

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1830 OF 2014

Harshukumar Khare & Anr. ... Petitioners.

V/s.

State of Maharashtra & Ors. ... Respondents.

WITH

CRIMINAL WRIT PETITION NO. 2296 OF 2014

Deepak Dattatraya Bhide & Ors. ... Petitioners.

V/s.

State of Maharashtra & Ors. ... Respondents.

Mr. Harshad Ponda i/by Sidheshwar N. Biradar, Advocate for the Petitioners in writ petition no.1830 of 2014.

Mr. Ravindra K. Adsure i/by Vitthal B. Devkhile, Advocate for the Petitioners in writ petition no. 2296 of 2014.

Mr. V.B.Konde-Deshmukh, APP for the State-Respondent No.1.

Mr. Prakash Naik i/by Pawan Mali, Advocate for Respondent No. 2 in both petitions.

Mr. H.G. Wakshe, Advocate for Respondent Nos. 3 to 5 in both petitions.

Mr. T.Y. Mujawar, API, Otur Police Station, is present.

CORAM : M.L.TAHALIYANI,J.

DATE : 11th FEBRUARY, 2015

P.C. :

1 The petitioners in both these petitions were accused in FIR No. 57 of 2012. The names of all the

petitioners were not initially mentioned in the FIR. Some of the names were revealed to the police later on. The FIR was registered for the offences punishable under sections 143, 377 r/w. 149 and 367 r/w. 149 of IPC and sections 3 and 5 of the Protection of Children from Sexual Offences Act, 2012 r/w. section 23 of the Juvenile Justice Act (Care and Protection of Children) Act, 2000.

2 The victim of the alleged offences was one Gorakh alias Gorkhya Babasaheb Dighe, aged about 19 years. The incident had occurred at a Farm House situated at Karanjale, Tahsil - Junner, Dist. District Pune. The House admittedly belongs to Shivajirao Sakharam Jondhale, the Petitioner No. 2 in writ petition no. 1830 of 2014. It was alleged in the FIR that Petitioner No. 2 and the other accused had formed an unlawful assembly and had kidnapped the victim boy and thereafter confined him at the said House and in prosecution of common object of unlawful assembly, some of the accused had inserted some foreign object in the anal-canal of the victim.

3 After completion of the investigation, the police submitted the report to the Special Court Judge under section 169 of the Cr. P.C., stating inter-alia that no material was found by them to substantiate the charges made in the FIR. At this stage, it may be stated here that the FIR is based on the

hearsay material. Therefore, it follows that the said FIR cannot be taken into consideration for the purpose of the decision as to whether there was material against the Petitioners or not.

4 After receipt of the report, the learned special court directed further investigation. The petitioners are aggrieved by the said order, directing further investigation by the police and therefore, these two petitions are filed by the petitioners against whom the offences were investigated by the police under the FIR No. 57 of 2012.

5 During the course of hearing of these petitions, it was revealed that the further investigation report submitted by the police inspector alleges that there was a prima facie case against the petitioner no. 5 - Kishor Bhausahab Jondhale and the petitioner no. 7 - Rajendra Jalindhar Vadak in writ petition no. 2296 of 2014. On the further report submitted by the police, these two petitioners have not been served the process of the court so far. The petitions can be disposed of by passing the following order :

- i. The learned Special Court Judge is directed to consider the initial report submitted by the police under section 169 of the Criminal Procedure Code and shall also consider the further report submitted by the

police and shall take decision as to whether the further report is to be accepted or otherwise.

ii. This exercise should be completed by the Special Court Judge within a period of four weeks from the date of the receipt of this order.

6 It is made clear that the petitioners shall be at liberty to move the appropriate court, if any process is issued against them by the Special Court. The petitioners are also at liberty to take out any other appropriate proceedings permissible under the law.

7 Authenticated copy be supplied to the petitioners as well as to the learned additional Public Prosecutor.

8 The learned Special Judge to act on an authenticated copy of this order.

9 Both the writ petitions are disposed of accordingly.

(JUDGE)

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