.2017 i.e. after more than a year and the delay has not been explained.

11. It is further pointed out that the judgment of the acquittal is dated 06.05.2017 and in the complaint there are allegations that the threats were given by the accused for withdrawal of the said case, which was going on at the relevant time. It is submitted that the informant could have immediately reported the said incident to the Court in which the said case was pending and could have requested the Court to take judicial note of it. However, she did not do the same. The applicant no.1 on 06.05.2017 was acquitted.

12. On the other hand, learned Additional Public Prosecutor and learned Counsel for non-applicant no.2 strongly opposed the application.

13. Learned Addl.PP points out that the informant in her supplementary statement expressed the suspicion against the applicants. It is submitted that one of the accused, who was

present at the spot of the incident on the date of incident, is the son of the applicant no.1. Hence, there is sufficient basis for suspicion.

14. He further pointed out that considering the threats given to her, which was relating to the criminal case, which was pending against applicant no.1, it cannot be said that the suspicion is unfounded.

15. Learned Counsel for the non-applicant no.2 reiterated the submission of the learned Addl.PP and prays for dismissal of the application.

16. In light of the rival submissions made by the respective parties, we have perused the charge-sheet and other documents filed along with the application. After having gone through the record, it is evident that the applicants were not present on the spot of incident and not named in the FIR. The informant subsequently gave an additional statement in which she expressed suspicion against the applicants, and on the basis of the same, the applicants are implicated as accused.

17. It is further evident that the alleged incident is dated 06.02.2016, whereas, the complaint came to be lodged on 05.03.2017 i.e. after more than a year of the alleged incident. This huge delay has not been explained by the informant.

18. It appears from the record that there was illicit relationship between applicant no.1 and informant for long time. And when applicant no.1 tried to withdraw from the said relationship, the informant got annoyed.

19. In the said backdrop, a complaint was made to the Police for the offence punishable under Sections 376 of the IPC. In the said complaint, a full-fledged trial was conducted which was culminated into the acquittal of the applicant no.1. The relevant findings recorded by the Sessions Judge in the said judgment, read thus :

“9] During cross-examination she voluntarily said that she did not lodge any report against the accused for about eight years since the accused was maintaining her properly. Thus, there is room to say that refusal of the accused to maintain her further prompted her to lodge report against him. It is also worth to note that she lodged report only after her release from jail. This also casts serious doubts over

the genuineness of her grievance. The victim apparently had consented voluntarily to be intimate with the accused. Since the victim did not say that the accused either induced or forced her into the relationship the accused cannot be blamed for exploiting her position. In such circumstances, evidence of the victim is not convincing enough to prove that the accused had raped her under any garb or on any pretext.

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12. From such evidence it is clear that the version of the victim is not much reliable to hold that the accused had exploited her condition or had indulged her into the physical relationship against her wish. Rather, the relations between them were absolutely consensual and no one could be blamed for that singly. The evidence adduced is thus not sufficient at all to prove the guilt of the accused. Hence, the point no.1 is answered in the negative and in answer to point no. 2 the following order is passed.”

20. The alleged threat given in the present crime by the accused to withdraw the case, was the case in which the above referred judgment was passed. Admittedly, the alleged incident is dated 06.02.2016 and the judgment passed by the Sessions Court is dated 06.05.2017 i.e. much after the alleged incident. Thus, the informant could have informed the said incident to the Court and could have requested the Court to take the judicial note of the

same. However, nothing happened of that sort.

21. In the above referred backdrop, we find the substance in the submission of the learned Counsel for the applicants that the present proceedings is maliciously instituted with an ulterior motive against the applicants.

22. In addition to the same, there is huge delay in lodging the report, which has not been explained by the informant.

23. In the circumstances, considering the law laid down in the case of *State of Madhya Pradesh vs. Shilpa Jain [2024] 4 S.C.R. 372*, we are of the opinion that this is a fit case for quashing the charge-sheet and also the Sessions Trial No.17/2017 to the extent of the present applicants.

24. Accordingly, the Criminal Application is allowed in terms of prayer clause (a).

25. Fees of the appointed Counsel be paid as per Rule.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR, J.)

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