

BEFORE THE SESSIONS COURT AT NAGPUR

(Presided over by V.B. Kulakarni, District Judge-2 & Additional Sessions Judge, Nagpur)

Sessions Trial No.473/2017

State of Maharashtra

V/s

Ranbir Singh Chandok & Anr.

ORDER BELOW EXH.5

(Passed on this 18th day of April, 2019)

Read the application filed by the applicant i.e. accused No.2 Harpritsingh Chondok under Section 227 of the Code of Criminal Procedure claiming his discharge from the present prosecution for the offence punishable under Sections 376(2)(f), 294,506 R/w Section 34 of the Indian Penal Code.

2. It is contention of the applicant that the accused No.1 is the brother-in-law of the complainant and accused No.2 is her nephew. The property Plot No.315, Baba Buddhaji Nagar, Panchpaoli, Nagpur was purchased by Gurucharan Singh Chandok and a three storied building i.e. G + 2 was built on the said plot by said Gurucharan Singh Chandok. It is also the contention of the applicant that accused No.1 Ranbir Singh S/o Gurucharan Singh resides on the ground floor of the said property with his family having wife, daughter and mother. Harjeet Singh S/o of Gurucharan Singh, who is father of the present applicant, resides on the first floor of the said property with his family. Another son of Gurucharan Singh namely Jagjeet Singh was residing on the second floor with his family till June 2012 and thereafter, he vacated the house as per the terms of the Agreement and again he gained forceful entry around in March,

2014. It is further contention of the applicant that an agreement to sell was executed between Jagjeet Singh Chandok i.e. husband of the complainant as vendor and accused No.1 Ranbir Singh as purchaser on 17/5/2012. In the said agreement, accused No.2 Harprit Singh is one of the witnesses of the said transaction. After execution of the agreement to sell, the vendor-husband of the present complainant, started giving false and vexatious police complaint against the purchaser and the witnesses of the said agreement to sell and trying tricky methods to threat nothing but to withdraw/revoke the said agreement, which was executed between the husband of the complainant and accused No.1. He further submitted that prior to filing the instant complaint, they had given seven false complaints against the purchaser and families of the witnesses of the said agreement to sell after the execution of the same dated 17/5/2012. The complainant family reported all the seven complaints immediately without any fear. Moreover, the present complainant mentioned herself as housewife and in all her previous statements and complaints, she has mentioned her mobile number and mischievously has not mentioned the same in this complaint. The police had taken statement of the daughter of the complainant in the previous complaints, which they failed to record in this matter. The complainant, aunt of the applicant misusing her faminity, lodged three days delayed complaint due to fear and falsely alleged that her nephew i.e. present applicant-accused No.2 mounted revolver on her temple and threatened to kill if shouts and after that, her brother-in-law accused No.1 dragged her from stairs and inserted his male organ in her mouth.

3. It is further case of the applicant that the police officers immediately registered the offence of rape on the gun point and Crime No.92/16 has been registered against the accused persons without making

inquiry about authenticity of the complaint under Sections 376(g), 294 and 506-B R/w Section 34 of the Indian Penal Code and under Section 3/25 of the Arms Act. The police had conducted the search and seizure at the residence of the accused for the alleged gun and then, after making NIL panchanama of the house of accused No.2, police *suo motu* deleted the allegations in respect of possession of fire arm under Section 3/25 of the Arms Act. The police have also changed the Section 376(g) and inserted the offence under Section 376(2)(f) of the Indian Penal Code. According to applicant, the investigation in this matter is null and void as well as there is no material evidence, which can corroborate the implication of present applicant/accused No.2. In fact, the alleged offence has never occurred and concocted story has been carved to revoke the agreement, which is bad in law. Even, the Investigating Officer could not recover any objectionable material, which can corroborate the implication of the accused No.2. It is also contention of the applicant that it was height of biased investigation that even the Investigating Officer has recorded the statement of the present applicant accused No.2 under Section 161 Cr.P.C., in which, he has stated that he is falsely implicated and he is innocent. The Investigating Officer has failed to produce the said statement before the Court and also failed to reflect the same in the chargesheet. It is also the case of the applicant that even the Investigating Officer did not find sufficient material to prosecute the applicant on the allegations of rape on the gun point. The prosecution has totally failed to prove whether any prima faice case stands against the present applicant-accused No.2. According to applicant, there is also malpractice in the investigation process to falsely implicate him in false and concocted story of rape on the gun point. The case is fit for discharge of the applicant. Hence, he prayed for discharge under the relevant provisions of law.

4. On this application, I have called the say of learned APP. Learned APP Shri Jikar has given say overleaf the application and strongly opposed the application. It is submission that in this case, the chargesheet has been filed and the matter is fixed for framing of the charge against accused persons. The applicant/accused No.2 has filed the present application to apply the delaying tactics and to prolong the matter. Therefore, in the facts and circumstances and as the offence alleged against the applicant is very serious in nature, the learned APP prayed to reject the application.

5. I have heard the the learned counsel Shri Deshraj appearing for the applicant and the learned APP Shri Jikar for the State.

6. After perusal of the chargesheet and the FIR as well as the police papers in this case, it is seen that the complainant, who is sister-in-law of the accused No.1, lodged report to the police station alleging that she is residing in the building situated on Plot No.315, Second Floor, Baba Buddhaji Nagar, which is a joint property belonging to the father of her husband and there was a dispute as regards the said property. In the said building, the accused Nos.1 and 2 also reside. On 17/3/2016 in the night time at 11 P.M., when she was teaching to her daughter and her husband was in the bedroom, the water supply of her house was stopped. Therefore, at 11.30 P.M. she went to start the water machine and for the same, she changed the valve and to start the motor, she was standing on the staircase to connect the plug. At that time, the dog belonging to the accused persons barked and she was frightened and loudly cried. Listening her cry, the son of her elder brother-in-law Harpritsing i.e. accused No.2 reached near her and accused No.1 her brother-in-law Ranbir Singh also

followed him. The accused No.2-her nephew covered her mouth by his hand and accused No.1-her brother-in-law forcibly carried her from the staircase on the open space on the gun point and then, accused No.1 forcibly lay her down at the said place. Thereafter, her brother-in-law i.e. accused No.1 tried to outrage her modesty and when she resisted, that time, the accused No.1 inserted his private part in her mouth and threatened her that she should take back all the cases, otherwise, he will kill her and her family. That time, her nephew Harprit Singh was standing behind her. She has narrated the incident to her husband, but as she was under fear, she has not lodged any report. Thereafter, she informed this incident to her friend namely, Surjit Kaur Atwal and with her help, she lodged the report against both the accused in Police Station, Gittikhadan, Nagpur on 20/3/2016.

7. I have also gone through the statements of the complainant recorded by the police and by the Magistrate under Section 164 Cr.P.C. The complainant has clearly stated in her statement before the police as well as before the Magistrate about the alleged incident and the role played by both the accused persons. There is material evidence seen from the perusal of the chargesheet and the statement of the complainant recorded by the police that the present applicant/accused No.2 put the complainant under the gun point and the accused No.1 inserted his male organ in the mouth of the complainant. Moreover, there are statements of friend of complainant namely, Sukhjeet Kaur Atwar, social worker Nutan Rewatkar and husband of the complainant Jagjeet Singh Chandok recorded by the Investigating Officer. Perusal of the statement of Sukhjeet Kaur clearly shows that the incident was narrated by the complainant to her and she, while giving her statement, stated the same before the

Investigating Officer. The social worker Nutan Rewatkar has also stated in her statement that the complainant has told her that at the time of incident, the present applicant Harprinsingh put the complainant in the fear of gun and accused Ranbirsingh inserted his mail organ in the mouth of complainant. Same incident is also seen to have been stated by the husband of complainant Jagjeetsingh in his statement before the police.

8. The learned counsel appearing for the applicant vehemently argued that it is a false case and both the accused are implicated falsely in this case as the civil dispute is going on between the husband of complainant and the present accused persons and on account of the said grudge in her mind, the complainant has prepared a concocted story and lodged false report against the accused persons. In this regard, it is pertinent to note that both the accused persons, in furtherance of their common intention, used force against the complainant, pulled her from the staircase till the open space and tried to outrage her modesty. There is specific allegation against present applicant that he helped the accused No.1 to drag the complainant from the staircase and put her under the fear of revolver and thereafter, the accused No.1 inserted his male organ in her mouth.

9. It is seen that there is civil dispute between the parties and the accused were interested in purchasing the property from the husband of the complainant, which is a joint property purchased by the father of the present accused No.1 as well as husband of complainant and grandfather of the applicant/accused No.2. There are serious allegations against both the accused and also, there is ample evidence on record, which prima facie shows that both the accused, in furtherance of their common intention,

have committed such heinous act. Moreover, the complainant is near relative of the accused persons and residing in the same three storied building. Accused No.1 resides on the ground floor with his family. Therefore, the question arises as to why a middle aged lady, who is near relative of the accused persons, lodges such complaint containing serious allegations of molestation and speaks lie. It is crystal clear that unless there is some reason, she could not have lodged such complaint putting her chastity on the stake, which was definitely going to defame her in the family as well as in the relatives and society.

10. It is also seen from the report lodged by the complainant as well as her statement that she has narrated this incident to her husband, who is none other than the real brother of accused No.1 and uncle of the present applicant/accused No.2, however, he has not taken any steps. Thereafter, the complainant disclosed the entire incident to one another lady and the said lady, after hearing her grievances, helped her and the report came to be lodged by the complainant against both the accused persons. The offences levelled against the accused persons are punishable under Sections 376(2)(f), 295, 506 R/w Section 34 of the Indian Penal Code and out of which, the offence under Section 376(2)(f) of IPC is very serious having maximum punishment of rigorous imprisonment, which shall not be less than seven years and which may extend to the imprisonment for life and also fine. The complainant, after lodging of the report, was also referred for medical examination and she has also narrated the incident occurred with her before the doctor while giving history. The clothes of the complainant and her samples as well as the samples of accused persons were also sent to C.A. for chemical analysis.

11. It is also clear from the record that there is dispute between the parties as regards the property and no partition had taken place yet, therefore, there is possibility that the torture has been started to the complainant since long with a view that she should leave the premises, and the present offence might be the outcome of said dispute. All these circumstances narrated by the complainant are such that, without recording the evidence and testing the allegations on the touch-stone of oral and documentary evidence during the trial, one cannot reach to the proper conclusion. The victim of this incident is a middle aged woman and therefore, without appreciating the evidence during the trial, the applicant/accused No.2, in my humble view, is not entitled for the discharge. There is no prima facie ground to hold that the present applicant/accused No.2 is implicated in the false case and hence, the powers under Section 227 of the Code of Criminal Procedure cannot be exercised in the instant case.

12. As earlier stated, there are statements of the friend Siurjit Kaur, who is friend of complainant and the husband of complainant Jagjeetsingh. There is no reason put-forth by the defence as to why these persons have stated against the accused persons. Moreover, no plausible reason is seen as to why the complainant should speak lie against the present applicant, who is her nephew. The question regarding the delay in lodging the report, in the given circumstances, does not arise as the complainant was under fear of her elder brother-in-law i.e. accused No.1. During arguments, learned counsel appearing for the applicant has submitted that there were several complaints lodged by the present complainant against the accused persons. In this respect, learned APP, per contra, submitted in his arguments that it is true that the complaints were

lodged, because the complainant was being tortured several time to leave the premises. It is further argued on behalf of the prosecution that several correspondence was done by the complainant earlier, as the complainant and her family members were being tortured so that they should leave the said house. In such circumstances, there is no ground seen as to why the complainant would falsely implicate the accused persons in this case. Hence, in this case without appreciating the evidence and going through the trial, applicant/accused No.2 is not entitled for discharge. Therefore, application filed by the present applicant/accused No.2 is required to be rejected. Hence, I proceed to pass the following order.

ORDER

The application (Exh.5) filed by the accused No.2 Harprit Singh Chandok for discharge from the prosecution for the offence punishable under Sections 376(2)(f), 294, 506 R/w Section 34 of the Indian Penal Code, stands rejected.

The prosecution as well as accused persons are directed to expedite the trial of this case.

Dt/-18th April, 2019

(V.B. Kulkarni)
District Judge-2 & Additional
Sessions Judge, Nagpur

CERTIFICATE

I affirm that the contents of this P.D.F. File of Order are word to word same, as per original order.

Name of Stenographer :

Shripad W. Patil