IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2626 OF 2022

Smt. ABC .....Petitioner

Vs.

The Senior Inspector of Police & Ors. .....Respondents

Mr. Vikrant V. Phatate for the Petitioner.
Ms. M.H. Mhatre APP, for the Respondent-State.
Mr. Vishnu Gaikwad, API, Fauzdar Chavdi Police Station, Solapur present.

CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.
DATE : 16th DECEMBER, 2022.

P.C.:-

1) The Petitioner, a victim in an offence under Sections 376, 376(2) (N), 376(D), 504 and 506 of the Indian Penal Code (for short, *'the IPC'*) bearing Crime No.847 of 2021 dated 9th December, 2021 registered with Fauzdar Chavdi Police Station, Solapur City, Solapur has invoked jurisdiction of this Court under Article 226 of the Constitution of India seeking transfer of investigation of the said crime.

The investigation of the said crime was conducted by Mr. Vishnu Gaikwad, API, attached to Fauzdar Chavdi Police Station, Solapur.

2) Perusal of first information report would itself clearly reveal that, the two named accused persons namely Ganesh Narale and Vishnu Bargande had committed the offence as contemplated under Sections 376, 376(2) (N), 376(D), 504 and 506 of the IPC against the victim. During the course of investigation, the Accused No.1-Ganesh Narale was arrested and subsequently released on bail.

3) Record discloses that, the Investigating Officer submitted a letter dated 12th January, 2022 to the Chief Judicial Magistrate, Solapur for recording the statement of the victim under Section 164 of the Code of Criminal Procedure (for short, *'the Cr.P.C.'*), which was accordingly recorded on 19th January, 2022 by the Judicial Magistrate, First Class (Court No.9), Solapur.

Perusal of statement of victim recorded under Section 164 of the Cr.P.C. would also indicate that, the accused persons have committed an offence under Section 376 of the IPC against the victim/prosecutrix. That, the victim was blackmailed by the Accused No.1- Ganesh to keep relations with him. It clearly appears to us that, at the time of recording of her statement under Section 164 of Cr.P.C. the victim was either put under pressure or threatened by the accused to give a diluted version, which will enable the accused to get exoneration from the charge of a serious offence. We have recorded such a finding on the basis of the pleadings before the Court and in the Petition.

4) Record further indicates that, the Investigating Officer during the course of investigation has reached to a finding that, the Accused No.2-Vishnu Bargande was not present at the alleged spot of incident on the date i.e. on 31st October, 2021 and his plea of alibi has been accepted by him by recording statements of friends of the said accused.

5) What is surprising to note is that, though the prosecutrix in her statement under Section 154 of the Cr.P.C. so also under Section 164 of the Cr.P.C. has categorically stated that, the accused persons have committed the crime as contemplated under Section 376 of the IPC against her, the Investigating Officer while submitting charge-sheet/final report under Section 173 of the Cr.P.C. has zealously ventured into dropping the said Sections namely 376, 376(2) (N), 376(D) of the IPC and has submitted charge-sheet by applying Sections 417, 504 and 506 of the IPC against Accused Ganesh Narale only.

6) During the course of arguments, we specifically put a query to the Investigating Officer that, as to who is the person with whom the act of cheating has been committed by the accused Ganesh, the Investigating Officer was unable to answer the same. If the application of Section 417 of the IPC to the crime is to be accepted, then the Investigating Officer must specify the person who has been cheated. If it is the victim who has been cheated, then why her statement recorded under Sections 154 and 164 of the Cr.P.C. before the J.M.F.C., Solapur alleging an offence under Section

376 has been disbelieved.

It clearly appears to us that, the Investigating Officer with a view to protect both the accused persons from the crime of higher degree has indulged into the said act. It further appears to us that, he is interested in protecting accused in such an offence of serious nature.

The facts as unfurled are not only astonishing but flabbergasting and shakes conscious of this Court.

7) In the circumstances, we hereby direct the Director General of Police, Maharashtra State (for short, *"D.G.P.M.S."*) to personally peruse the record of investigation and transfer the investigation of present crime to a Senior Officer of IPS Cadre to further investigate the present crime. The D.G.P.M.S. is also directed to instruct the concerned Officer not to relegate his powers further to any subordinate officer, taking into consideration the serious nature of the case.

8) The Investigating Officer so appointed shall also investigate the role of the present Investigating Officer namely Mr. Vishnu Gaikwad, API attached to Fauzdar Chavdi Police Station, Solapur in the investigation of entire crime and if necessary may take appropriate remedial measures in that behalf.

9) Apart from the transfer of Investigation and adopting remedial measures, D.G.P.M.S. is also requested to adopt appropriate remedial measures as contemplated under the Maharashtra Civil Services (Discipline

and Appeal) Rules, 1979, if warranted and necessary.

The D.G.P.M.S. is directed to submit his report to this Court on or before 16th January, 2023.

10) As per record the charge-sheet in the present crime has been submitted before the Judicial Magistrate First Class (Court No.3), Solapur. In that event, the J.M.F.C. (Court No.3), Solapur is directed not to take any further action/steps on the said charge-sheet/final report and the same be kept in abeyance until further Orders by this Court.

11) It is to be noted here that, we have come across at least three such cases in last three weeks wherein the statement of prosecutrix has been totally disbelieved in grave and serious offence under Section 376 of the I.P.C. by not following the law enunciated by the Hon'ble Supreme Court in its catena of decisions.

In this week itself, this is a second case we have come across, wherein Police did not adhere to basic principles of investigation.

12) In view of above, we direct the Registrar General, High Court Bombay to communicate this Order to the Hon'ble Home Minister, Government of Maharashtra, the Hon'ble Law Minister, Government of Maharashtra, the Hon'ble Chairperson, Maharashtra State Commission For Women by hand delivery for their information and record.

This be done within a period of two weeks from today.

13) At this stage the learned Advocate for the Petitioner expressed

serious apprehension to the life or limb of the victim, as she has gathered courage to raise voice against the police officer i.e. the investigating officer in present crime and the accused persons. In view thereof, the Commissioner of Police, Solapur is directed to provide round the clock protection to the victim at the cost of State i.e. free of cost till further Orders by this Court.

14) Stand over to 16th January, 2023.

(PRAKASH D. NAIK, J.) **(A.S. GADKARI, J.)**

SANJIV SHARNAPPA MASHALKAR
Digitally signed by SANJIV SHARNAPPA MASHALKAR
Date: 2022.12.21 10:23:55 +0530