



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2866 OF 2019

1. Mr. Rohit Satindra Sharma
Aged:-48 years
Occupation:- Service,
R/o 101, Kalpana Bldg.,
35-36 Talmiki Road,
Santacruz (West),
Mumbai-400 054
.....Petitioner

Vs.

1. The State Of Maharashtra
2. Archana Vohra
Aged:- 43 years
Occupation: Service
R/o 64, Bharat Tirth Society,
V. N. Purav Marg,
Chembur (E)-400071
.....Respondents

Mr. Hemant Kenjalkar, with Mr. Shubham B. Choudhar with Ms. Nikita J. More, for the Petitioner.
Smt. Madhavi H. Mhatre, APP for Respondent No.1-State.

CORAM: A. S. GADKARI AND
DR NEELA GOKHALE, JJ.

RESERVED ON: 14th AUGUST, 2024.

PRONOUNCED ON: 21st AUGUST, 2024.

JUDGMENT (Per Dr. Neela Gokhale, J):-

- 1) Petitioner seeks to quash and set aside criminal proceedings bearing C.C.No.1363/PW/2019 pending before the Metropolitan Magistrate, 12th Court, Bandra arising from C.R.No.19 of 2019 dated 9th January 2019 registered with Bandra Police Station for the offences

punishable under Sections 354, 354A, 323 and 509 of the Indian Penal Code, 1860 ('IPC').

2) The facts of the case are as under:

2.1) It is the case of the Respondent No.2/First Informant that she was working as a Head Chef in the Tata Global Beverages Ltd., Bangalore ('TGBL'). Prior to her employment with the TGBL, she was working as a head Chef in a company called 'Hola Chef'. She was acquainted with the Petitioner as he was employed as Head of Supply in 'Hola Chef'. The Petitioner left 'Hola Chef' in December, 2016 and took up employment in the TGBL, as Head of Operations. According to the Respondent No.2, since they were close, there used to be frequent interaction between the families of the Petitioner and the Respondent No.2.

2.2) It is further case of the Respondent No.2 that she left 'Hola Chef' in February 2017 and at the request of the Petitioner, joined TGBL. Her position was that of a contractor in TGBL and her reporting officer was the Petitioner.

2.3) The TGBL opened its first restaurant in Bangalore. There were parties and functions organized to celebrate the opening of the said restaurant. At that time, the Petitioner told the Respondent No.2 that '*You are so hot, I want to sleep with you.*' The Respondent No.2 did not respond to him and went away.

2.4) On 4th December 2018 at 11.00 am. the Respondent No.2 received a

call from the Petitioner's mobile phone and he called the Petitioner for a meeting to discuss the photo shoot and presentation for launching of the recipes of the TGBL. According to the Respondent No.2, she avoided going for the meeting on the pretext that her daughter Ria needed her, however, at the insistence of the Petitioner, she agreed. She received a WhatsApp message from the Petitioner to pick up her from 'Lucky' restaurant and she agreed. She went to the restaurant at 3.30 pm. in the afternoon. The Petitioner was standing near the Lucky Hotel and sat in her car. The Petitioner said to her, '*Your mole is attractive, spend some time with me at a hotel*'. So saying he touched her body. The Respondent No.2 resisted and there was a skirmish in the car upon which the Petitioner said to the Respondent No.2 that '*What do you think of yourself*' to which she responded by saying that she does not want to work with him. She asked the Petitioner to get out of the car and she went home. Upon returning home, she shared the incident with her husband and on his suggestion, she filed the subject FIR.

3) By an Order dated 5th July 2023, the Petition was admitted. Despite service, none appeared for the Respondent No.2.

4) Mr. Hemant Kenjalkar, learned Counsel appeared for the Petitioner and Ms. Madhavi Mhatre, learned APP represented the State.

4.1) Heard both the counsels and perused the documents with their assistance.

5) Mr. Kenjalkar submitted that the relationship between the parties was purely consensual and no offence is made out. The FIR was filed only with *malafide* intention and ulterior motive to harass the Petitioner. He submitted that the Respondent No.2 made a complaint to the Internal Complaints Committee ('ICC') of the TGBL constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('POSH'), which was dismissed after adducing evidence and examining witnesses. This itself indicates that the allegations are incorrect. Mr. Kenjalkar further contends that the FIR ought to have been lodged by the TGBL, i.e, the employer who is vested with the authority to make such complaint, under the provisions of Section 19(h) of the POSH Act. He submitted that, it is only the employer who has such authority and the Respondent No.2 is not competent to lodge the FIR. Furthermore, the Respondent No.2 has not challenged the findings of the ICC and thus, the FIR is not maintainable. He further submitted that, once the ICC has rendered a finding against the Respondent No.2, she ceases to be an 'aggrieved person' under the POSH Act. Lastly, Mr. Kenjalkar contends that the Respondent No.2 has concealed the material fact relating to the dismissal of her complaint by the ICC from the Police since the said fact does not find any mention in the FIR. There is also a delay in filing the FIR. Mr. Kenjalkar submitted that, for these reasons, the FIR deserves to be quashed as the allegations are absurd and inherently improbable.

6) Ms. Mhatre, learned APP opposed the Petition. She submitted that, the charge sheet has been filed and perusal of the gist in the charge sheet points to commission of cognizable offence.

7) At the very outset, it is clear that the Respondent No.2 has failed to make any mention of the enquiry by the ICC constituted by the TGBL under the POSH Act in the FIR. She has concealed the material fact pertaining to the Committee and its finding from the Police. We have perused the complaint made by the Respondent No.2 before the ICC, the reply given by the Petitioner to the said complaint and the findings rendered by the ICC. The contents of all three documents clearly reveal that the Petitioner and the Respondent No.2 were in a relationship right from their days at 'Hola Chef'. Their families knew each other, they celebrated various functions and events together. However, unbeknownst to the families, the parties were engaged in an intimate consensual relationship.

8) A plain and careful reading of the findings of the ICC indicates that the Respondent No.2 had many opportunities to avoid the Petitioner, but she herself accompanied him to various hotels by using her own ID to check into the hotels. Contrary to her allegations that she was compelled to follow the dictates of the Petitioner since he was her boss and sanctioned her salary, the ICC, on examining the witnesses found that her payment was disbursed by the Accounts Department of the TGBL. In fact, she herself was independently in touch with the Accounts Department. Most importantly,

there are audio recordings of the Respondent No.2's husband relating to the relationship between the Petitioner and the Respondent No.2 which clearly demonstrates that it is only because her husband learnt about their intimate relationship that the Respondent No.2 filed the sexual harassment complaint with the ICC.

9) The Respondent No.2 made the complaint to the ICC by the e-mail dated 7th October 2018. A reply was given by the Petitioner to the ICC on 17th October 2018 and after adducing evidence of witnesses, the ICC rendered the findings on 3rd January 2019. The conclusion of the finding of the ICC is as under:

“Conclusion:

The Respondent has not only produced evidences to counter the narration of the Complainant but has remained consistent with his statements. Some of the evidences shared (WhatsApp Conversation between the spouses and recording of the Complainant's husband conversation with Respondent and his wife) lead us to believe that the Complainant's husband believed that the Complainant and the Respondent had an existing relationship. These conversations and intent behind these conversations are not part of the Complainant's formal statement or her email (written with the support of her husband). The justifications shared appear to be an afterthought.

It is however, clear that the Respondent concealed the relationship with the Complainant not only at the time of

hiring but also during the tenure at the Company.

The Complainant has shared a narration which has changed as and when additional facts have come to light (through evidences produced by the Respondent) despite IC repeatedly requesting the Complainant to share all details and not withhold any information, for us to understand the matter in totality. Also, Complainant has not been able to produce any evidences which would validate or support her side of the story. The Complainant has also concealed facts which had an important bearing on the establishing the intent and merit of the complaint.

In light of the evidences and narration shared by both parties, the IC Committee found the allegation of sexual harassment by the Complainant to be unsubstantiated.”

10) The finding of the ICC clearly negates the allegations made by the Respondent No.2. A *prima facie* perusal of the FIR does not establish any assault or criminal force to the Respondent No.2. The Respondent No.2 has not stated the fact of her filing a complaint with the ICC in the FIR. Since the intimate and consensual relations between the parties is clearly established, *albeit* the fact that both of them were married to different partners, there is no gainsaying that physical contact by the Petitioner was unwelcome. The finding of the ICC that the Petitioner was not directly in charge of her payments refutes the allegation that he demanded sexual favours from her using his dominant position over her as an employer. Neither does the FIR contain any allegation of hurt being caused to the

Respondent No.2. The fact that there was a consensual physical relationship between the parties right from the 'Hola Chef' days also contradicts the allegations of the Petitioner as mentioned in the FIR. Even otherwise, it is incredulous that the words '*Your mole is attractive*' is intended to outrage her modesty given the subsistence of their relationship. Thus, a bare reading of the contents of the FIR does not *prima facie* indicate commission of any cognizable offence. Ingredients of the alleged offences are not fulfilled. There is considerable delay in lodging the FIR. No reason whatsoever has been given in the FIR for huge delay of more than 90 days in approaching the Police. It is apparent that the FIR has been lodged only after the ICC rejected the complaint made by the Respondent No.2.

11) The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by the Supreme Court for quashing of an FIR in the case of State of *Haryana Vs. Bhajan Lal*¹. The parameters are:-

“(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) ...

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same

1 AIR 1992 SC 604

do not disclose the commission of any offence and make out a case against the accused.

(4) ...

(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) ...

(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.”

12) We are of the view that the case of the present appellants falls within the parameters Nos. 1,3, 5 and 7 respectively of *Bhajan Lal (supra)*.

13) The Supreme Court in its decision in the case of *Mahmood Ali & Ors. Vs. State of U.P. & Ors.*² observed as under:

“At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted

with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. 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 CrPC or Article 226 of the Constitution 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.”

- 14) The Supreme Court has also followed this decision in the matter of *Salib @ Shalu @ Salim Vs. State of UP*³. An examination of the attending

circumstances in the present case leads to an irrefutable position that the allegations made by the Respondent No.2 in the FIR are improbable considering the findings of the ICC based upon statements given by witnesses as well as the conduct of the Respondent No. 2 herself. It is evident from fact of the FIR being filed by her after dismissal of her complaint to the ICC and absence of any mention of the ICC proceedings in the FIR that the FIR is an after thought and made only after their respective spouses became aware of their relationship. The intent is clearly to harass the Petitioner and wreak vengeance.

15) In State of *Andhra Pradesh Vs Golconda Linga Swamy*,⁴, the Supreme Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

“5. ...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 such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of

4 (2004) 6 SCC 522

these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

16) In the facts of the present case, we are of the considered view that continuance of the proceedings will be an abuse of the process of law. In the result, this Petition succeeds and is hereby allowed. The criminal proceedings bearing C.C.No.1363/PW/2019 pending before the Metropolitan Magistrate, 12th Court, Bandra arising from C.R.No.19 of 2019 dated 9th January 2019 registered with Bandra Police Station are quashed and set aside.

17) Rule is accordingly, made absolute.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)

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signed by
SHAMBHAVI
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