
(2014) 03 BOM CK 0248

In the Bombay High Court

Case No : Criminal Writ Petition No. 4451 of 2012

Ashwini Suresh Mohite

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202 — Penal Code, 1860 (IPC) -
Section 354, 504

Citation : (2015) ALLMR(Cri) 1343

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : A.A. Mane, APP, for the Respondent

Final Decision : Allowed

Judgement

Sadhana S. Jadhav, J.?Rule. Rule returnable forthwith with the consent of parties. Heard respective counsel. The petitioner herein had filed a complaint in the Court of Metropolitan Magistrate at Kurla, which was registered as C.C. No. 42/SW/2010. The complainant had alleged that she had joined the services as a peon in the School known as S.G. Barve School, Kurla (West), Mumbai in the year 1999. In 2001, she was transferred to Magan Nathuram Marg BMC Urdu School. Kurla (West) and was working there as a peon. She has contended that respondent No. 2 was working as a Principal of the said School. Respondent No. 3 was working as a teacher of Physical Training as well as Carpentry Course. Respondent No. 4 was the Administrative Officer, who was in charge of the transfer of peon/staff employed in the BMC School and respondent No. 5 was the Beat Officer in charge of transferring the teachers employed in BMC Schools. She alleged that in the month of December, 2008, when she was sweeping the floor. Sadashiv Dattaram Naik, who was working as teacher in the said School, caught her from backside. On 26.1.2009, when she was opening her lock, he followed her and tried to have physical contact with her. In the month of February 2009, when the students of 7th Std. were to leave for a picnic to Pen-Panvel, she was

carrying school catalogues to be distributed amongst the students. He pushed those catalogues there. When the catalogues fell down, he touched her inappropriately under the guise of removing catalogues from her hands. She lodged a complain to the Education Department of BMC on 26.3.2009. Prior to that, on 21.3.2009. the accused had committed similar offences. Respondent No. 3 herein along with original accused No. 2 had committed similar offences and she lodged a report regarding the same on 21.3.2009 to V.B. Nagar Police Station. The police had registered N.C. No. 418/2009. She thereafter informed the respondent No. 2 about the said incident since the respondent No. 2 was working as a Principal of the said School. The accused persons had threatened the complainant in the presence of respondent No. 1 that they would assault her in the event that she tried to act smart. The police authorities had not taken any action against the accused. They had not recorded her statement properly. Thereafter, she lodged a report to the Deputy Municipal Corporation and brought to his notice about the said incident on 10.6.2009. She had also reported that the original accused Nos. 1, 4 and 5 had not taken any action against the accused Nos. 2 and 3 and on the contrary, in collusion with accused No. 1, had transferred the complainant to other school i.e. Naupada Urdu School of Kurla vide transfer order dated 18.6.2009. The transfer order was deliberately kept incomplete by not mentioning her salary in column No. 3. Since the basis salary was not mentioned, she was not permitted to join her transfer post. She had approached the police on several occasions. However, the police had turned a deaf ear to her complaint and had not taken any action against the accused. She has further stated in her complaint that she is working with the school situated at Kurla. The accused are also posted at the school at Kurla and are serving within the jurisdiction of V.B. Nagar Police Station. The learned Magistrate had called for a report under Section 202 of Cr.P.C. API V.B. Nagar Police Station filed a report under Section 202 of Cr.P.C. on 19.5.2010. It was reported that on 21.3.2009. she had lodged a report at Bailbazar Police Chowki against the accused and her contention that the police had not recorded her statement properly cannot hold good ground since she had signed the report. Moreover, the police had reported that there was a delay of four months in lodging the report and therefore, it does not inspire confidence. It is admitted that she had reported to the senior police about inaction on the part of police. The officer has further opined that there appears to be some dispute between the accused and the complainant and therefore, she had lodged a report to the Deputy Commissioner and hence the Deputy Commissioner had transferred the complainant as well as the accused. It was further opined that there are no concrete allegations against the accused. The police had further stated that there is no independent witness to support/corroborate the allegations levelled by the complainant. That although the Principal was a lady, the complainant had not made any complaint to her. According to police, only because of the dispute between the complainant and the accused, she had filed false report against the accused. It was also reported that she had challenged her transfer order before the Labour Court and the said case is pending. That she had not co-operated for medical examination and had

not joined her transferred post. Hence, the police had reported that being disgruntled with the accused, she had malafidely lodged reports against them and, prima facie, there is no case made out against the accused.

2. The learned Magistrate had issued notice to the complainant calling upon her to show cause as to why the report filed by the police should not be accepted.

3. On 4.5.2010, the police had recorded the statement of the complainant and she had made specific allegations against the accused. The police had also recorded the statement of Innusa Aktar i.e. original accused No. 1. She has stated that on 21.3.2009, when she was in her office, the present petitioner and the accused had quarrelled. She had lodged a report at the police station. She brought the police and therefore, Smt. Innusa enquired with her. The petitioner had informed her that the accused had abused her. The respondent No. 2 herein had assured the petitioner that he would transfer the accused to some other school. According to her, inspite of the said assurance given, she lodged a report with the Education Department of the B.M.C. The committee members had come to the school and enquired. The petitioner was then transferred to Naupada School. The respondent No. 2 has further contended that thereafter the petitioner had approached the Labour Court. The police has recorded the statement of the accused against whom allegations were made by the petitioner and has then contended that there is no independent evidence to corroborate the allegations of the petitioner. Upon perusal of the report under Section 202 of Cr.P.C., the Metropolitan Magistrate vide order dated 29.7.2010, has been pleased to dismiss the complaint against accused Nos. 1, 3, 4 and 5 and has issued process against accused No. 2 for the offence punishable under Sections 354 and 504 of Indian Penal Code. The learned Magistrate has observed that there is no proof besides her bare words. According to her, the learned Magistrate has placed implicit reliance upon the report under Section 202 of Cr.P.C.

4. Being aggrieved by the dismissal of the complaint against accused Nos. 1, 3, 4 and 5, the petitioner had filed Revision Application No. 771 of 2010. The Sessions Court vide order dated 4.10.2012 has dismissed the Revision. Both the Courts have held that the authorities had deliberately given a transfer order without mentioning her basic salary due to which she could not join her transferred post. Both the Courts have held that no loss or damage was caused to the petitioner for not mentioning the basic pay in the transfer order. Hence, this Writ Petition.

5. In the intervening period, the petitioner had filed a complaint (ULP) No. 269 of 2009 before the Industrial Court, Maharashtra at Mumbai. The Industrial Court had observed that the petitioner had lodged a complaint on 8.4.2009 to the Deputy Addl. Commissioner V. Radha, who happens to be the Chairman of Prevention of Sexual Harassment Working Committee. The said complaint was sent to Smt. More-Patil. The petitioner had made complaints in respect of the sexual harassment at the workplace. The petitioner was therefore, constrained to file a complaint before the Commissioner, B.M.C. and the Education Officer of

B.M.C. An enquiry had commenced against the accused persons. The Industrial Court had allowed the complaint filed by the petitioner. It was declared by a detailed judgment that respondent Nos. 1 to 5 jointly and severally have indulged into an unfair labour practice within the meaning of item Nos. 3 and 9 of Schedule IV of the MRTU & PULP Act, 1971 and the respondent Nos. 3 to 5 were jointly and severally directed to pay token compensation of Rs. 25,000/-. The Industrial Court had directed the petitioner to resume her work as a peon at the respective transferred place.

6. On 16.4.2009, the petitioner had filed a complaint to the Deputy Commissioner in respect of the humiliation and harassment meted out to her at the hands of the accused. The Deputy Commissioner by an order dated 16.4.2009, had only requested Shri Baig to look into the matter personally and take necessary action as deemed fit. Therefore, it cannot be said that the present petitioner had not taken any steps before filing the complaint. The statement of respondent No. 2 was recorded by the Education Officer. Respondent No. 2 had categorically stated that on 19.3.2009, the petitioner had complained to her that Shri Naik abused her in a slang language and that they spit or passed comments whenever she is passing. The respondent No. 2 instead of taking action against the accused had assured that within a short time, they would deliberate about the action to be taken. After two days, the petitioner had taken the police to the premises and at that time, the respondent No. 2 had decided to put an end to the issue by transferring the accused and the complainant. According to the respondent No. 2, the matter would end at that place. The Deputy Education officer had also recorded the statement of the accused and the complainant. The Deputy Education Officer had recommended transfer of the accused and the complainant in different schools as that would settle the issue. Thereafter, a committee was constituted on 22.4.2009 and on 8.7.2009, the proceedings were conducted. The Committee had given a report on 8.7.2009. It has been erroneously recorded that the petitioner had not reported to any authority. It was reported that the complainant had not given evidence against the accused. It was the opinion of the Committee that it was not sexual harassment at workplace. but in fact it appeared to be an internal dispute between the staff of the said school. Further enquiry could not be conducted as the petitioner was transferred. The President of the Committee of sexual harassment gave a final report on 7.12.2009. It was concluded that in fact the Principal ought to have taken action against the accused when the accused have been transferred. It was concluded that the petitioner has been on leave for about 8 months and, therefore, the Committee had directed the Principal to hand over a copy of the transferred letter showing her salary. It was suggested that the petitioner be re-transferred to the original school i.e. Nathuram Marg BMC Urdu School or any other school. The petitioner had approached this Court in Writ Petition No. 2373 of 2010. However, she had made a statement that she would join her duties in the school where she was transferred.

7. Upon perusal of the documents and the reports submitted by the police under

Section 202 of Cr.P.C., this Court is of the opinion that the learned Magistrate ought to have observed that in the enquiry under Section 202 of Cr.P.C., the Investigating Officer had only recorded the statements of the accused. Prima facie, a complaint for cognizable offence was made out against the respondents. The delay in filing the report was considered to be fatal and the learned Courts were under the impression that she had filed the present proceedings only to frustrate her transfer order and seek quashing of the said order. However, this Court is of the opinion that the delay is not fatal to the prosecution. It is observed that on the very same day she had approached the Principal of the said School and demonstrated that the present respondents have committed the alleged offence. It was therefore not proper on the part of the Metropolitan Magistrate to dismiss the complaint against the accused Nos. 1, 3, 4 and 5. It was a matter of recording of evidence and therefore, the complaint ought not to have been quashed by the Metropolitan Magistrate.

8. At the stage of issuance of process, all that the Magistrate has to look into is as to whether there are allegations against the accused which constitute an offence. The report included only the statement of the accused. The I.O. has recorded the statements of the accused and arrived at a conclusion that "no offence is made out". The learned Magistrate ought to have reprimanded the I.O. in respect of the mode of investigation adopted by him. The Hon'ble Apex Court in the case of *Fiona Shrikhande Vs. State of Maharashtra and Another*, observed as under :--

"At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint."

In the present case, the learned Magistrate has embarked upon a detailed discussion on the merits and demerits of the case on the basis of the report under Section 202 which only includes the statements of the accused. The learned Magistrate has committed a grave error in not considering the inherent probabilities apparent on the statement made in the complaint although it is stated in the complaint that the complainant had earlier taken steps to initiate action against the accused and had failed only because of the high-handedness of the accused and the authorities. The petitioner had taken appropriate steps soon after the incident. However, she was a helpless woman and hence had to finally approach the Court of Chief Metropolitan Magistrate and lodged a complaint. The defence of the accused could be a subject matter of the evidence at the time of trial.

Hence the order passed by the revisional Court confirming the order passed by the Metropolitan Magistrate thereby dismissing the complaint against accused

Nos. 1, 3, 4 and 5 is quashed and set aside. The learned Metropolitan Magistrate shall proceed with the complaint in accordance with law. Rule is made absolute in the above terms. The Petition stands disposed of.