
(2013) 08 BOM CK 0250

In the Bombay High Court

Case No : Criminal Writ Petition No. 533 of 2013

Haridas Devidas Akotkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 996

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Judgement

P.D. Kode, J.—Rule. Rule made returnable forthwith. Heard finally by consent of the parties. The petitioner-accused in Summary Criminal Case No. 789/2005 pending on the file of J.M.F.C, Khamgaon prays for quashing and setting aside part of the order dated 09.06.2010 accusing petitioner amongst other of having committed an offence u/s 354 of the I.P.C. as well as the order dated 14.03.2012 passed by the Court of Session rejecting prayer made in Criminal Revision Application No. 61/2010 for deletion of such accusation against petitioner.

2. Mr. Paliwal, learned counsel for the petitioner, submitted that upon the FIR lodged by first informant Rupali for commission of offences u/s 448, 354, 509 of the I.P.C. in the incident which had allegedly occurred on 20.06.2005 with Khamgaon Police Station, Crime No. 140 of 2005 was registered and investigated by said Police Station. The said Police Station charge-sheeted the petitioner for commission of such offences. Mr. Paliwal further submitted that the trial Court, after considering the police papers, framed accusation of commission of an offence u/s 448, 354, 509 of the I.P.C. against the petitioner.

3. Mr. Paliwal, learned counsel further submitted that accusation framed for an offence u/s 354 therein runs to the effect:

2ndly you on same day, time and place in course of the same transaction outraged the modesty of complainant Ku. Rupali by asking her to come in bed room by saying "Tu Aat Yeva Bahercha Darwaja Lavun Ghey

Mr. Paliwal, further submitted that since at the time of explaining accusation, the Court being not required to make a roving enquiry into the material available against petitioner in the charge-sheet and even assuming that material prima facie to such effect against petitioner was revealed from charge-sheet, still on the basis of the same, the trial court could not have accused him of commission of an offence u/s 354 of the I.P.C. Mr. Paliwal, by drawing attention to the provisions of Section 354 of the I.P.C. further submitted that use of criminal force is an essential ingredient for accusing of commission of offence u/s 354 of the I.P.C. and as such element was totally absent in the material in charge-sheet against the petitioner, no accusation as made by the trial court could have been levelled against the petitioner on the basis of the matters stated in the body of said charge.

4. Mr. Paliwal further submitted that not only trial Court but also the revisional Court completely lost sight of said vital aspect and it resulted in the trial Court accusing the petitioner of having committed offence u/s 354 of I.P.C. and the revisional Court dismissing the challenge given to it by preferring application in revision. Since forming/levelling correct accusation is important at any criminal trial and no accusation can be levelled without there being any foundation for it in the material collected by Police during the course of investigation against the petitioner, such accusation levelled/explained by the trial court and upheld by the revisional court cannot be legally sustained. It is urged hence powers be exercised u/s 482 of the Cr.P.C. for quashing and setting aside such accusation formed/levelled against petitioner.

5. Mr. Rao, learned A.P.P. submitted that considering the over all view regarding the material collected by the prosecution, relationship in between the petitioner-accused and the complainant, who was a profession, and since prima facie intent of the petitioner in outraging the modesty is revealed from said material, the trial court was fully justified in accusing petitioner also for an offence u/s 354 of I.P.C.

6. Since, it is not in dispute that the act committed by the petitioner as revealed from the material in charge-sheet does not transcend beyond the matters stated in the body of charge-secondly-framed by the trial court, it will be wholly unnecessary to recite in detail regarding other material in the charge-sheet. Now, taking into consideration the material placed before the trial Court while forming accusation secondly for an offence u/s 354 of the I.P.C. in the light of the provisions of section 354 of the I.P.C. there appears all the force in the submissions canvassed, that assault or use of criminal force to a woman is an integral ingredient for accusing for commission of offence of said section. The act which has been made as foundation for framing the charge u/s 354 of the I.P.C. in term fails to reveal that there was any use of criminal force. Resultantly, the accusation formed/levelled for an offence u/s 354 of the I.P.C. against the petitioner cannot be legally sustained due to lack of foundation for it, the same formed and explained by the trial court, as well as maintained by the revisional Court hereby stands quashed and set aside. The accusation levelled/explained by

the trial court regarding remaining offences, however, stands unmodified.
Rule made absolute in the above terms. No order as to costs.