

2024:BHC-GOA:1465

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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 6 OF 2021

STATE THR. CANACONA
POLICE STATION, CANACONA ... APPLICANT

Versus

GULSHER AHMED ... RESPONDENT

Mr. S.G. Bhobe, Public Prosecutor for the Applicant.

Mr. Kautuk Raikar with Mr. Digaj Bene, Advocates for
the Respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 3rd SEPTEMBER 2024

ORAL ORDER:

1. Heard learned Public Prosecutor Mr. Bhobe for the State and Mr. Raikar for the Respondent.

2. The present Revision is filed challenging the order dated 03.03.2021 passed by the Additional Sessions Judge, Margao, thereby discharging the Respondent/Accused for the offence punishable under Sections 376 and 506 (ii) of the IPC.

3. Mr. Bhobe would submit that inspite of specific statements recorded in the complaint and thereafter in the

statement recorded under Section 164 of Cr.P.C, the learned Sessions Court evaluated such statements as if the Victim/ Complainant has deposed in the Court and disbelieved her on the basis of the statements of other witnesses on the ground that it appears to be a consensual relationship.

4. Mr. Bhobe submits that the learned Sessions Court while passing the impugned order has lost sight that the matter was to find out whether there is *prima facie* material to frame a charge against the Accused. He submits that the reasoning in the impugned order would go to show that at this stage, the statements of the Victim are completely disbelieved, which is not permissible. He submits that even if there is no positive medical examination report, the statements of the Victim carry substantial value and the conduct of the Victim in lodging the complaint immediately, would show that such overt act alleged against the Accused was without any consent.

5. Mr. Raikar would submit that the impugned order needs no interference as the Victim cannot be believed in view of her conduct and the surrounding circumstances. He submits that the Victim voluntarily accompanied the

Accused to book the room at the said hotel and thereafter, went inside. He submits that the Victim has suppressed the fact that first they verified the room, made the payment and then had lunch before entering the room. He submits that the medical examination report is clearly against the contentions raised by the Complainant as there is no observation that there was a recent sexual intercourse.

6. Mr. Bhohe now points out that there is a report received from the Forensic Department in respect of serological examination, which shows that semen was detected on the clothes of the Victim.

7. Admittedly, this report was not placed before the learned Sessions Court at the time of passing of the impugned order.

8. The question before the learned Sessions Court was only with regard to framing of charge against the Accused. However, the tenor of the order passed while discharging the Accused would clearly go to show that the entire burden is put on the Complainant and she has been disbelieved only because she accompanied the Accused and went inside the

room. Such observations of the learned Trial Court and that too at the stage of framing of charge are clearly beyond the scope of the provisions under which the Sessions Court is required to consider the material so as to frame the charge against the Accused.

9. Chapter XVIII of Cr.P.C. deals with a trial before the Sessions Court and the relevant provisions are Sections 227 and 228, which are material for the Court to consider, after receiving of the chargesheet and on the appearance of the Accused, as to whether there is material to frame charge against the Accused or not. The wording under Section 228 simply says that if a Court comes to a conclusion that there is a ground for presuming that the Accused has committed such an offence, the charge could be framed.

10. It is well settled that at the stage of framing the charge, the Court has to shift and weigh the material only for the purpose of forming an opinion as to whether there is any material to frame the charge. While doing so, the Court has to peruse the entire chargesheet along with the statements of the Victim and other witnesses as well as the documents corroborating the case of the prosecution. Once the Court

comes to a conclusion that there is grave suspicion, the charge is required to be framed.

11. The matter in hand would clearly go to show that the complaint is lodged by the Victim immediately after the incident. The record shows that the Victim after coming out of the room, immediately called the Police. On arrival of the Police at the said hotel, the Complainant was taken to the Police Station and the complaint was lodged. The Victim in clear words disclosed that the Accused took her to a hotel under the pretext of having a meeting with an Agent, who was supposed to provide her job abroad.

12. It is no doubt true that there is material to show that the Accused and the Complainant were instrumental in booking the room, however, that would not be considered as consent given by the Victim for the purpose of sexual intercourse.

13. The Complainant in her statement disclosed that the Accused after closing the room threatened her to kill and thereafter, had sexual intercourse without her consent. She stated that once the Accused went inside the bathroom, she

immediately came out of the room and went running towards the ground floor and then called the Police by dialing the number 100.

14. The record shows that the Accused was arrested on the same day whereas the panchanama of the scene of offence was conducted on the next date i.e. on 03.03.2020. During the said panchanama, the room was inspected and no incriminating articles were found and attached.

15. The Victim was subjected to medical examination on the date of the complaint but during night time and the report is placed on record. The opinion of the Doctor says that the examination report is reserved pending reports of serological/biological examination. Thus, it cannot be said that the report is not supporting the case of the prosecution.

16. Though the witness at the hotel disclosed that the Accused along with the Complainant went inside the room, there is a statement of one hotel staff which clearly shows that he saw the girl [Victim] coming down crying and went directly outside the hotel and was calling someone. This statement fully corroborates with the contents of the

complaint as well as her statement recorded under Section 164 of Cr.P.C.

17. The learned Additional Sessions Judge clearly committed an error by observing that since the Victim went inside the room, she consented to sexual intercourse. Drawing such an inference is clearly against the settled proposition and specifically when the complaint was lodged immediately after the incident. Even if it is accepted that the Victim went inside the room along with the Accused, the same cannot by any stretch of imagination be considered as her consent for sexual intercourse. The learned Additional Sessions Judge has clearly mixed two aspects i.e. going inside with the Accused in a room without any protest and secondly, giving consent for what happened in the room. The action on the part of the Complainant immediately after coming out of the room and that too crying, calling the Police and lodging a complaint on that day itself show that the overt act allegedly carried out in the room by the Accused was not consensual.

18. The statement given by the Complainant as well as recorded under Section 164 of Cr.P.C., cannot be disbelieved

in a manner which the learned Additional Sessions Court did and that too while passing an order for discharging the Accused. The only job is to find out whether there is strong suspicion. If it is found that there is material to frame a charge, it is the bounden duty of the Court to frame the charge and put the Accused to trial. The report from the forensic laboratory was subsequently received which confirmed the presence of semen on the clothes of the Victim.

19. It is a settled proposition of law that in case of rape under Section 376 of IPC, full penetration is not at all necessary. The learned Trial Court has completely lost sight of the above settled proposition and arrived at a finding which is perverse to the record. The impugned order is therefore quashed and set aside. There is sufficient material to frame a charge against the Accused/ Respondent herein for the offence punishable under Sections 376 and 506(ii) of IPC. The Trial Court is therefore directed to frame charges against the Accused accordingly.

20. Parties shall appear before the Trial Court on 26.09.2024 at 10:00 a.m.

21. The Revision Application stands disposed of accordingly.

BHARAT P. DESHPANDE, J.