
(2014) 11 BOM CK 0194

In the Bombay High Court

Case No : Criminal Application (APL) Nos. 725 and 726 of 2014

Poonam and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 109 143 3 307 31
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(11) 3(1)(xi)

Citation : (2015) ALLMR(Cri) 2722

Hon'ble Judges : B.R. Gavai, J; V.M. Deshpande, J

Bench : Division Bench

Advocate : Tejas S. Deshpande, Advocate for the Appellant; N.S. Khubalkar, APP, Advocate for the Respondent;

Final Decision : Allowed

Judgement

B.R. Gavai, J.

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. By way of Criminal Application No. 725 of 2014, the applicant No. 1, who is the first informant and applicant Nos. 2 to 10, who are the accused in Crime No. 235 of 2014, have approached this Court praying for quashing and setting aside the First Information Report for the offences punishable under Sections 354-A, 354-D, 143, 342, 509, 109 of the Indian Penal Code and under Section 3(1)(xi) of the Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Act 1989.

3. By way of Criminal Application No. 726 of 2014, the applicant No. 1, who is the first informant and the applicant No. 2, who is the accused in Crime No. 3157 of 2014, have approached this Court for quashing and setting aside of the said

First Information Report.

4. The First Information Report in Criminal Application No. 725/2014 alleges that when the first informant i.e. the applicant No. 1 was travelling on the motorcycle with one Shaharukh, who was treated by her as her brother, and when she had come near Mahatma Fule Square, the accused persons formed unlawful assembly and stated to her that "why you are sitting on the motorcycle of a Musalman boy, what is your relations with him, whether sons of Hindu have died." It is alleged that saying that they had insulted the first informant. It is further alleged that restraining her, the photograph was taken against her wish. With these allegations, the First Information Report came to be filed for the offences punishable under Sections 354, 31, 3, 342, 143, 508 and 109 of the Indian Penal Code and under Section 3(1)(11) of The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Insofar as the second application is concerned, the applicant No. 1 Sulochana is the mother of Poonam who is the first informant in Criminal Application No. 725 of 2014. It is alleged in the said First Information Report that when the first informant was sitting in the Ladies Rest Room of the Police Station in connection with Crime No. 235/14, the applicant No. 2 i.e. the accused came there and threatened her saying "withdraw your complaint otherwise your daughter would be maligned".

6. The applications are jointly filed by the first informant and the accused, who are undisputedly the residents of the same town contending therein that the matter has been amicably settled and in order to bring harmony in the town, the parties have decided to bury their differences and give an end to the criminal proceedings.

7. The application is opposed by the State by filing an affidavit of 11 pages.

8. We have heard Shri Tejas S. Deshpande, the learned counsel in both the applications for the applicants and Shri N.S. Khubalkar, learned APP for the State.

9. Shri Khubalkar, the learned APP, equipped with legal expertise and with his usual vehemence, has opposed the applications basically relying on the judgments of the Apex Court in various cases including in the case of Narinder Singh and Others Vs. State of Punjab and Another, and in the case of State of Maharashtra Vs. Vikram Anantrao Doshi, . The learned APP submits that the present crime is heinous crime of sexual assault and, therefore, this Court should not exercise its inherent powers under Section 482 of Cr.P.C., and permit the offenders to be let free without any deterrent action against them.

10. With the assistance of the learned APP, we have gone through the Judgments of the Apex Court to appreciate the submission of the learned A.P.P..

11. In the case of Narinder Singh and Others Vs. State of Punjab and Another, , the Hon"ble Apex Court scanning the earlier Judgments wherein the Court had either exercised or not exercised the powers, to quash the proceedings, has

observed thus:--

"We would like to expand this principle in some more detail. We find, in practice and in reality, after recording the conviction and while awarding the sentence/punishment the court is generally governed by any or all or combination of the aforesaid factors. Sometimes, it is the deterrence theory which prevails in the minds of the court, particularly in those cases where the crimes committed are heinous in nature or depict depravity, or lack morality. At times it is to satisfy the element of "emotion" in law and retribution/vengeance becomes the guiding factor. In any case, it cannot be denied that the purpose of punishment by law is deterrence, constrained by considerations of justice. What, then, is the role of mercy, forgiveness and compassion in law? These are by no means comfortable questions and even the answers may not be comforting. There may be certain cases which are too obvious, namely, cases involving heinous crime with element of criminality against the society and not parties inter se. In such cases, the deterrence as purpose of punishment becomes paramount and even if the victim or his relatives have shown the virtue and gentility, agreeing to forgive the culprit, compassion of that private party would not move the court in accepting the same as larger and more important public policy of showing the iron hand of law to the wrongdoers, to reduce the commission of such offences, is more important. Cases of murder, rape, or other sexual offences, etc. would clearly fall in this category. After all, justice requires long-term vision. On the other hand, there may be offences falling in the category where the "correctional" objective of criminal law would have to be given more weightage in contrast with "deterrence" philosophy. Punishment, whatever else may be, must be fair and conducive to good rather than further evil. If in a particular case the court is of the opinion that the settlement between the parties would lead to more good; better relations between them; would prevent further occurrence of such encounters between the parties, it may hold settlement to be on a better pedestal. It is a delicate balance between the two conflicting interests which is to be achieved by the court after examining all these parameters and then deciding as to which course of action it should take in a particular case."

12. In the said case, the court was dealing with the case wherein the crime was registered for the offence punishable under Section 307 of the Indian Penal Code. In the said case, the High Court had refused to accept the compromise entered between the parties and the parties were required to go to the Apex Court seeking quashing of the First Information Report. The Apex Court, taking into consideration the various aspects, quashed the First Information Report.

13. Insofar as the Judgment of the Apex Court in the Case of Vikram Doshi (cited) supra is concerned, no doubt the learned APP was justified in relying upon the said Judgment inasmuch as in the said case though the High Court had exercised power under Section 482 Cr.P.C. and gave an end to the criminal proceedings, the Apex Court had set aside the same. In the said case, while reversing the orders of the High Court, the Apex Court found that modus

operandi narrated in the charge sheet would clearly show that it was a social wrong and had immense social impact. It was found that availing of money from the Nationalized Bank in the manner, as alleged by the investigation agency, vividly expositis fiscal impurity and, in a way, financial fraud. It has been further observed that the offence of such nature creates a hazard in the financial interest of the society. It has been observed that the gravity of the offence creates a dent in the economic spine of the nation.

14. Though, we could have also referred to number of cases, we find that the law has now been well crystallized and referring to the other Judgments of the Apex Court, would result in nothing else but adding pages to the Judgment. The Apex Court very recently has observed that the High Court should make an attempt to be as precise as possible in writing the Judgments and should avoid making Judgments verbose by citing Judgments after Judgments and reproducing them.

15. The Apex Court in the case of Narindra Singh in para No. 29.5 has observed that while exercising its powers, the high Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

16. While considering the application under section 482 of Cr.P.C., for giving an end to the criminal proceedings, one of the factors that should weight in the mind of the court, is as to at what stage the settlement has been arrived at. It has been observed that if the settlement is arrived at immediately after the alleged commission of the offence and the matter is still under investigation, the High Court should be somewhat liberal in accepting the settlement to quash the proceedings/investigation. It has further been observed that when the challan is submitted but the charge has not been framed, the High Court may exercise its jurisdiction. It has further been observed that at this stage since the report of the Investigating Officer is also placed before the court it would become a boundant duty of the court to go by the nature of injury sustained. It has been found that after such examination if the court finds that in such case no useful purpose would be served in carrying the criminal proceedings, which would result in acquittal, the High Court would be justified to exercise the power under Section 482 of Cr.P.C..

17. In para No. 29.5, the Apex Court has clearly observed that while exercising the power, the High Court should examine as to whether possibility of the conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and as to whether extreme injustice would be caused to him by not quashing the criminal cases. The Apex Court in the case of Vikram Doshi, has further observed that it is the duty of the court to scan the entire facts to find out as to whether the case is made out for quashing or not.

18. In the light of the aforesaid law, let us examine the facts in the present case.

19. The allegations, in nutshell, are that when the first informant was travelling on the motorcycle of one Musalman boy, to whom she treated to be her brother, accused persons stopped her and said "why are you travelling on the motorcycle of the Musalman boy, how he is related to you, whether the Hindu boys had died". Now let us examine as to whether taking the allegations in the First Information Report at its face value, whether they constitute the offence punishable under Sections 354-A and 354-D of the Indian Penal Code. It will be relevant to produce the Sections 354-A and 354-D, which read as thus:--

"354-A. Sexual harassment and punishment for sexual harassment-

1) A man committing any of the following acts-

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

354-D. Stalking- (1) Any man who-

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that-

i) It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State, or

ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

iii) in the particular circumstances such conduct was reasonable and justified.

2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine".

20. For making out a case under Section 354-A, what is required, is either physical contact and advances involving unwelcome and explicit sexual overtures, or demand or request for sexual favours, or showing pornography against the will of a woman; or making sexually coloured remarks. In our considered view, taking allegations at its face value the case would not fall in either of the aforesaid categories. Insofar as the Section 354-D is concerned, the offence would require a man to follow a woman and contact, or attempt to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitor the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking. We find that taking the allegations made in the First Information Reports at its face value, none of the ingredients can be said to be satisfied.

21. Apart from the fact that as stated in the joint applications, it is specifically averred that after the alleged incident elder citizens of the village interfered in the matter and persuaded both the parties to amicably settle the matter between the applicants so they can live in harmony and maintain peace in the village.

22. The applicant No. 1, the first informant has herself approached this court for giving an end to the criminal proceedings. As such there is not even a remote possibility of her supporting the prosecution case. Insofar as the alleged eye witness to whom reference is made in the affidavit viz. Jagdish Zanzad and Rajaram Tayade are concerned, admittedly their statements are recorded after two days. We have perused the case diary. Perusal of the statements would reveal that the most of the applicants/accused have been implicated on an information given by one of the accused. We ask the question to ourselves as to whether the co-accused could be convicted on the information given to one of the witnesses by one of the accused.

23. The Apex Court in the case of Narinder Singh and Others Vs. State of Punjab and Another, was dealing with the similar case. In para No. 33 it has specifically referred that the very pertinent statement appears on record i.e. "respectable persons have been trying for a compromise uptill now, which could not be finalized." In the present case with the intervention of the elders of the village compromise has been arrived at. The parties who are the residents of the same village, have requested this court to give an end to the criminal proceedings between them.

24. No doubt that it is stated in the affidavit as well as oral submissions have been made with utmost vehemence by the learned APP, that the offence is one of

the most heinous ones inasmuch as it pertains to the offence of sexual harassment to a woman. We have already discussed as to how even after taking the allegations in the First Information Report at its face value, no ingredients for the offences punishable under Section 354-A and 354-D are made out. In respect of the scanning of the entire evidence as has been said in the case of Vikaram Doshi and in the case of Narinder Singh, we could not find out anything which can be said to be remotely connected with sexual harassment or in that matter even sexual overtures.

25. In view of the settlement between the parties, we could have very well disposed of the applications by a Judgment consisting of 2-3 pages and could have avoided this some what verbose Judgment, which has been deprecated by the Apex Court. However, the vehemence in the affidavit and in the arguments of the learned APP, compelled us to deal with the matter with certain details so that we are not accused of not giving due weightage to the valid and important submissions made on behalf of the State.

26. Since the State has vehemently opposed the applications, we had directed the parties to remain present in the court. The first informant in both the crimes, so also all the accused are present in the Court. They stated that since they all belong to same village and live in the same village, in order to bring peace and harmony, they had decided to give an end to the criminal proceedings. As it was vehemently submitted in the affidavit that the first informant had agreed for settlement under coercion and force, we had repeatedly asked her as to whether they were acting under force or coercion.

27. Both of us have an experience of almost 30 years either as lawyer or as Judge. With this experience, it would not be out of place to say that to some extent we have ability to read the faces of the persons to find that whether they are making statements out of free will or compulsion. We have inquired with the first informant at least on 2-3 occasions in the morning as well as in the afternoon sessions. We have no hesitation to say that we are of the view that the approach by the first informants to this court appears out of their free will and not out of compulsion.

28. It is further to be noted that the first informant in the Criminal Application No. 725/14 is a college going girl aged 20 years. In spite of her desire to give an end to the criminal proceedings, if she is compelled to undergo rigor of a trial, we find that mental harassment would be caused to her also. All the accused are young boys without any criminal antecedent. Some of them have started working recently and some of them are College going. At the cost of repetition, we must say that it is not the case where hardened criminals have indulged into same drastic or heinous acts so as to dissuade ourselves from exercising jurisdiction vested either under Section 482 of Cr.P.C. or under Article 226 of the Constitution of India. In the result, finding that continuation of the criminal proceedings would result in nothing else but harassment to the first informants along with the accused persons, we pass the following order.

Order

The applications are allowed. Rule is made absolute in terms of prayer clause (A).