

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.113 OF 2014

WITH

CRIMINAL APPLICATION NO.1029 OF 2014

CRIMINAL WRIT PETITION NO.113 OF 2014

Sunil s/o Radhakishan Thombre,
Age : 42 years, Occu. Govt. Service,
R/o. Virboa Mala, Fansenagar,
Pipeline Road, Ahmednagar.

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Petitioner

.. Versus ..

- 1] The State of Maharashtra,
Through its, Secretary,
Ministry of Home, Mantralaya,
Mumbai.
- 2] The Commissioner of Police,
District – Beed.
- 3] The Majalgaon Police Station,
Through its P.I.
(Copy of to be served on
P.P. High Court at Judicature of
Bombay Bench at Aurangabad)
- 4] Shaikh Mannu Shaikh Yasin,
Age : 60 years, Occu. Agri.
R/o. Talkhed, Tq. Majalgaon,
District - Beed (Complainant).

- 5] Smt. Jyoti Kshirsagar,
Age : Major, Occ.: Sub-Divisional Police Officer,
Georai, Additional Charge,
Majalgaon Division.

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Respondents

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Shri S.R. Pande, Advocate for petitioner,
Shri S.D. Kaldate, A.P.P. for respondent nos.1 to 3,
Shri Sayyed Tousif Yaseen Faruquee, Advocate for respondent no.4.
None for respondent no.5.

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CRIMINAL APPLICATION NO.1029 OF 2014

- 1] Prashant Raghunath More,
Age 37 years, Occu : Agril,
- 2] Mohan Marotibuva Puri,
Age 40 years, Occu : Service,
- 3] Bhaskar Babasaheb Labase,
Age 26 years, Occu : Agril.
- 4] Madhukar Sadashiv Sapkal,
Age 25 years, Occu : Driver,

All R/o. Talkhed, Tah. Majalgaon,
District – Beed.

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Applicants

.. Versus ..

- 1] The State of Maharashtra,
Through Police Station Majalgaon (Rural),
District – Beed.
- 2] Shaikh Mannu Shaikh Yasin,
Age 60 years, Occu : Agril,
R/o. Talkhed, Tq. Majalgaon,
District-Beed.

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Respondents

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Shri S.J. Salunke, Advocate for applicants,
Shri S.D. Kaldade, A.P.P. for respondent no.1-State,
Shri Sayyed Tousif Yaseen Faruquee, Advocate for respondent no.2.

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**CORAM : S.S. SHINDE AND
A.M. BADAR, JJ.**

Date of reserving the judgment : 17.02.2015.
Date of pronouncing the judgment : 09.04.2015

JUDGMENT : (Per : A.M. Badar, J.)

- 1] By Criminal Writ Petition No.113/2014 accused no.8 Sunil s/o

Radhakishan Thombre is praying for quashing and setting aside Crime No.139/2013 under Sections 376 (1), 363 (A) r/w 34 of the Indian Penal Code and under Section 3 (a) and 4 of the Protection of Children from Sexual Offences Act, 2012 and consequential charge-sheet as well as Special Case No.2/2014 registered thereupon pending with the Special Court, Majalgaon, District-Beed. Same relief is sought by accused no.12 - Prashant Raghunath More, accused no.14 - Mohan Marotibuva Puri, accused no.13 - Bhaskar Babasaheb Labase and accused no.11 - Madhukar Sadashiv Sapkal by filing Criminal Application No.1029/2014. As such, both these matters are being disposed of by this common judgment.

2] Brief facts leading to the institution of the present proceedings can be summarized thus :

(a) Informant Shaikh Mannu Shaikh Yasin is resident of village Talkhed, Tahsil-Majalgaon, District-Beed. Anil Ramkishan Gaikwad is his neighbour. Juvenile in conflict with law Shubham Rambhau Jadhav is nephew of Anil Gaikwad. Informant Sheikh Mannu Shaikh Yasin is having one son and six daughters. Victim girl, whose identity we do not desire to disclose, is his sixth daughter and at the time of the incident in question, she was below 16 years of age.

(b) The incident in question happened on 28.11.2013 and informant Shaikh Mannu Shaikh Yasin lodged the report regarding the same on 30.11.2013 with Police Station, Majalgaon, District - Beed. In his First Information Report, informant Shaikh Mannu Shaikh Yasin alleged that his

minor victim daughter was taking education in 10th Standard. On 28.11.2013 at about 10.00 pm she went for sleeping, but on 29.11.2013 in the morning hours, inmates of his house found her missing. It is further alleged that, upon inquiry, it was revealed that Shubham Rambhau Jadhav, nephew of Anil Gaikwad, is also missing. With this, informant suspected said Shubham might have kidnapped his minor victim daughter under instigation of his mother Saraswati alias Jana Rambhau Jadhav and sister Pallavi Anil Gaikwad.

(c) After registration of the crime in question, it was on 1.12.2013, according to the prosecution case, missing girl along with juvenile in conflict with law Shubham were brought to the Police Station, Majalgaon by applicant-accused no.12 Prashant More and other accused persons. According to the prosecution case, then clothes of victim girl as well as that of juvenile in conflict with law Shubham came to be seized. They both were sent for medical examination and necessary samples were collected. During the course of investigation, the statements of witnesses including that of victim girl came to be recorded. She was then given in the custody of her father by the police. Naib Tahsildar Shri Bunde recorded her statement on 3.12.2013. During the course of investigation, according to the prosecution case, love letters allegedly exchanged by juvenile in conflict with law as well as victim girl came to be seized. Seized articles were sent for Chemical Analysis. On completion of investigation, Charge-sheet no.14/2014 came to be filed against the accused persons. Consequently, Special Case No.2/2014 came to be registered against them and it is pending on the file of the Special Court at Majalgaon, District-Beed. The same is sought to be quashed and set aside by these proceedings

initiated on behalf of accused no.8-Sunil s/o Radhakishan Thombre, accused no.12-Prashant Raghunath More, accused no.14-Mohan Marotibuva Puri, accused no.13-Bhaskar Babasaheb Labase and accused no.11- Madhukar Sadashiv Sapkal.

3] Heard Shri S.R. Pande and Shri S.J. Salunke, learned counsels for the petitioners/applicants. According to them, even if the entire chargesheet is considered and accepted as it is, then also, no offence is made out against the present petitioners/applicants. According to them, the petitioners can, at the most, to be treated as witnesses to the alleged offence, but no criminality can be attributed to them. By drawing our attention to the statement of the victim girl, both the learned counsels contended that no allegations whatsoever are made by her against the present applicants in her statement recorded on 1.12.2013. They further contended that the role attributed to the present applicants is to the effect that they had taken juvenile in conflict with law Shubham and the victim girl to Majalgaon Police Station. As such, the applicants-accused have aided in investigation and they cannot be arrayed as accused in the criminal trial.

4] Per contra, Shri Sayeed Tousif Yaseen Faruquee, the learned counsel appearing on behalf of informant Shaikh Mannu Shaikh Yasin in both these matters, submitted that complicity of the applicants-accused in crime in question is well established from the material collected during the course of investigation. Statement of the victim girl shows that they threatened her not

to state anything against juvenile in conflict with law Shubham. The learned counsel appearing on behalf of informant further argued that the petitioner-accused no.8-Sunil Thombre has arranged driver for the vehicle of main accused Saraswati alias Jana Rambhau Jadhav - the mother of the juvenile in conflict with law. Other applicants-accused have played role of alluring the victim girl to enable her to accompany the juvenile in conflict with law and they have also abused and pressurized her in order to see that no report is lodged against the main accused.

5] Learned A.P.P. Shri S.D. Kaldate submitted that the role of applicants-accused in the crime in question is revealed from the chargesheet placed on record by the petitioners.

6] We have carefully examined the entire chargesheet which has resulted in registration of Special Case No.2/2014 against the applicants and other accused persons in pursuance to the First Information Report lodged by Shaikh Mannu Shaikh Yasin bearing Crime No.139/2013 for the offences punishable under Sections 376 (1) (2) (H), 363 (A), 366 (A), 109 r/w 34 of the Indian Penal Code and under Section 3 (A) and 4 of the Protection of Children from Sexual Offences Act, 2012. We have also perused the reply-affidavit filed by the informant as well as the State. Undisputedly, Shubham, who allegedly kidnapped and raped the victim girl, is juvenile in conflict with law and he is being dealt with by the Juvenile Justice Board where the chargesheet against him is filed.

7] The prosecution has attributed role of alluring the minor victim girl in order to enable her to accompany the juvenile in conflict with law and thereafter abusing and pressurizing her in order to see that she should not make any statement against the accused persons; to accused no.12-Prashant More, accused no.14-Mohan Puri, accused no.13-Bhaskar Labase and accused no.11-Madhukar Sapkal. So far as petitioner-accused no.8-Sunil Thombre is concerned, it is alleged that he helped Saraswati alias Jana Rambhau Jadhav, mother of juvenile in conflict with law and provided a driver to her in order to enable her to undertake return journey from Ahmednagar i.e. from where the couple was found to Majalgaon Police Station in the night intervening 30.11.2013 and 1.12.2013. This can also be seen from various remand applications filed by the investigating officer from time to time before the learned Special Court. These applications are placed at Annexures A to C on record. The charge sheet also reflect the same position.

8] On this backdrop, at the outset, let us to examine the First Information Report lodged by Shaikh Mannu Shaikh Yasin, father of the victim girl. In this FIR dated 30.11.2013, which is lodged only on the basis of suspicion, informant suspected that juvenile in conflict with law Shubham might have kidnapped his minor daughter and Saraswati alias Jana Rambhau Jadhav-mother and Pallavi Anil Gaikwad-sister of Shubham, might have instigated him for kidnapping minor victim girl. Name of the present petitioners/applicants are not reflected in the FIR and rightly so because, at

that point of time, the informant was not aware as to what happened to his minor girl, who went missing.

9] Perusal of chargesheet shows that it was on 1.12.2013 in the morning hours, the minor victim girl as well as juvenile in conflict with law Shubham were brought to Police Station at Majalgaon by applicant-accused no.12-Prashant More and other applicants-accused. At this juncture, it is opposite to note that even, according to the case of prosecution, there used to be exchange of chits between the minor girl and the juvenile in conflict with law, as they were in love relations with each other. Record of investigation shows that on 5.12.2013 several love letters allegedly written to each other by them came to be seized from the house of juvenile in conflict with law Shubham and those are sent for handwriting expert. The minor victim girl and juvenile in conflict with law Shubham are of tender age and chargesheet shows that minor victim girl was taken by the juvenile in conflict with law Shubham from her house to village Pathardi and from there to Ahmednagar, where they both stayed in rest room of the Railway Station. Alleged kidnapping happened in the night hours of 28.11.2013 and during morning hours of 29.11.2013, the couple reached Railway Station of Ahmednagar as seen from the charge sheet.

10] Entire fate of the prosecution case as such hinges on version of minor victim girl. Her statement was recorded on 1.12.2013 by the Assistant Police Inspector of Majalgaon Police Station immediately after she was reached

to the Police Station along with juvenile in conflict with law Shubham by accused no.12-Prashant More and other applicants.

11] Perusal of statement of the victim girl recorded on 1.12.2013 by Assistant Police Inspector, Majalgaon Police Station, shows that there was love affairs between the victim girl and juvenile in conflict with law Shubham and they used to exchange chits. The victim girl further stated that on 28.11.2013 at 10.00 pm, she opened the door and found Shubham present there. According to her version, Shubham then wrapped handkerchief around her face and threatened to kill her if she shouts. Then she accompanied him by walking to Talkhed bifurcation and then by hiring a vehicle they went to Pathardi and from Pathardi by S.T. Bus, she and Shubham went to Ahmednagar. From S.T. stand by auto-rickshaw, she and Shubham then went to Railway Station of Ahmednagar and stayed there in the rest room. The victim girl further stated in her statement under Section 161 of Code of Criminal Procedure that in the night, he raped her. She further stated that, in the afternoon, Shubham called his mother Saraswati Jadhav on mobile and informed her that he and the victim girl are at Railway Station of Ahmednagar. Then as per the version of the victim girl, mother of Shubham, accompanied by applicant-Prashant More and other applicants came there in the evening. The victim girl further stated that, then mother of Shubham and other applicants took both of them to Majalgaon. They were then left at Majalgaon Police Station on 1.12.2013 and police took both of them in custody.

12] This very first version of the victim girl candidly discloses that applicant-accused no.12-Prashant More just accompanied accused Saraswati Jadhav along with other accused-applicants. They all then carried the couple and reached both of them to the Police Station, Majalgaon where offence was registered against Shubham. It became writ large that applicant-accused no.12 Prashant More and his associates thus aided in investigation by making arrangement of taking the kidnapped victim girl along with juvenile in conflict with law to the Police Station, Majalgaon. As such, in a way, role attributed to the present applicant Prashant More and his associates is to trace out the missing teenage couple and to hand over their custody to the Investigating Officer. In the wake of recitals to that effect in the statement of the victim girl, no criminality is attributed to any of the applicants by the minor victim girl. It cannot be said that the applicant or any of them had entered in conspiracy of kidnapping the minor girl or abetted the juvenile in conflict with law, who raped her.

13] It was on 3.12.2013 that statement of the minor victim girl came to be recorded again by the Naib Tahsildar, wherein she appears to have somewhat deviated from her original version. She disclosed the Naib Tahsildar that on 28.11.2013 on opening the door of the house, she found Shubham Jadhav. She further stated that Shubham took her out. She further stated that there was a car nearby and one person and driver were in the car. In the cryptic manner, she disclosed that the car went to Pathardi, then went to Ahmednagar and, thereafter, at Ahmednagar Railway Station where she was

forcibly made to drink juice and then she became unconscious. She further stated that on 30.11.2013, she regained consciousness and found herself in one room. On the next day, Shubham Jadhav, who was also present in that room, spoke on a mobile and after sometime, accompanied by Sarpanch of Talkhed namely Prashant More; Bhaskar Labase, Anil Gaikwad and Sonaji Gaikwad came there. As per version of the victim girl before the Naib Tahsildar, they all told her that she should speak in their favour and if she speaks against them, they will not allow her father and brother to be alive. Then as per her version, they traveled in a car and in the morning, reached Police Station, Majalgaon.

14] Even if the second statement of the victim girl, which is making too much improvements, is considered, then also we fail to satisfy ourselves that a prima facie case for the offences alleged against them is made out against the applicants. The statement of victim girl, in fact, goes to show that on call of the juvenile in conflict with law, his mother accompanied by the villagers reached Ahmednagar from Talkhed and brought back the eloped couple which was then handed over to Police Station Officer, Majalgaon, where the crime in question was already registered. This appears to be in aid of investigation if taken at its face value. Both these statements of the victim girl do not prima facie constitute any offence or make out a case against applicants/petitioners before this Court. Other evidence collected by the prosecution also does not disclose commission of any offence by applicants before this Court. The papers of investigation do not show that the applicant-accused no.8-Sunil Thombre

had arranged any driver for accused Saraswati. Even if, it is assumed that he arranged driver, then also, it can be said that it was only for the purpose of reaching the couple to the Police Station, where the offence was registered against one of them. Other applicants-accused just accompanied accused Saraswati Jadhav in order to see that the missing couple should be brought back and handed over to the Police Station.

15] We are not oblivious to the settled position of law that the powers of quashing the criminal proceedings should be exercised very sparingly and with circumspection, but in the case in hand, we propose to exercise the same for securing the ends of justice, as the applicants, who, in fact, aided investigation, could not be made to suffer ordeal of undergoing the criminal trial. It would be abuse of process of law, if they are made to undergo the trial of the case in the light of material collected by the investigating officer reflected in the charge sheet.

16] At this juncture, it is relevant to note the observations of the Hon'ble Apex Court in the matter of State of Haryana and others .vs. Bhajanlal and others, reported in 1992 Supp. (1) SCC 335, wherein guidelines for exercising powers under Section 482 of the Code of Criminal Procedure can be found.

102. *“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have*

extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where, the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is constituted) to the institution and continuance of the proceedings and/or where there is a specific provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him to private and persons grudge”.

17] As, in the case in hand, even after perusal of the entire chargesheet, it is clear that there are no sufficient grounds for proceeding against any of the applicants before the court and uncontroverted allegations made in the First Information Report and the evidence collected in support of the same reflected in the chargesheet do not disclose the commission of any offence by any of the applicants before this court. We are of the considered opinion that the impugned First Information Report, chargesheet and the Special Case No.2/2014 between the parties, as against the applicants before this court, needs to be quashed and set aside and, therefore, the order :

ORDER

(I) Criminal Writ Petition No.113/2014 and Criminal Application No.1029/2014 are allowed.

(II) Impugned FIR bearing No.139/2013 registered at the instance of informant Shaikh Mannu Shaikh Yasin and consequently, Chargesheet No.14/2014 for the offences punishable under Sections 376 (1) (2) (H), 363, 366 (A), 109 of the Indian Penal Code and under Section 3 (a) and 4 of the Protection of Children from Sexual Offences Act, 2012 and resultant, Special Case No.2/2014, between the parties, pending on the file of Special Court at Majalgaon, District-Beed, qua the petitioner-applicants before this Court, is quashed and set aside. Rule is made absolute in these terms.

[A.M. BADAR, J.]

[S.S. SHINDE, J.]