IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 30 OF 2020

APPLICANT

VERSUS

NON-APPLICANTS: 1] State of Maharashtra,
through its Police Station Officer,
Police Station, Bramhapuri,
Tah. Bramhapuri, Dist. Gadchiroli.

Mr. V. S. Lokhande, Advocate for the applicant.
Mr. A. R. Chutke, A. P. P. for Non-applicant No.1/State.
Mr. Yuvraj Humne, Advocate for Non-applicant No.2.

CORAM : G. A. SANAP, J.
Date of Reserving the Judgment : January 19, 2023.
Date of Pronouncement of Judgment: March 16, 2023.

JUDGMENT

01] Heard Mr. V.S. Lokhande, learned advocate for the

applicant, Mr. Amit R. Chutke, learned Additional Public Prosecutor for the non-applicant No.1/State and Mr. Yuvraj Humne, learned advocate for the non-applicant No.2. Perused the record and proceedings.

02] ADMIT. Taken up for final disposal by consent of the learned advocates for the parties.

03] In this revision application, challenge is to the order dated 04.04.2019 passed below Exh.10 in Regular Criminal Case No. 29/2017 by the learned Judicial Magistrate, First Class, Bramhapuri, whereby the learned Magistrate was pleased to discharge non-applicant no.2 for the offences punishable under Sections 354-A (1) & (2) of IPC.

04] Facts leading to this case can be summarized as follows :-

The applicant is the informant. Non-applicant No.2 is the accused in Regular Criminal Case No. 29/2017. The applicant/ informant on 25.04.2017 lodged a report against non-applicant No.2/accused and made serious allegations against him. The informant and the accused at the relevant time were working as

Assistant Teachers in Zilla Parishad Primary School No.4 at Bramhapuri. As far as the incident dated 16.08.2011 is concerned, it is stated that on 16.08.2011, the accused was working as an in-charge Principal of the said school. He had called the informant in his chamber under the pretext of writing some documents. When she started writing the document, accused from behind placed his hand on her shoulder and dragged the same upto her waist. He was terribly frightened. When she tried to get up, the accused requested her to satisfy his sexual lust. She left the said chamber, however, the accused pulled her saree. It is stated that thereafter on number of occasions, the accused behaved with her in indecent manner by touching her shoulder and her body.

05] It is stated that again on 04.08.2015 at about 1.00 p.m. she had gone to urinal. When she was about to close the door of the urinal, she saw that the accused was hiding in the urinal. The informant got scared and came out of the urinal. For the whole day she was crying in the school. In the evening, she narrated this incident to her husband. It is stated that since the children were grown up and well educated and in order to avoid defamation in the society, they did

not lodge the report. The torture and indecent behaviour of the accused was such that she had tried to commit suicide by pouring kerosene on her body. However, her husband and other neighbours saved her.

06] It is further stated that when the torture and harassment became unbearable, on 29.03.2016, she made a complaint to the Education Officer (Primary) and the Chief Executive Officer of Zilla Parishad, Chandrapur. The Chief Executive Officer referred the matter to the Women Grievance Redressal Committee, Chandrapur. The Committee submitted its report on 20.03.2017 and observed that the accused had indulged in a serious offence.

07] The informant therefore, on 25.04.2017, lodged a report at Police Station, Bramhapuri. On the basis of this report, a crime bearing No. 371/2017 for the offence punishable under Section 354-A(1)&(2) of the Indian Penal Code came to be registered.

08] The Investigating Officer conducted necessary investigation. He recorded the statements of the witnesses. Similarly, the supplementary statement of the informant was recorded. In the

said statement recorded on 26.04.2017, the informant has stated that the second incident had occurred on 05.08.2015 and not on 04.08.2015. On completion of the investigation, charge-sheet was filed against the accused in the Court of Judicial Magistrate, First Class, Bramhapuri.

09] The accused made an application under Section 239 of the Code of Criminal Procedure for his discharge. The prosecution opposed this application. In the application, the accused has stated that the case filed against him was false and frivolous. There was inordinate delay in lodging the first information report. There was no explanation for the delay. Similarly, in the enquiry conducted by the Block Education Officer, Bramhapuri it is found that there was no substance in the allegations. The learned Magistrate after considering the material on record found that the material on record was not sufficient to frame the Charge. No case was made out on the basis of the material to presume that the accused has committed the offence. Learned Magistrate accordingly discharged the applicant.

10] The State has not challenged the order of discharge. The applicant/informant has challenged the order in this revision.

11] I have heard the learned advocates for the parties. Perused the record and proceedings.

12] Learned advocate for the informant submitted that the order passed by the learned Magistrate is not in accordance with law. Learned advocate submitted that while deciding the discharge application, the appreciation of evidence and meticulous examination of the statement of the witnesses is not permissible. Learned advocate further submitted that the learned Magistrate has taken into consideration the point of delay in lodging the FIR, to discharge the accused. Learned advocate submitted that the delay in lodging the FIR by itself is not fatal to the case of prosecution. The delay in lodging the FIR can be explained and the finding on that issue is subject to the appreciation of the evidence led by the prosecution. Learned advocate further submitted that the statement of the informant on the point of molesting her modesty by the accused is a sterling piece of evidence, to frame the charge against the accused.

13] Learned advocate for the informant took me through the order passed by the learned Magistrate and submitted that the learned

Magistrate on appreciation of material or touching the merits of the matter, has recorded a finding of fact. Learned advocate submitted that it is not permissible at the stage of framing of the charge or while deciding the discharge application. Learned advocate, therefore, submitted that the accused, who is otherwise required to face prosecution on the basis of the serious allegations, has been granted a clean chit by the learned Magistrate at a preliminary stage. Learned advocate, therefore, submitted that the order is required to be quashed and set aside.

14] As against this, learned advocate for the accused submitted that apart from the delay in lodging the report, the facts stated in the report are unbelievable. Learned advocate submitted that the two incidents dated 16.08.2011 and 04.08.2015 have been made the basis of the registration of the FIR against the accused. Learned advocate submitted that the report was lodged on 25.04.2017. Learned advocate submitted that the facts stated in the report create a suspicion about the truthfulness of the said report. Learned advocate submitted that there is ample material on record to show that on account of cantankerous nature of the informant, the other teachers working in

the school had submitted a representation for their transfer elsewhere. Learned advocate submitted that the enquiry was conducted by the Education Officer, Zilla Parishad, Chandrapur. The Education Officer found the substance in the allegations made in the representation.

15] The learned advocate further submitted that before lodging the FIR, the informant had made a complaint to the Education Officer (Primary), Zilla Parishand, Chandrapur. The enquiry was conducted by the Block Education Officer, Brahmapuri. The Block Education Officer, Brahmapuri had submitted a report to the Education Officer (Primary) Zilla Parishad, Chandrapur. Learned advocate submitted that in the said report, the Block Education Officer, Brahmapuri has categorically stated that the allegations made by the informant in the said complaint were baseless. Learned advocate submitted that the delay in lodging the FIR cannot be completely brushed aside, while assessing the material on record. Learned advocate submitted that in the teeth of material on record, the delay in this case assumes greater significance. Learned advocate submitted that, therefore, the learned Magistrate was right in taking all the facts available on record into consideration while deciding the discharge

application.

16] In order to substantiate his submission, the learned advocate has relied upon the following decisions:

1. *Krishna Lal Chawla & Ors. Vs. State of U.P. & Anr. [2021 AIR (SC) 1381].*
2. *Union of India Vs. Prafulla Kumar Samal and Another [1979 Cr.LJ. 154].*
3. *State of Maharashtra Vs. Priya Sharan Maharaj [1997(4) SCC 393].*
4. *Satish Mehra Vs. Delhi Administration [1996(9) SCC 766].*

17] I have gone through the record and proceedings and the judgments relied upon by the learned advocate for the accused. It is apparent on the face of the record that there was inordinate delay in lodging the report. The question is whether the accused can be discharged solely on the ground of inordinate delay in lodging the FIR. In my view, this question needs to be answered on the basis of the material available on record. As a general rule, the delay in lodging the FIR or even for that matter, inordinate delay in lodging the FIR cannot

be made the basis of discharge. It is a settled position in law that the accused cannot be given benefit of doubt and acquitted on the ground of delay alone. It is settled position that delay in lodging the FIR is not always fatal to the case of prosecution. The Court has to see the reason or explanation, if any, provided in the FIR for lodging the delay. The question in such cases is whether there is explanation for delay in lodging of the FIR and whether the said explanation is sufficient to accept the case of prosecution.

18] In this case, according to the informant, the accused had an evil eye on her. In a report, she has categorically stated that the first incident occurred on 16.08.2011. In the report, in detail, she has narrated the said incident. It is her contention that on 16.08.2011, the accused touched her body and dragged his hand towards her waist in his chamber and thereby outraged her modesty. It is her specific allegation that the accused asked her to satisfy his sexual lust. It is her case that she was humiliated and subjected to molestation on numerous occasions thereafter. The second incident according to her, occurred on 04.08.2015. It is stated that on 04.08.2015, when she went to urinal, on opening the door of the urinal, she found that the

accused was hiding in the urinal for her.

19] The informant reported the matter to the police on 25.04.2017. In the said report, as far as the second incident is concerned, the date mentioned was 04.08.2015. However, in her statement recorded on the very next day i.e. on 26.04.2017, she has stated that the second incident occurred on 05.08.2015 at about 1:00 p.m. In her statement, she has stated that she was not in proper state of mind at the time of lodging the report and therefore, hurriedly, she has stated the date of the second incident as 04.08.2015. In the report, she has further stated that she is disabled person. In the report, the reason for delay in lodging the report has been stated. She has stated that earlier she did not lodge the report because she thought of so many things. Her children were grown up and educated. She further stated that in order to avoid defamation and humiliation in the society, she did not go to the police and lodge the report. In her report, she has stated that when all this become unbearable, she poured kerosene on her person and tried to set herself on fire. She has stated that she was saved by her husband and the neighbours.

20] In the report, it was stated that thereafter when this torture

became unbearable, she made a complaint to the Education Officer (Primary) Zilla Parishad, Chandrapur and the Chief Executive Officer, Zilla Parishad, Chandrapur. It is to be noted that this complaint was referred by the Chief Executive Officer to Women Grievance Redressal Committee, Chandrapur. The committee had submitted the final report and opined that the accused was involved in the serious crime.

21] It needs to be stated that all these facts have been stated in the charge-sheet. All these facts are required to be taken into consideration. It is to be noted that the ground of delay cannot be made the basis of discharge. The Court has to appreciate the material on record and come to a conclusion whether the delay is otherwise fatal to the case of prosecution in all respect. Therefore, in my view, the learned Magistrate was not right in making delay a primary ground to discharge the accused.

22] At this stage, it is necessary to make a useful reference to the judgments of the Hon'ble Apex Court where the law on the point of the nature of the enquiry to be made at the stage of discharge while deciding the discharge application and the considerations while

considering the discharge application or at the stage of framing of charge, is required to be made.

23] The decisions are in the cases of ***Tarun Jit Tejpal .vs. State of Goa and another***, reported at ***(2020) 17 SCC 556 ; Niranjan Singh Karam Singh Punjabi, Advocate .vs. Jitendra Bhimraj Bijjaya and others***, reported at ***(1990) 4 SCC 76*** ; and S***ajjan Kumar .vs. Central Bureau of Investigation***, reported at ***(2010) 9 SCC 368***, wherein it has been held that appreciation of evidence at the time of framing of the charge or while considering discharge application, is not permissible. The Court is not permitted to analyse all the material touching the *pros* and *cons*, reliability and acceptability of the evidence. In *Tarun Jit Tejpal's* case (*supra*), it is held that at the time of consideration of the application for discharge, the Court cannot act as a mouth piece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is held that at the stage of consideration of application for discharge, the Court has to proceed with an assumption that the materials brought on record by prosecution are true and evaluate the said materials and documents with a view to find

out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offences. At this stage, the Court is not expected to go deep into the matter and hold that materials would not warrant a conviction. It is held that what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting accused has been made out. It is further held that the law does not permit a mini trial at the stage of deciding the discharge application or at the time of framing of charge.

24] It is, therefore, necessary to see whether the material on record is sufficient to proceed against the accused for framing the charge and adjudication of the matter after recording the evidence. It is to be noted that in the report, the specific allegations have been made against the accused. The informant in her report has narrated the serious acts and misdeeds committed by the accused. It is seen that other teachers from the said school have not supported the informant. The question is whether their statements can be made a basis to discharge the accused. The informant in her report has categorically stated the acts and misdeeds of the accused. In such cases, the

reputation of the family and the reputation and character of woman is at stake. It is to be noted that in such cases one has to be mindful of the fact that the character and reputation of a woman in our society is preserved and protected like invaluable jewel. The women in our society as well as the near and dear are, therefore, reluctant to come out in open against such a crime, which has a tendency and propensity to cause a direct dent to the character and reputation. In our conservative society, therefore, as far as possible, an attempt is made to veil such incident.

25] The informant is the Assistant Teacher. There was no reason for her to malign her image and reputation in the society. She has narrated the same in her report. It is further pertinent to note that the learned Magistrate has branded her report as a false report. In my view, at the stage of discharge, it is not permissible. It is trite law that the evidence of sole witness of a sterling quality can be made the basis of conviction. It is to be noted that when the sterling evidence of one witness can be made a basis of conviction, then why such a statement cannot be the basis for framing the charge. At the stage of the framing of the charge, the Court is not supposed to conduct a mini trial. The

Court is not supposed to touch upon the pros and cons of the case of prosecution and the evidence of the prosecution at the stage of framing of the charge or at the stage of deciding the discharge application. The Court has to look into and consider the material to record a satisfaction that the same is sufficient to presume that the accused has committed the offence.

26] It needs to be stated that, as per the law, the accused can be discharged by the Court, if the Court considers the charge against the accused to be groundless. Whether the charge is groundless or not has to be decided on the basis of the material on record. If the material on record is sufficient to form an opinion that there is ground for presuming that the accused has committed an offence, the charge has to be framed. In my view, if the material on record is examined in juxtaposition with this settled position, it becomes clear that the approach of the learned Magistrate was not in accordance with law. The learned Magistrate while deciding the discharge application has made a roving enquiry and appreciated the material on merits. It is not permissible.

27] It is further seen on perusal of the order that the defence set up by the accused in his discharge application, has also been made a ground to allow the discharge application. It is settled legal position that at the stage of framing of charge or discharge application, the defence of the accused cannot be given any weightage. The Court has to consider the material placed on record by the prosecution. In this case, the learned Magistrate has taken into consideration the documentary evidence relied upon by the accused, to substantiate his defence. In my view, this is not permissible at the stage of framing of charge or while deciding the discharge application.

28] In this background, it would be necessary to consider the applicability of the decisions relied upon by the learned advocate for the accused.

29] In the case of ***Krishna Lal Chawla*** (supra), it is held that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud, even before they reach the stage of trial by discharging the accused in fit cases.

30] In the case of ***Union of India*** (supra), it is held that where the evidence discloses grave suspicion or if two views are equally possible, the Court may be justified in discharging the accused.

31] In the case of ***State of Maharashtra Vs. Priya Sharan Maharaj*** (supra), it is held that at the stage of framing of charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

32] In the case of ***Satish Mehra*** (supra), it is held that the Sessions Judge can discharge the accused without trial if he is fairly certain that there is no prospect of case ending in conviction and time of Court will be wasted in holding the trial.

33] In my view, the proposition of law laid down in the judgments cited (supra) instead of supporting the submissions advanced by the learned advocate for the accused, leans in favour of the case of the prosecution. The proposition of law laid down in the

judgments cited by the learned advocate for the accused is not, therefore, applicable to the case of the accused. The material on record in my view is sufficient to frame the charge against the accused. The case in question is not a case for discharge. The learned Magistrate ought to have given due weightage to the facts stated by the informant in her report. It is seen that the delay in lodging the report by and large weighed with the learned Magistrate, to record a finding against the prosecution and in support of the accused.

34] In my view, therefore, the decision rendered by the learned Magistrate if examined on the touchstone of the law and in the teeth of the facts, does not stand the scrutiny on both the counts. Therefore, in my view, the order passed by the learned Magistrate deserves to be set aside.

35] The application is, therefore, **allowed**. The order passed by the learned Magistrate dated 04.04.2019 discharging the accused, is set aside. The application at Exh. 10 is dismissed. The Regular Criminal Case No.29/2017 shall stand restored to file of the learned Judicial Magistrate First Class, Brahmapuri. The learned Magistrate shall proceed further to frame the charge and dispose of the matter in

accordance with law.

36] Considering the nature of the matter and delay caused in this process, the learned Magistrate is requested to dispose of the matter within four months from the date of receipt of the writ.

37] The application is disposed of in above terms.

(G. A. SANAP, J.)

Vijay