

(2023) 08 BOM CK 0026

In the Bombay High Court

Case No : Criminal Writ Petition No. 3702 Of 2017

Vijay Choudhary

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 11-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 354A, 509
Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 — Section 4

Citation : (2023) 08 BOM CK 0026

Hon'ble Judges : A. S. Gadkari, J;Shivkumar Dige, J

Bench : Division Bench

Advocate : Sanjay Kumar, Abhishek Singh, Praveet Shetty, Ajay Patil, Meenaz Kakalia

Final Decision : Allowed

Judgement

A. S. Gadkari, J

1) Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (for short, 'the Cr.P.C.') for quashing of the First Information Report No.347 of 2016, dated 24th August, 2016, under Sections 354-A and 509 of the Indian Penal Code (for short, 'the IPC'), registered with Bhandup Police Station, Mumbai, at the instance of Respondent No.2, the informant.

2) Heard Mr. Sanjay Kumar, learned counsel for the Petitioner, Mr. Patil learned APP for the Respondent No.1-State and Ms. Meenaz Kakalia, learned Advocate for the Respondent No.2.

3) Record reveals that, by an Order dated 5th October, 2017, this Court had granted ad-interim relief in favour of Petitioner. By a subsequent Order dated 16th January, 2018, Rule was issued in the Petition. The ad-interim relief granted

by an Order dated 5th October, 2017 was confirmed as interim relief.

4) The Respondent No.2, first informant, has lodged the crime in question on 24th August, 2016 under Sections 354-A and 509 of the IPC. It is stated in the FIR that, she is residing at the address mentioned therein along with her husband. She was working as a Center Manager in Max Life Insurance Company situated at Goregaon Link Road, Bhandup (West), Mumbai for last about one year, prior to lodging of FIR. That, her company's Vice President (H.R.) i.e. the Petitioner herein, stays at Delhi for the office work. He intermittently come to the company's office at the said address for office work.

That, on 20th May, 2016 at about 10.00 a.m., the Petitioner had been to the said office for meeting. After meeting at about 2.30 p.m. to 3.00 p.m. in the noon, Petitioner came to the desk of the Respondent No.2. He was continuously staring at her, so she asked him 'How can I help you, Sir', on this, he said that, 'you are looking sexy and gorgeous'. On the said comment of Petitioner, the Respondent No.2 retorted to him 'behave yourself'. Due to the said, Petitioner got angry and torn her paper nameplate which was on her desk. While leaving the said place, he threatened Respondent No.2 by saying 'I will fix you, bitch', abused her and left the said place. At that relevant time, four to five of her colleagues working in the office were present there. Amongst them, Mr. Tanveer Khan and Mr. Nirmal Paul were present there. They had witnessed this entire incident.

After the said incident of 20th May, 2016, the Respondent No.2 complained against the Petitioner with her company team through an email on 30th May, 2016 about the same. However, the company did not take any action against the Petitioner. The Respondent No.2 therefore told to her father about the said incident and thereafter her father also complained to her company team by an email dated 11th August, 2016. Even after the said complaint of her father, her company did not take any action against the Petitioner and therefore she went to police station and lodged present crime. In this brief premise present crime is registered by the Respondent No.2.

5) Learned counsel for the Petitioner submitted that, the allegations made by the Respondent No.2 in the present crime are fiction of her own imagination. That, the FIR is full of improvements by the Respondent No.2 from her original Complaint dated 30th May, 2016 lodged with the company vide email for mental harassment case and grievance.

He submitted that, in the said Complaint dated 30th May, 2016 for an alleged incident of 20th May, 2016 it is stated that, the Petitioner came to her work desk and tore her nameplate with an annoyed look and thrashed it in the dustbin in presence of her colleagues, hurting her self respect, dignity and ethical sentiments. That, the said version was further improved by her father in his email dated 11th August, 2016. However, in both the said Complaints, the alleged sexual remarks made by the Petitioner are absent. He submitted that, on the basis of Complaint dated 30 th May, 2016 lodged by the Respondent No.2

with the company, it had referred the said case to the Internal Complaint's Committee ('ICC') as constituted under Section 4 of the Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, 'the POSH Act') and the said committee, after conducting detailed inquiry has exonerated the Petitioner from the allegations leveled by the Respondent No.2. He submitted that, various High Courts in India have held that, where the facts giving rise to the criminal complaint have already been investigated by the ICC constituted under the provisions of the POSH Act and have resulted into exoneration of the accused person on merits then a FIR arising out of the same facts cannot be sustained. In support of this contention, he relied on the decisions in the cases of (i) Ashish Chauhan V/s. State (Govt. of NCT of Delhi) & Ors. reported in MANU/DE/0549/2023, (ii) L. Sunil Kumar & Ors. V/s. State of Karnataka & Ors. reported in MANU/KA/5130/2018, (iii) B. Narasimhan V/s. State & Ors. reported in MANU/TN/6183/2022 and (iv) Radheshyam Kejriwal V/s. State of West Bengal & Anr. reported in (2011) 3 SCC 581.

He submitted that, the present crime is lodged with inordinate delay of 90 days and in view of the law enunciated by the Hon'ble Supreme Court in the case of Thulia Kali V/s. The State of Tamil Nadu reported in (1972) 3 SCC 393, the concocted story as a result of deliberation and consultation cannot be ruled out. He submitted that, in view of the fact that the company had constituted the ICC under the POSH Act and improvements made by the Respondent No.2 while lodging FIR, the Clause Nos. 6 and 7 of guidelines enumerated by the Hon'ble Supreme Court in the case of State of Haryana & Ors. V/s. Bhajan Lal & Ors. reported in 1992 Supp (1) SCC 335, are squarely applicable to the present case. He therefore prayed that, the crime in question may be quashed by allowing the Petition.

6) Per contra, learned Advocate for the Respondent No.2 submitted that, whatever has been stated in the first information report by the Respondent No.2 is true and correct narration of the facts of the incident, occurred on 20th May, 2016. She drew our attention to paragraph No.12 of the reply of the Respondent No.2 and contended that, initially the Respondent No.2 was very perplexed and was unable to decide as to what to do, as the Petitioner herein is holding a very powerful and influential position in the company and complaining against him would not only endanger her present as well as future career. That, ultimately after thinking a lot, she gathered courage to file complaint on 30th May, 2016 by email with the company which was then forwarded to the ICC. Therefore there is delay in lodging the crime. She on instructions submitted that, there are no improvements in her first information report.

Learned Advocate for the Respondent No.2 however fairly conceded to the fact that, the Respondent No.2 had earlier lodged a complaint with Boriwali Police Station with similar allegations as in the present crime and the Boriwali Police Station had informed her by its communication dated 18th July, 2016 that, perusal of her complaint reveals a civil dispute and it requested her to approach

Civil Court. She submitted that, the Respondent No.2 has annexed the said communication at page No.162 of her Affidavit dated 8th June 2023. She therefore prayed that, present Petition may be dismissed.

7) Record reveals that, even as per the present FIR, the alleged incident of sexual harassment/remarks occurred on 20th May, 2016 between 2.30 p.m. to 3.00 p.m. in presence of two named and other unnamed colleagues of Respondent No.2. The Respondent No.2 thereafter addressed a detailed email to the Senior Officials of Max Life Insurance Company on 30th May, 2016, complaining about alleged incident and harassment by Petitioner and other two officials.

As far as the Petitioner is concerned in her initial complaint dated 30th May, 2016, she has stated that, on 20th May, 2016 at Nahur office, the Petitioner came to her work desk and tore her nameplate with an annoyed look and thrashed it in the dustbin in presence of her colleagues hurting her self respect, dignity and ethical sentiments. It is to be noted here that, the Respondent No.2 did not make any allegation of passing sexual remarks by the Petitioner against her in the said first complaint.

7.1) On the basis of her email dated 30th May, 2023, the ICC was constituted for investigating/inquiry of 23 issues raised by the Respondent No.2 as part of her allegations as per her email. It appears from the record that, the Max Life Insurance Company sought clarification from the Petitioner and other officials while conducting inquiry into the email/complaint dated 30th May, 2016 of the Respondent No.2.

7.2) The Respondent No.2 thereafter approached Boriwali Police Station, Mumbai with a complaint dated 18th July, 2016 with similar allegations as have been mentioned in the present FIR. The Boriwali Police Station, Mumbai after conducting preliminary inquiry, by its communication dated 18th July, 2016 informed the Respondent No.2 that, perusal of her complaint reveals a civil dispute and she was directed to approach Civil Court for redressal of her grievance. The said communication issued by Boriwali Police Station to the Respondent No.2 is at page No.162.

7.3) On 27th July, 2016, the Internal Complaint's Committee Report was forwarded to/shared with the Respondent No.2 by the Max Life Insurance Company.

7.4) Petitioner thereafter lodged one non-cognizable offence bearing No.3311 of 2016 on 8th August, 2016 with Bhandup Police Station for alleged incident of 6th August, 2016. The said N.C. Report is at page No.163. The Respondent No.2 had lodged N.C. Report against three persons from her Company including the Petitioner alleging that, they threatened her to leave job otherwise to face consequences for the same. Perusal of the said N.C. Report indicates that, the name of the Petitioner was hexed out from the said N.C. Report.

7.5) The Respondent No.2's father subsequently made another Complaint dated 11th August, 2016 through email with the officials of the Company mentioning that, on 20th May, 2016 the Petitioner rubbed shoulders and pushed her, which made his daughter to leave the office immediately. In the said email, it is also stated that, the Respondent No.2 had filed police complaints with Boriwali and Nahur Police Station, Mumbai.

On 11th August, 2016, the Respondent No.2 affirmed that, her father had sent an email/complaint to the officials of her company.

7.6) The company thereafter again constituted an Internal Complaint's Committee for investigating the allegations dated 11th August, 2016 made by father of the Respondent No.2.

The said Committee recorded statement of Respondent No.2 on 22nd August, 2016. In her statement she has stated that the allegation made by her father in his Complaint was not included in her original Complaint and she requested the company to exclude the said allegation from her Complaint. In her statement dated 22nd August, 2016 for the first time, the Respondent No.2 stated before the company that, the Petitioner made sexually infused comments against her.

7.7) The Max Life Insurance Company after conducting detailed investigation into the Complaint made by the father of the Respondent No.2 as contemplated under the provisions of POSH Act, exonerated the Petitioner from the allegations. The said report is annexed at page Nos.101 to 107 to the Petition.

7.8) In these aforementioned admitted facts on record, the Respondent No.2 has lodged present crime with Bhandup Police Station on 24th August, 2016.

8) During the course of investigation of the present crime, police have recorded statements of Mr. Tanveer Khan and Mr. Nirmal Paul i.e. the witnesses referred to by the Respondent No.2 in her FIR. These two witnesses have not supported the version of the informant as far as her allegations of sexual comments made by the Petitioner against her on 20th May, 2016.

9) In her FIR, the Respondent No.2 has stated that, though she had lodged her complaint with the Company, the Company did not take any cognizance of it, is not only contrary to the record and facts as mentioned herein above but also a thoroughly incorrect rather false statement made by her. Respondent No.2 has suppressed the fact that, the Max Life Insurance Company had taken cognizance of the complaints lodged by her on 30 th May, 2016 and her father on 11th inquiry into it. She also did not August, 2016 and the ICC had conducted disclose the fact of her lodging of earlier complaint with Boriwali Police Station on 18th July, 2016.

10) There is delay of about three months in lodging the present crime.

The Hon'ble Supreme Court in the case of Thulia Kali V/s. The State of Tamil Nadu (Supra) has held as under:-

"12First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained."

11) Perusal of record clearly indicates that, the FIR lodged by the Respondent No.2 is filled with improvements and suppression of material facts which are on record, as noted above and according to us is lodged with mala fide intention, only to harass the Petitioner.

The Hon'ble Supreme Court in the case of State of Haryana & Ors. V/s. Bhajan Lal & Ors. (Supra) has enumerated categories of cases by way of illustration, while exercising extra-ordinary power under Article 226 of Constitution of India or the inherent powers of Section 482 of the Cr.P.C. for quashing and in paragraph No.102 thereof has held as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 under Section 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 the 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 under Section 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.

12) After applying category Nos.6 and 7 of the principles enumerated by the Hon'ble Supreme Court in the case of State of Haryana & Ors. V/s. Bhajan Lal (Supra), to the present case, we are of the considered view that, the continuation of further investigation in the FIR lodged by the Respondent No.2 would be sheer abuse of process of law and needs to be quashed in the interest of justice.

13) Petition is accordingly allowed in terms of prayer clause (b) and Rule is made absolute.