

(2014) 04 BOM CK 0155

In the Bombay High Court

Case No : Criminal Application (Apl) No. 716 of 2013

Syed Kamruddin Syed Ismail

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482

Penal Code, 1860 (IPC) — Section 274, 34, 354(C), 376, 406

Citation : (2014) ALLMR(Cri) 2771

Hon'ble Judges : C.V. Bhadang, J;B.R. Gavai, J

Bench : Division Bench

Advocate : Anil. S. Mardikar, Sr. Adv, Advocate for the Appellant; V.A. Thakare, A.P.P. and R.J. Mirza, Advocate for the Respondent

Final Decision : Dismissed

Judgement

C.V. Bhadang, J.—Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties. This is an application u/s 482 of the Criminal Procedure Code (Cri. P.C.) for quashing first information report vide Crime No. 153/2013 with Police Station, Patur registered under Sections 376, 354(C), 469, 471, 500, 406, 274 read with Section 34 of Indian Penal Code (IPC).

2. The brief facts are that, non-applicant No. 2 filed complaint on the basis of which first information report No. 153/2013 was registered with Police Station, Patur. According to the allegations in the complaint, non-applicant No. 2 was married with one Ahesonuudin Mohd. Razimoddin on 28/5/1997 and she has two sons out of the wedlock. The applicant happens to be the Secretary of a Trust, which is running one primary, one senior primary and one high school at Patur and also schools at Bawanbare, District Buldhana and Paras, District Akola non-applicant No. 2 was serving in the senior primary school of the said Trust at Patur as Assistant Teacher from 09/7/1996. The complaint was lodged against the applicant and four others, namely; (1) Sheikh Aarif Sheikh Gaffar, who is said to

be working as a Clerk in the School at Paras, (2) Abdul Jabbar Abdul Gaffar, who is working as a Teacher in the School at Bawanbare, (3) Mohd. Sajid Mohd. Sadiq, who is working as a Teacher in the School at Patur, and (4) Sheikh Aasif Sheikh Wahed, who is said to be close friend and associate of the present applicant.

3. It was further complained that from January, 2012 to June, 2013, the husband of non-applicant No. 2 had gone to Saudi Arabia. From the year 2009, the applicant started calling non-applicant No. 2 in the office for his personal work, such as preparing correspondence and speeches, etc. The applicant made an attempt to develop intimacy with non-applicant No. 2 and it is alleged that she was threatened with life and forced to sign a resignation and her signatures were obtained on blank papers. According to non-applicant No. 2, the applicant also prepared certain video clips, which he threatened to make public. In short, non-applicant No. 2 was forced to do personal work of the applicant in the office as well as at his residence.

4. In January, 2011 non-applicant No. 2 was doing her B.Ed, in the Government College at Ramdaspath, Akola, At that time the applicant took a room in Hotel Suvidha in his and his wife's name. According to non-applicant No. 2, the applicant had forcibly sexual intercourse with her in the room after she was made to drink cold drink laced with some stupefying substance. Subsequent to this also, for 2-4 times, the applicant had forcible intercourse with her and prepared a video clip of the same. Subsequently, in August, November and December, 2012 as also in January and February, 2013, the applicant had sexual intercourse with her against her will and without her consent at Hotel Tushal and Hotel Vikrant.

On 19/5/2013 non-applicant No. 2 and some other teachers had gone to Yashwantrao Open University at Nashik to enquire about their result of B.Ed. Examination. The applicant went there and met her at the Bus Stand in the evening. After, all the other teachers, left for Aurangabad, the applicant took her to a Hotel and again had sexual intercourse with her under the threat of making the video clip public as also threatening to kill her and her children. The applicant also showed a pistol, which was allegedly with him.

Further, according to non-applicant No. 2, the applicant prepared a false and fabricated gift deed and an agreement on 09/6/2013, 20/6/2013 and 20/7/2013. None of these documents bear her signature. The applicant also fabricated a false Nikahnama on 01/01/2013 showing that she was married to the applicant at Shahbabu Dargah at Patur. That Nikahnama is signed by the other non-applicants, who were named in the complaint non-applicant No. 5 Sheikh Aasif Sheikh is shown as Qazi, who had solemnized the Nikah.

Now, non-applicant No. 2 has stopped going to the School from 20/7/2013.

In short, according to non-applicant No. 2/complainant, her marriage with Ahesonuudin is not yet dissolved. The applicant, taking undue advantage of his

position as Secretary of the Trust and being influential, forced himself on her on various occasions under the threats as set out above. He also fabricated false document in order to show that the applicant has been married to non-applicant No. 2.

On such complaint being filed, an offence came to be registered for the offences as mentioned above on 31/10/2013. The present application is filed for quashing the same.

5. According to the applicant, he is secretary of the educational institution, which is running the schools and is also President of a political outfit in the district. He is a respectable, law abiding and peace loving person. Further, according to the applicant, non-applicant No. 2 is working as a Teacher in the School run by the Trust at Patur. She claims to be married to one Mohd. Ahesonuudin. According to the applicant, non-applicant No. 2 has made false and malicious allegations against the applicant having forcible physical relations with her during 2009 to 2013. It is contended that the complaint is belated and is lodged deliberately in order to harass the applicant and to extract money from him and the complaint is in the nature of abuse of the process of law.

Further, according to the applicant, non-applicant No. 2 was being ill-treated by her husband Ahesonuudin and he had pronounced divorce and the marriage between non-applicant No. 2 and Ahesonuudin has been dissolved. After that, non-applicant No. 2 has entered into a wedlock with the present applicant on 01/01/2013 as per the Nikahnama (Annexure P-4). Further, according to the applicant, he has paid an amount of Rs. 51,000/- as Mehar (Annexure P-5) and house worth Rs. 10 lac as gift (Annexure P-6) to non-applicant No. 2. She was also allowed to keep the custody of her two children born out of the first marriage. Subsequently, on account of some differences, non-applicant No. 2 resigned her job as per the resignation sent on 19/7/2013 and it is thereafter with malafide intention and after her former husband came to Patur, she had lodged the report at the instance of "political and other opponents" of the applicant for extracting money from the applicant.

6. It is contended that as non-applicant No. 2 had disputed her signatures on Nikahnama and gift deed, the applicant got the documents examined by private Handwriting Expert, who gave his opinion (Annexure-P-7) to the effect that the documents bear signatures of non-applicant No. 2. In short, according to the applicant, the complaint is false and filed with an ulterior motive to malign the reputation and image of the applicant and to extract money. The complaint is belated and an afterthought and it is lodged after the former husband of non-applicant No. 2 came to Patur.

7. Non-applicant No. 2 has contended that the documents are forged and fabricated and the applicant had sexual intercourse with her without consent and under the threats. By way of rejoinder filed, it was also contended that the applicant has some criminal antecedents to his discredit.

8. We have heard Shri Mardikar, learned Senior Counsel for the applicant, Shri Mirza, learned Counsel for non-applicant No. 2 and Shri Thakare, learned Additional Public Prosecutor for respondent No. 1-the State.

9. It is submitted by learned Counsel appearing for the applicant that the complaint, even if it is taken on its face value, cannot make out any offence as the alleged acts were committed over a period of four years starting from 2009 when the complaint itself was lodged in October, 2013. It is contended that even after non-applicant No. 2 stopped attending the School in July, 2013, the complaint is lodged after a period of three months thereafter. Learned Counsel was at pains to point out that non-applicant No. 2 was married and has two children from her first wedlock and she has been divorced by her former husband. Thereafter, there is Nikahnama and agreements entered into between the parties and the applicant and non-applicant No. 2 have married on 01/01/2013 on payment of Mehar as per the custom. It is submitted that a house worth Rs. 10 lac was also gifted to non-applicant No. 2 and when the documents were disputed, the applicant has got opinion of the Handwriting Expert, which would show that the documents bear the signatures of non-applicant No. 2. Learned Counsel for the applicant further submitted that in view of the opinion given by the Handwriting Expert, the offences under Sections 469 and 471 IPC cannot be said to be made out. So far as the allegations concerning the offence u/s 376 IPC is concerned, it is contended that the allegations in the complaint would be absurd and highly improbable as non-applicant No. 2, who is an adult lady having gone through marriage earlier, would allow herself to be ravished for over a period of four years, at different places. Learned Counsel further submitted that the complaint and the consequent first information report and the crime is in the nature of abuse to the process of law and it is liable to be quashed.

10. On the contrary, it is submitted by learned Counsel for non-applicant No. 2 that the disputed documents also been got examined by her from the Handwriting Expert and the opinion dated 14/11/2013 is produced on record (at page 99 of the compilation). He also submitted that the Handwriting Expert has clearly opined that the documents do not bear the signatures of non-applicant No. 2. Learned Counsel also drew our attention to the disputed and admitted signatures (page Nos. 110 and 111) in order to submit that a bare comparison of the same, would show that they do not tally.

11. It is next submitted that the applicant, being the Secretary of the Trust under which non-applicant No. 2 was serving, was in a position of influence and under the threat of harming non-applicant No. 2 and her children, had forced himself on non-applicant No. 2, He submitted that at any rate the matter would involve inquiry and trial and no case for quashing of the first information report is made out.

12. Learned Additional Public Prosecutor has supported the submissions made on behalf of non-applicant No. 2.

13. The Hon''ble Apex Court, in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, had an occasion to consider the scope and ambit of the power conferred upon the High Court u/s 482 of the Criminal Procedure Code as also under Article 226 of the Constitution of India to quash the complaint/first information report without claiming to be exhaustive, the Hon''ble Apex Court has set out the following categories of cases wherein extraordinary powers under Article 226 or the inherent powers u/s 482 of Cri. P.C. can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

(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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(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) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.

14. In the present case, it is not in dispute that non-applicant No. 2 was serving as a Teacher in the Trust of which the applicant is Secretary. It is also not in dispute that non-applicant No. 2 had married Ahesonuudin and has two children from the said wedlock. Even in the present application, non-applicant No. 2 is named as Rubina Yasmin Mohd. Ahesonuudin. While, according to non-applicant No. 2, she has not yet been divorced, the applicant claims that she has been divorced by her former husband and there is Nikahnama between the applicant

and non-applicant No. 2 on 01/01/2013. The documents produced in this behalf, viz. Nikahnama, the agreement and the gift deed, are disputed by non-applicant No. 2. Both the parties got the documents examined from the Handwriting Expert and there are conflicting opinions of the Handwriting Expert on record as to whether the documents bear the signatures of non-applicant No. 2. As noticed earlier, the said documents are in dispute and there are conflicting opinions on the same. It is true that as per the complaint, the alleged incidents/instances on which the applicant had sexual intercourse with non-applicant No. 2 are from January, 2011 and at different places i.e. at Akola and Nashik. However, the question is, whether that was under any threat as was allegedly held out by the applicant or taking undue advantage of his position as Secretary of the Trust. In our considered view, the case would not fall under any of the categories as set out by the Hon''ble Apex Court in the case of Bhajan Lal, [2013 ALL SCR (O.C.C.) 1] (supra). The allegations and the counter allegations would necessarily involve and require an inquiry and investigation. It is not possible to express any opinion at this stage, much less conclusive one, so as to hold that the complaint and allegations, even if taken at the face value, do not prima facie constitute any offence or make out a case. We are conscious that the stage at which the matter stands as of today, it would be neither permissible nor proper to make any detailed appreciation of the material or to express any binding opinion so as to prejudice either of the parties. Needless to mention that, no opinion is expressed on the merits of the complaint or the allegations made. Thus, we do not find that any case is made out for exercise of inherent power u/s 482 of the Cri. P.C. to quash the complaint/first information report.

Consequently, the application is hereby dismissed with no order as to costs.

Rule stands discharged.

Later On:

At this stage the learned Counsel for the applicant seeks extension of protection, which was granted earlier for the further period of four weeks.

Taking into consideration the view taken by us, we are not inclined to grant the prayer of the learned Counsel. The same is rejected.