



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

CRIMINAL WRIT PETITION NO.3634 OF 2016

Manoj Suryakant Dalvi
Age – 32 years, Occu.: Service,
13/603, Shivneri Co-Hsg,
Mahada Compex, Link Road,
Kandivali, Mumbai 400 067

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Petitioner

Versus

1. The State of Maharashtra
Office of the Public Prosecutor
(At the instance of Airport
Police Station, Santacruz, Mumbai)
2. Smt. Tina Suny John,
Age : 56 years, Occu.:Housewife,
Residing at – A/302, Vraj Vihar
Satellite Road, Ahmedabad,
State – Gujarat.

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Respondents

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Mr.Ashutosh S. Khandeparkar, Advocate for the Petitioner.

Mr.J.P. Yagnik, APP for Respondent No.1 – State.

Mr.Mukund S. Mane, Advocate for Respondent No.2.

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***CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATED : 18th NOVEMBER, 2024.

JUDGMENT : (Per : Manjusha Deshpande, J.)

1. The Petitioner is in service with the IndiGo Airlines as Assistant Security Manager. He is seeking directions to quash

Rajeshri Aher

and set aside the proceedings pending before the 66th Metropolitan Magistrate Court, Andheri, Mumbai, in Criminal Case No.1051/PW/2016. The Petitioner is also seeking to quash and set aside the Chapter Proceedings bearing Case No.59 of 2016 in Chapter Case No.17 of 2016, pending against the Petitioner before the Additional Special Executive Magistrate, Airport, Mumbai.

2. The Writ Petition is filed against the First Information Report (FIR) No.2 of 2016, registered at Airport Police Station, Santacruz, Mumbai on 12.01.2016, on complaint of one Mrs.Tina John, Respondent No.2, alleging offence punishable under Section 354 of the Indian Penal Code (IPC) against the Petitioner.

As per the FIR filed by Respondent No.2, while she was travelling alongwith her husband, daughter-in-law and granddaughter from Kochi to Ahmedabad via Mumbai on 12.01.2016, when their flight reached Mumbai at 03:30 p.m., the staff of IndiGo Airlines was checking the boarding pass of the passengers. It is alleged that the husband of the complainant Mr.Sunny John wanted to use the lavatory but he was not allowed to use it. Since he was in urgent need of using the

Rajeshri Aher

lavatory, he requested the ground staff to allow him to use it but on the pretext that the cleaning of the lavatory is under progress he was not allowed to use the lavatory.

When the husband of the complainant saw that the pilot of the said plane had used the lavatory, he again requested the ground staff to allow him to use the lavatory since he needed it to use urgently, but his request was not considered by the ground staff. Hence, he caught hold the hand one of the IndiGo staff of the IndiGo Airlines and took him to the lavatory indicating him that no one is there in the lavatory.

Thereafter, Mr.Sunny John, the complainant and her daughter-in-law all of them used of the lavatory and went to their respective seats in the Aircraft. After some time, some of the people from the ground staff, namely, Manoj, Preeti and some of the security personal from CISF of Santacruz Airport, approached them and informed that since he had manhandled the staff of the Airlines, he will not be allowed to travel further. He was directed to deplane or else the plane will not be allowed to fly. The husband of complainant was thereafter taken outside the plane, she also followed him.

When she came out, one of the ground staff of the IndiGo Airlines brought one bag and handed it over to the her.

Rajeshri Aher

On looking at the bag, the husband of the complainant informed her that the bag did not belong to them. At that point of time, a boy named Manoj approached her for taking away the bag.

When she refused to hand over it, he held her hand and tried to pull the bag. Since she wanted to demonstrate to the police that, the staff of the Airlines were not diligent while handling the baggage of passengers therefore she did not relieve her hold on the bag. The concerned staff, namely, Manoj caught hold of her hand tightly and again tried to pull the bag from her. Thereafter, all their belongings were removed from the plane and alongwith luggage they were taken to arrival gate by the CISF officials. Hence, the complainant had approached the Airport Police Station by filing the complaint against the ground staff of IndiGo Airlines.

It is on this background, the complainant has filed FIR alleging that the present Petitioner i.e. Manoj had caught her hand while removing the bag forcibly from her hands, and, therefore, the said conduct of Manoj of holding her hand amounts to outraging modesty.

3. The Airport Police Station, Santacruz, Mumbai filed charge against him before the learned Metropolitan Magistrate

Rajeshri Aher

66th Court at Andheri, Mumbai. The Airport Police Station, Santacruz, Mumbai has also initiated Chapter proceedings bearing No.59 of 2016 in Chapter Case No.17 of 2016 against the Petitioner under Section 107 of the Code of Criminal Procedure, which is pending before the Additional Special Executive Magistrate, Airport, Mumbai. The Petitioner has been called upon to sign a bond of Rs.5,000/- for good conduct.

It is the contentions of the Petitioner that the allegations made by the Airport Police Station, Santacruz, Mumbai, against him in the said Chapter proceedings are in the background of the FIR No.2 of 2016, registered by complainant against the Petitioner.

The Petitioner has approached this Court for quashing the Chapter case as well as the chargesheet bearing C.C.No.1051/PW/2016, pending before the learned 66th Metropolitan Magistrate Court, Andheri, Mumbai.

4. When the matter was heard on 09.03.2017, this Court had granted interim relief in terms of prayer Clause (f), thereby the proceedings in Chapter Case No.17 of 2016, were stayed. Thereafter, when the matter was listed before this Court on 10.01.2018, the proceedings relating to the FIR bearing No.2 of 2016 at Airport Police Station, Santacruz, Mumbai, were stayed

Rajeshri Aher

till further orders. Subsequent thereto the matter was listed from time to time and on 22.11.2018 'Rule', was granted and interim order passed earlier was directed to be continued.

5. We have heard the learned advocate for the Petitioner Mr.Khandeparkar.

It is the contention of the Petitioner that he was discharging his duty as usual and since he was part of the 'service' industry and he is trained to handle such situation, and he is also trained not to hurt sentiments of any person. He had not acted in any manner which would be detrimental to him, his company, and even to the passengers, travelling in the plane of the Airline. Being an Assistant Manager, Security, it is his job to ensure the safety and security of all the passengers, staff and in general to maintain the safety and security. Due to the FIR lodged against him by the complainant, which was followed by the chargesheet, his entire career and reputation is at stake and hence, the chargesheet and FIR is filed against him is nothing but abuse of process of law.

6. Learned advocate Mr.Khandeparkar submits that, merely holding hand while removing the bag from the hand of complainant which belonged to some other passenger, would not

Rajeshri Aher

attract Section 354 of the IPC, as he has not acted in any manner intending to outrage or knowing it to be likely that he will thereby outrage modesty of the complainant, as alleged. According to the Petitioner the complainant has misused the provision of Section 354 of IPC. She has filed the complaint with an intention, to avoid the complaint which was likely to be filed against her and her husband because of their manhandling of the ground staff of the Airlines.

7. The Petitioner has placed on record the chargesheet, which contains the statement of witnesses who were present during the said incident. One of them is the cabin attendant of the Airlines Smt.Dimple Deepak Gupte, who has categorically stated in her statement that, the complainant has snatched the bag from the hands of the Petitioner and he had done nothing to outrage her modesty. In spite of that, the complainant started making hue and cry.

8. The learned counsel Mr.Mane appearing for the complainant Respondent No.2 has opposed the prayer made by the Petitioner contending that the chargesheet is already filed, and, therefore, the proceedings filed by the complainant are required to be taken to its logical end.

Rajeshri Aher

We have perused the FIR. Bare perusal of the FIR discloses that the Petitioner who is Assistant Security Manager had made an attempt to hand over her luggage to the complainant, therefore he had brought certain bags from the plane so that the complainant could identify her own luggage. When the husband of the complainant informed the complainant that the bag in her hand did not belong to them and that, she had wrongly taken the bag, the Petitioner merely tried to remove the bag from the hands of the complainant. From the narration of the complaint itself it is obvious that because of the incident wherein the husband of the Petitioner had manhandled the staff of the Airlines, they were required to deboard the plane and as a result, they were enraged due to the said incident. When they were required to deboard the plane, they felt insulted, and as a counter, the complainant levelled baseless allegations against the Petitioner.

From the purport of Section 354 of IPC, it will have to be gathered whether conduct of the Petitioner comes within the purview of Section 354 of the IPC, which reads thus:

354. Assault or criminal force to woman with intent to outrage her modesty. – Whoever assaults or uses criminal force to any woman, intending to outrage or

Rajeshri Aher

knowing it to be likely that he will thereby outrage her modesty, [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.]”

From the contents of Section 354 of IPC, it is evident that there should be intent on the part of a man to use force against any woman with intention to outrage her modesty.

Since the word, ‘Modesty’, has not been defined in the IPC, the dictionary meaning of Modesty will have to be taken into consideration. In Oxford English Dictionary, 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.’*

The ‘intention’ of a person is important in order to prove offence under Section 354 of IPC, since intention and knowledge are not capable of being proved by any evidence, however, it will have to be gathered or inferred from the attending circumstances of the case. So far as the present case is concerned, from the narration of the incident by no stretch of imagination, such an intent can be attributed to the Petitioner, wherein he is merely alleged to have held the hand of

Rajeshri Aher

complainant in order to take away the bag, which did not belong to her. Therefore, in our view, from the contents of the FIR, itself no offence under Section 354 of the IPC is made out in complaint against the present Petitioner.

9. Recently this Court while addressing the issue on the scope of Section 354 of the IPC has held in the case of ***Nitin Upadhyay and Anr. Vs. The State of Maharashtra*** in Criminal Writ Petition (St.)No.13234 of 2024 (Coram : Revati Mohite Dere and Prithviraj K. Chavan, JJ.) in its order dated 05.08.2024, that, in order to attract Section 354 of IPC, certain ingredients are necessary, such as :

- (i) The assault must be on a woman;
- (ii) The accused must have used criminal force on a woman;
and
- (iii) The assault or criminal force must have been used with intent to outrage or knowing that the accused thereby would outrage her modesty.

This Court had further relied on the judgment in case of ***State of Punjab Vs. Major Singh***¹, wherein the observations in paragraph 4 and 16, were reproduced, which read thus:

“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

1 AIR 1967 SC 63

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.

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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."

10. The essential ingredient to attract Section 354 is intent to outrage or the knowledge that by the offending act, the accused would outrage the modesty of a woman, whereas, the assault or use of criminal force to a woman simpliciter unaccompanied by such a state of mind may not fall within the four corners of the offence under Section 354 of the Penal Code, though the accused may be liable for having committed some other offence. Applying the above observations made by this Court, we do not find that even in the FIR, any such statement is made by the Petitioner as there is no indecent assault or criminal force used by the Petitioner.

From the contents of the complaint, it appears that in a spur of a moment, sudden incident of snatching the bag occurred between the Petitioner and the complainant, wherein there was no use of indecent assault, therefore, we do not find any substance in the accusation made in the First Information Report.

11. While considering the prayer of the Petitioner for quashing the proceedings pending before the Special Executive Magistrate, Airport, Mumbai, we have to consider whether this is a fit case for exercising our inherent powers under section 482 of the Cr.P.C., or the extra ordinary jurisdiction under Article 226 of the

Rajeshri Aher

Constitution of India, to quash the FIR or criminal proceedings on the ground that they are instituted with ulterior motive. In this context, it would be appropriate to rely on the observations of the Hon'ble Apex Court in case of *Mohmood Ali and Ors. Vs. State of U.P. and Ors.*², wherein the Hon'ble Apex Court has held that in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure or Article 226 of the Constitution of India, Courts need not restrict itself only to the stage of a case, but is empowered to take into account the overall circumstances leading to the initiation/registration of the case, as well as the materials collected in the course of investigation.

Since the Proceedings bearing Case No.59 of 2016 in Chapter Case No.17 of 2016, pending against the Petitioner before the Additional Special Executive Magistrate, Airport, Mumbai, are consequence of filing of FIR No.2 of 2016, the consequential proceedings will also have to be set aside as a necessary corollary.

2 2023 SCC Online SCC 950

In view of the observations of the Apex Court, in our view this is a fit case for exercising our power under Section 482 of the Code of Criminal Procedure to quash and set aside the chargesheet and proceedings pending against the Petitioner C.C.No.1051/PW/2016, pending before the learned Metropolitan Magistrate 66th Court at Andheri, Mumbai alongwith Chapter Proceedings bearing Case No.59 of 2016 in Chapter Case No.17 of 2016, pending against the Petitioner before the Additional Special Executive Magistrate, Airport, Mumbai/66th Metropolitan Magistrate Court, Andheri, Mumbai, in Criminal Case No.1051/PW/2016.

Rule is made absolute in terms of prayer Clauses (b) and (d) of the Petition.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

Rajeshri Aher