



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 1167 OF 2018

Lalchand Sirumal Bhojwani
Aged 73 years, Occu: Retired,
Add : A-703, Lake Castle, Cliff Avenue,
Hiranandani Gardens,
Mumbai 400 076.

.....Applicant

Vs.

1. The State of Maharashtra,
Through Senior Inspector,
Mulund West Police Station,
Mumbai.

2. Ms. XYZ

.....Respondents

Mr. Hitesh G. Ramchandani with Mr. G. J. Ramchandani, for the Applicant.
Mr. A. S. Shalgaonkar, APP for Respondent No. 1-State.
Mr. Ninand Muzumdar with Mr. Ameya Khot, i/b. Adv. Kenny V. Thakkar, for
Respondent No. 2.

CORAM: A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.

RESERVED ON: 26th JULY, 2024.

PRONOUNCED ON: 31st JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale, J.) :-

1) By the present Application under Section 482 of the Criminal Procedure Code, 1973 (“Cr.PC.”), the Applicant seeks quashing of First Information Report (“FIR”) No. 303/2018 dated 8th August 2018 registered originally with the Powai Police Station lodged by Respondent No. 2 (“Complainant”) against him, for the offenses punishable under Sections

376, 420 and 506 of the Indian Penal Code, 1860 (“**IPC**”) and subsequently transferred to Mulund Police Station, Mumbai for further investigation.

2) Vide Order dated 16th December 2022, notice was issued to Respondent No. 2 and the trial Court was directed to defer the criminal proceedings arising from the said FIR. Thereafter, the Application was admitted by an Order dated 28th March 2023.

3) Facts of the case:

3.1) It is the case of complainant that, after completing 12th Standard, she took up a job in the company of the Applicant. There were 10-12 other employees working in the company. In July 1987, on a holiday, the Applicant directed the complainant to come to office to prepare some bills for the purpose of audit. Since the Applicant was her employer, she came to office. While she was working, the Applicant came to her and hugged her and kissed her. She struggled to get away from him, but he forcibly established sexual relations with her on the wooden table. She tried to scream but he muffled her voice with a handkerchief. Then he threatened to defame her if she complained about this.

3.2) The complainant states that, she was very scared and hence she did not complain to anybody. Thereafter, during the period between July 1987 and 2017 the Applicant raped her by taking her to various hotels in Kalyan, Bhiwandi and other places. He promised to marry with her and told her that, she was his second wife and he would look after her. In

August 1993, he put a gold Mangalsutra in her neck and declared her to be his second wife. He also assured her that, he would give her the status of a wife.

3.3) It is the contention of the complainant that the Applicant did not permit her to be married to anybody else but threatened to defame her if she did so. In 1996, he suffered a heart attack. During that period, she looked after the company and managed the affairs. In September 2017, her mother suffered from cancer and she had to take leave of absence from her job. When she resumed service, she found the office closed and there was lock on the Company gate. She tried to contact the Applicant, but he was unreachable.

3.4) When her parents demanded to know as to why she had not gone to work, she revealed the entire relationship. Her father took her to the Applicant's house, where he admitted to the relationship but requested them not to inform his wife and family members regarding the same. He again promised to marry her after few days. It is the complainant's case that despite his assurances, he failed to marry her. When she demanded documents relating to Bank, Income Tax, an Agreement relating to a Medical Shop and her gold Mangalsutra, the Applicant refused to give the same to her. Thereafter, all her attempts to reach him were in vain and the Applicant refused to meet her.

3.5) The complainant, on 29th December 2017 went to the Applicant's house and revealed to his wife the relationship between them. However, the Applicant's wife did not take any action. Thus, the complainant states that, the Applicant has cheated her by establishing a sexual relationship with her on the assurance of marriage. He has thereby committed the alleged offenses and thus she filed the present FIR.

4) Mr. Hitesh Ramchandani, learned counsel, appears for the Applicant. Mr Ninand Muzumdar, learned counsel appears for the complainant and Mr A.S Shalgaonkar, learned APP, represents the State.

4.1) We have heard counsels for all the parties and perused the record with their assistance.

5) Mr. Ramchandani contends that, this is a clear case of a consensual relationship between the parties and there is no element of force in the same. He submitted that, every breach of promise to marry cannot be cheating or rape and even the statements given by the complainant to the police prima facie shows that, their relationship was consensual. The complainant has never made any grievance to the police for the last 31 years and on the basis of delay alone, the FIR deserved to be quashed. Mr Ramchandani submitted that, the complainant has continued the partnership with the Applicant in the medical shop located at Mulund till date. Thus he submitted that, the FIR is filed only because the relationship between the parties was soured. No cognizable offense as alleged is made

out and therefore the FIR deserves to be quashed.

6) Per Contra, Mr. Muzumdar led a spirited defense by saying that, the sexual abuse of the complainant started in 1987. He submitted that, this was a time that making a complaint of rape was a taboo and women facing such situations in those times were reluctant to reveal their plight. He drew our attention to the fact that, the complainant was merely 18 years of age when she first took up employment with the Applicant. It is his defense that, the complainant needed the employment and lacked courage to complain against the Applicant for fear of losing her job. He denied the contention of the Applicant regarding existence of a consensual relationship between the parties and argued that, every act of abuse narrated by the complainant was by force.

6.1) On delayed filing of FIR, Mr Muzumdar earnestly argued that, it was only in 2018 when the Company of the Applicant closed down; the threat and pressure on complainant ceased and hence the FIR is filed immediately when the threat ended. He placed reliance on the following decision of the Supreme Court and the Gauhati High Court:-

i. *State of Himachal Pradesh v. Sanjay Kumar*,¹

ii. *Suresh Garodia v State of Assam*²

7) Mr Shalgaonkar, strongly opposed the Application and supported the case of the complainant.

1 (2017) 2 SCC 51.

2 Criminal Petition No.825 of 2017 dated 22nd August 2022 (Gauhati High Court).

8) At the very outset, we are quite disturbed to note that, counsel for Respondent No/2 has sought to canvass his arguments by placing reliance on a decision of the Gauhati High Court, which has already been overturned by the Apex Court. We decry this practice of counsel placing reliance on decisions which have been overturned by the Apex Court, without verifying precedents that holds the field. Mr Muzumdar while countering the argument of Mr Ramchandani regarding delayed reporting of offense brazenly cited the Guwahati High Court Judgement in the case of *Suresh Garodia (supra)*, taking little or no pains to ascertain as to whether any Appeal was filed in the said case in the Apex Court. Although the said decision of the Single Judge of the Gauhati High Court has no binding effect on this Court, yet being judicial finding, we deemed it necessary to peruse the same. What we find that in fact, the Supreme Court in criminal Appeal no. 185 of 2024 in its Order dated 9th January 2024 in the case of *Suresh Garodia v State of Assam & Anr.*³ has overturned the decision of the Guwahati High Court and in clear terms observed as follows:

"15. We find that lodging a case after 34 years and that too on a bald statement that the prosecutrix was a minor at the time of commission of offense, could itself be a ground to quash the proceedings. No explanation whatsoever is given in the FIR as to why the prosecutrix was keeping silent for a long period of 34 years. The material on record shows that the relationship was consensual, inasmuch as

3 (2024) SCC OnLine SC 38.

the son who is born out of the said relationship has been treated by the Appellant as his son and all the facilities, including cash money, have been provided to him.

16. We find that the finding of the I.O that the case was filed only for the greed for the property of the Appellant herein cannot be said to be erroneous. We find that the continuation of the proceedings would lead to nothing else but an abuse of the process of law."

9) The facts of the present case are not quite distinct from the observations of the Supreme Court in similarly situated case. The contents of the FIR clearly indicate a consensual relationship. The parties were indulging in sexual relationship for as many as 31 years. The complainant has never breathed a word about her alleged objection to the relationship. The contents of the FIR are completely silent regarding any explanation for delayed FIR. It is only in the arguments that her counsel attempts to offer an explanation, *albeit* lame that it is.

10) The FIR itself indicates that, the complainant was aware that Applicant was married and despite this knowledge, she continued to believe his assurance regarding marriage. She is adult enough to know that the law forbids a second marriage and there is no allegation in the complaint that, the Applicant promised to divorce his first wife and then marry her. Even otherwise, this would purely be wishful thinking on the part of the complainant that the Applicant will marry her after divorcing his existing wife. In the past 31 years, there were many opportunities for the

complainant to break away and lodge a complaint against the Applicant. For example, in 1996 itself when the Applicant suffered a heart attack, there was no reason for the complainant to look after the affairs of the company in the Applicant's absence and she could have easily sought assistance of the Police. The element of alleged force ceased and complainant had opportunity to file a compliant. However, she chose not to and that itself supports the defense of the Applicant that the relationship was completely consensual. In the past 31 years, she has willingly and knowingly participated in the relationship with the Applicant. Regarding the contention that, she gave in to the sexual abuse to keep her job cannot be believed since in the past so many years, it was possible for her to seek other employment opportunities. Thus, it is clear that, only when the Company shut down and the Applicant refused to hand over documents relating to purchase of medical shop etc. that the complainant has approached the police. This is a classic case of relationship between the parties turning sour and thereafter the complainant lodging a police complaint.

11) The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail

by the Supreme Court in the case of *State of Haryana v. Bhajan Lal*.⁴ A note of caution was, however, added that, the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by the Supreme Court are as follows:

“(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)

(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)

(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) Having regard to the above and in the overall conspectus of the case, we are of the view that, the physical relationship between the complainant and the Applicant cannot be said to be against her will and without her consent. On the basis of the available material, no case of rape

⁴ 1992 Supp. (1) SCC 335.

or of cheating is made out. We find that, the present case clearly falls under category 1, 5 and 7 of the category of cases culled out by the Supreme Court in its decision in the *Bhajan Lal (supra)* case.

13) Therefore, FIR No.303 of 2018 dated 8th August 2018 registered originally with the Powai Police Station and subsequently transferred to the Mulund Police Station is quashed.

14) Rule is accordingly made absolute.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)