

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.774 OF 2015

Abhijit Baswant Nigudkar ... Applicant
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Amol Patankar with Mr. Neil Chandiwala for the applicant.

Mr. Yogesh N. Nakhwa, APP for respondent No.1-State.

Mr. Ajinkya Udane for respondent No.2.

Mr. Suryakant Doke, PSI, Borivali Police Station, is present.

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CORAM : AMIT BORKAR, J.

DATED : APRIL 8, 2026

PC.:

1. By the present criminal application preferred under Section 482 of the Code of Criminal Procedure, 1973, the applicant seeks quashing of First Information Report bearing Crime Register No. 177 of 2015, registered with Borivali Police Station, Mumbai, for the offence punishable under Section 354-C of the Indian Penal Code, 1860.

2. The case of the applicant, as set out in the application, is that in the course of employment, the applicant and the complainant were required to coordinate with one Seema Sharma and others, including the applicant herein. It is stated that for official purposes

and client meetings, the complainant and said Seema Sharma were required to visit various client offices, at times in the company of the applicant. It is alleged that the applicant insisted that the complainant should attend certain meetings alone. It is further alleged that during the course of work, the applicant used to insult the complainant, avoided normal eye contact, and instead allegedly stared at her chest and made inappropriate comments.

3. It is further the case that on 14 November 2014, during a meeting held at the Borivali office, attended by the applicant, Seema Sharma, Prashant Jain and the complainant, the complainant observed that the applicant was staring at her chest. It is stated that she felt disturbed and conveyed the incident to Seema Sharma. Thereafter, Seema Sharma addressed an email to one Rakesh Pande, the Head of Department stationed at Gurgaon, Haryana. The matter was also brought to the notice of the Human Resources Manager, Smt. Shringarpure; however, it is alleged that she expressed disbelief regarding the conduct attributed to the applicant.

4. It is further stated that on 21 November 2014, during another meeting at the Andheri office, and subsequent to the complaint made against the applicant, the applicant allegedly began to find faults with the work of the complainant and publicly insulted her. It is the case that the company initiated internal proceedings and convened multiple meetings, wherein Seema Sharma was called as a witness. Both the complainant and Seema Sharma were issued notices by the company, to which replies were submitted. It is alleged that the company, being dissatisfied with

the explanations, threatened termination of the complainant's services, which led to the filing of the present complaint.

5. Learned counsel for the applicant submitted that, upon a plain reading of the First Information Report, no prima facie offence under Section 354-C of the Indian Penal Code is disclosed. It is contended that the allegations, even if taken at face value, do not satisfy the essential ingredients of the said offence, and therefore, the continuation of the proceedings is unsustainable in law and liable to be quashed. It is further submitted that the complainant had earlier approached the employer, namely Max Life Insurance Co. Limited, whereupon an Internal Complaints Committee was constituted in accordance with the law laid down by the Hon'ble Supreme Court in Vishaka and others, and the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Committee, comprising Ms. Pramita Singh as Chairperson along with other members, conducted an inquiry into the allegations. Upon completion of the inquiry, the Committee submitted its report to the management, exonerating the applicant of the allegations. A copy of the report was also furnished to the applicant.

6. Per contra, the learned Additional Public Prosecutor, along with the learned advocate appearing for the complainant through the Legal Aid Committee, opposed the application and supported the prosecution. It is submitted that the statements of witnesses, including that of the complainant, clearly disclose the commission of the alleged offence. It is further submitted that the material collected during investigation, particularly the witness statements

forming part of the charge-sheet, indicate that the applicant deliberately insulted the complainant, stared at her chest in a manner intended to outrage her modesty, and made objectionable remarks. According to the prosecution, such conduct constitutes an offence affecting the modesty of a woman, and therefore, prima facie attracts the ingredients of Section 354-C of the Indian Penal Code.

REASONS AND ANALYSIS:

7. For the purpose of adjudicating the issue involved in the present matter, it is necessary to reproduce Section 354-C of the Indian Penal Code, which reads as under:

“354-C: Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image¹ shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation: For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

8. Section 354-C of the Indian Penal Code defines and penalises the offence of voyeurism. A careful reading of the provision shows that the offence is not attracted merely on account of improper behaviour or unwelcome staring. The section requires specific factual elements to be present. The essential requirement is that a man must either watch a woman or capture her image while she is engaged in a “private act”. The provision further requires that such act must be in circumstances where the woman has a reasonable expectation of privacy. Thus the emphasis is on the nature of the act and the surrounding circumstances. The offence is complete only when such watching or recording intrudes upon a sphere of privacy which the law seeks to protect. The explanation to the section clarifies what constitutes a “private act”. It includes situations where the woman’s genitals, posterior or breasts are exposed, or are covered only by undergarments. It also includes use of a lavatory or engagement in a sexual act not ordinarily done in public. Therefore, the legislative intent is to penalise conduct involving invasion of bodily privacy in intimate or secluded settings. The section also covers a situation where images of such private acts are captured with consent but are later disseminated without consent. In such a case, even if the initial act was permitted, the subsequent act of sharing the images constitutes the offence.

9. Section 354-C is not a general provision covering every form of offensive gaze or bad behaviour towards a woman. The provision is specific. It applies where a man watches or captures the image of a woman engaging in a private act, in circumstances where she would usually expect not to be seen by the perpetrator or by any other person at the behest of the perpetrator. The Explanation makes it more clear that the “private act” must be one in which privacy is normally expected, such as exposure of intimate parts, use of lavatory, or sexual act not ordinarily done in public. The section also covers dissemination of images of such private act. The foundation of the offence is therefore intrusion into privacy in a private setting, or recording and circulation of such private act.

10. When the above statutory language is applied to the allegations in the present case, the difficulty for the prosecution becomes evident. The complaint does not state that the applicant watched the complainant while she was engaged in any private act. It does not say that any image of a private act was captured. It does not say that the complainant was in a place or condition where she was reasonably expected not to be observed and that the applicant nonetheless watched her in that prohibited setting. The allegation is only that he stared at her chest during office meetings. Unwanted staring, even if accepted as true, is not the same thing as voyeurism within the meaning of Section 354-C. The statute cannot be stretched beyond its plain words.

11. The prosecution has relied upon the statements of witnesses and the complainant’s supporting material in the charge-sheet.

Learned APP and the learned advocate appearing for the complainant submit that these statements show that the applicant deliberately insulted the victim, stared at her chest, and taunted her. They contend that this conduct offended her modesty and therefore the ingredients of the section are present. But a close reading of the section shows that the law does not punish every act which offends modesty under Section 354-C. The legislature has used a much narrower description. The act complained of must fall within the specific field of watching or capturing a woman in a private act. Mere offensive conduct in an office environment, even if morally wrong, cannot be brought inside this provision unless the statutory conditions are shown.

12. The internal inquiry conducted by the employer and the report of the Internal Complaints Committee also have been placed before the Court. The applicant points out that the Committee, after inquiry, gave a clean chit to him and forwarded its report to the management as well as to the applicant. That report may have significance in the service dispute and may support the applicant's defence as regards the workplace allegations. At the same time, even if that report were to be kept aside, the criminal case would still fail for want of basic ingredients under Section 354-C. The existence of an internal finding in favour of the applicant only adds support to his stand, but the real ground for quashing is the absence of the statutory offence itself.

13. It must also be stated that the criminal law is not meant to be used to convert every workplace grievance into an offence of voyeurism. The Court has to see the substance of the accusation,

not the label given to it. Here, the substance is of alleged staring at the chest, insulting behaviour, and workplace harassment. These may at the highest amount to misconduct, indecency, or some other wrong depending on the facts proved in proper proceedings. But they do not fit into the narrow mould of Section 354-C. To permit the prosecution to continue on such facts would be to ignore the clear language of the statute.

14. The material placed before the Court, therefore, does not disclose the basic legal foundation required for the offence alleged. The complainant may have genuinely felt offended and humiliated. The workplace atmosphere may indeed have become unpleasant. Yet criminal prosecution under Section 354-C cannot survive only on the basis of such allegations, unless there is watching or recording of a woman during a private act or dissemination of such image. That element is completely absent here. The FIR and the supporting statements, even if accepted in full, do not make out the offence.

15. For these reasons, the continuation of the criminal proceedings would amount to abuse of the process of law. The FIR cannot be sustained only on suspicion, general allegation, or moral disapproval. The law insists upon clear ingredients. Since those ingredients are missing, the applicant is entitled to relief.

16. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The Criminal Application is allowed;

(ii) First Information Report bearing Crime Register No.177 of 2015 registered with Borivali Police Station, Mumbai, for the offence punishable under Section 354-C of the Indian Penal Code, stands quashed and set aside;

(iii) Consequently, all further proceedings arising out of the said FIR, including the charge-sheet, if any, shall stand terminated;

(iv) Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)