REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1619 OF 2019
(Arising out of S.L.P.(Crl.)No.4294 of 2019)

Miss XYZ ...Appellant

Versus

State of Gujarat & Anr ...Respondents

J U D G M E N T

R.Subhash Reddy,J.

1. Leave granted.

2. This appeal is filed by the 2nd respondent in R/Special Criminal Application No.9897 of 2017 filed before the High Court of Gujarat, at Ahmedabad. By the impugned order, High Court has allowed R/Special Criminal Application by quashing FIR No. CR-I-60-2017 registered on the file of Mahila Police Station, Ahmedabad City, District Ahmedabad.

3. The appellant herein, is the informant in crime registered in FIR No.CR-I-60-2017 on the file of Mahila Police Station, Ahmedabad City. On her complaint the aforesaid crime is registered against the 2nd respondent for the alleged offence punishable under Sections 376, 499 and 506(2) of the Indian Penal Code, 1860.

4. The complaint was filed with the following averments:

She is a permanent resident of Jodhpur, Rajasthan State and had come to Ahmedabad in Gujarat City for employment and she met the 2nd respondent, who is the Managing Director of the G.S.P. Crop Science Pvt. Ltd. After conducting interview she was appointed as his Personal Assistant in the month of November, 2014. When the appellant was not well, the 2nd respondent started visiting her residence and when she was in sleep, the 2nd respondent has taken an inappropriate pictures of her. When she was attending the office, the 2nd respondent by showing her pictures, was blackmailing her. When she visited Odhav, Kathwada and Nandesari, Baroda on official work of the company, the 2nd respondent used to take advantage of the situation when the appellant was alone, and was blackmailing to make

viral her pictures and to terminate her employment. As the financial condition of the appellant was not stable, she did not disclose this to anyone. In December, 2014 the 2nd respondent took the appellant to Baroda for some work, by threatening to publish her nude pictures, committed rape on her. Even after coming back to Ahmedabad, the 2nd respondent again took her to Baroda on the pretext of some work and committed rape by similar threats in the hotel. The 2nd respondent was also visiting her rented premises at Ahmedabad and used to commit rape on her under the threat of termination of employment and publication of her pictures. The 2nd respondent rented an apartment at Adani Pratham in August, 2015. When the appellant was residing in the said apartment,the 2nd respondent used to come to the said apartment and was demanding sexual favours. As she was fed up with the exploitation by the 2nd respondent, she vacated the rental premises in June, 2016. In view of serious threat by the 2nd respondent to her life, she left for Jodhpur and her marriage was fixed with one Mr.Shoukin Malik who is the resident of Badi Sadri, Rajasthan in the month of December, 2016. The 2nd respondent having come to know about the marriage of the appellant with

Shoukin Malik, he contacted Mr.Shoukin Malik on telephone and informed him that the appellant is not of good character, she had physical relationship with him and with other boys. As Mr.Shoukin Malik refused to meet the 2nd respondent, the 2nd respondent sent a cover to the residence of Shoukin Malik containing her nude/inappropriate pictures.

5. In view of such allegations as referred above made in the complaint, a case is registered against the 2nd respondent for the alleged offence under Sections 376, 499 and 506(2) of IPC.

6. When the complaint is under investigation, the 2nd respondent has filed R/Special Criminal Application No.9897 of 2017 before the High Court of Gujarat seeking quashing of FIR itself and also further consequential steps taken pursuant to the registration of crime.

7. Primarily, it was the case of the 2nd respondent before the High Court that there was absolutely no truth in the allegation of rape as alleged by the appellant and it was only consensual sex between the parties. It is further alleged that in view of the allegations made by the appellant, a settlement is purported to have been arrived at, between them in the

month of July, 2016. A written agreement was also entered into and the same is signed by the parties. It is stated in the agreement that the dispute between the parties is settled and the 2nd respondent has allegedly paid a huge amount to the appellant. It is further the case of the 2nd respondent that whatever the electronic and other materials lying with the parties were agreed to be destroyed. Further it was the case of the 2nd respondent that the alleged telephonic calls made by the 2nd respondent to Mr. Shoukin Malik of Rajasthan was absolutely false and baseless. Pleading that the complaint filed and investigation taken up is a gross abuse of process, the 2nd respondent has sought quashing of the proceedings.

8. By referring to the rival contentions of the parties and the material on record, the High Court has recorded a finding that the case of the 2nd respondent falls under Exceptions 5 and 7 as carved out in the judgment of this Court in **State of Haryana** vs. **Bhajanlal & Ors.**[1] and further the allegations and facts as mentioned in the FIR, appear to be improbable and the same is malicious prosecution, quashed the proceedings registered against the 2nd respondent.

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1 AIR 1992 SC 604

9. We have heard Sri Amit Anand Tiwari, learned counsel for the appellant, Ms. Deepanwita Priyanka, learned counsel for the State and Sri Mukul Rohatgi, learned senior counsel for 2nd respondent.

10. Mainly, it is contended by the learned counsel for the appellant that the High Court has passed the impugned order by exceeding the scope of power conferred under Section 482 CrPC. In view of the serious allegations made against the 2nd respondent, the High Court should not have exercised power under Section 482 of the CrPC to scuttle the investigation. It is submitted that the High Court has committed error in summoning the Police Inspector, and on relying on such statement, for quashing the FIR. It is stated that the alleged settlement was under the guise of threat and coercion by the 2nd respondent, and it is not entered into by the appellant with her free will and consent. It is stated that the 2nd respondent misused the photographs taken by him, and repeatedly used the same to blackmail her, to secure sexual favours from the appellant. It is contended that the 2nd respondent taking advantage of his position as a Managing Director of the Company, has exploited the appellant and committed rape on her at her residence and in the

apartment secured by the 2nd respondent and also during her tours to Baroda. It is submitted that it is not open for the High Court to make a roving inquiry, while considering the application filed under Section 482 CrPC.

11. Learned counsel for the first respondent-State has submitted that the Investigating Officer made an attempt to secure data from the service providers of the mobile phones, but the same was not provided. In the meantime, in view of interim orders passed by the High Court, further investigation was not made.

12. Sri Mukul Rohatgi learned senior counsel appearing for the 2nd respondent, by taking us through the settlement documents arrived, between the parties, and other material placed on record, has submitted that there is absolutely no basis for the allegation of rape by the 2nd respondent, and it was only consensual sex between the parties. It is submitted that having regard to the allegations made, parties arrived at a settlement and entered into a written agreement in the month of July, 2016. As the appellant is not disputing the said documents, the allegation of rape is false. It is submitted that parties were in consensual sex for several years and in absence of any allegation against

the 2nd respondent of committing rape subsequent to the agreement, there is no basis for such allegations. It is also submitted that there is no truth in the allegation made by the 2nd respondent about his telephone talk with Shoukin Malik, to defame the appellant. It is contended that having received huge money from the 2nd respondent pursuant to the settlement arrived at, false complaint is filed by the appellant to harass the 2nd respondent. Learned senior counsel also relied on the recent judgment of this Court dated 21st August, 2019 passed in Criminal Appeal No.1165 of 2019 wherein in similar circumstances FIR was quashed by this Court.

13. Having heard learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the Writ Petition, and by virtue of interim order granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/informant, whether the 2nd respondent by

clicking inappropriate pictures of the appellant has blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsels have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion,it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the

complaint and the serious allegations made against the 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings. During the course of hearing, learned counsel for the appellant, brought to our notice provision/Section 114-A of the Indian Evidence Act, 1872. Section 114-A of the Indian Evidence Act, 1872 deals with the presumption as to absence of consent in certain prosecution for rape. A reading of the aforesaid Section makes it clear that, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped, and such woman states in her evidence before the Court that she did not consent, the court shall presume that she did not consent.

14. Though Learned senior counsel Sri Mukul Rohatgi relied on the judgment of this Court dated 21st August,2019 in Criminal Appeal No.1165 of 2019, but we are of the view that the said judgment would not render any assistance to support his case. Whether in a given case power under Section 482 is to be exercised or not, depends on the contents of the complaint, and the material placed on record. In that view of the matter, we are of the view that it is a fit case to set aside

the order passed by the High Court and allow the investigating agency to proceed with the further investigation in accordance with law. It is made clear that we have not expressed any opinion on the merits of the complaint, and it is open to the investigating agency and competent court, to proceed in accordance with law.

15. For the aforesaid reasons, this criminal appeal is allowed and the impugned order dated 13th December, 2018 passed in R/Special Criminal Application No.9897 of 2017 by the High Court of Gujarat is set-aside. The 2nd respondent shall appear before the concerned Police Station on 18-11-2019 at 11.00 a.m. and co-operate with the investigation. Till then no coercive action shall be taken against him.

.....J.
[UDAY UMESH LALIT]

.....J.
[Indu Malhotra]

.....J.
[R. Subhash Reddy]

New Delhi;
October 25, 2019