

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.244 OF 2015

Shreeprakash Chandmal Bora

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. M.S. Mohite a/w Mr. S.M. Mangaonkar &
Mr. D.S. Mhaispurkar for the Applicant.
Mr. D.R. More, APP for the Respondent-State.

CORAM:-M.L. TAHALIYANI, J.

DATED :8th JULY, 2015.

P.C.

Admit. Heard finally.

2. Heard learned Advocate for the Applicant and learned APP for the Respondent -State of Maharashtra.

3. The Applicant is facing trial for various offences alongwith other accused in Special Case No.4 of 2014, pending in the Court of Special Judge, Khed, Rajgurunagar, District-Pune. The main accused in the case is Mahadu Borade, who was working as a peon at Rangadas Swami Shikshan Vikas Mandal, Junnar Taluka Shikshan Mandal and Apang Kalyan Kendra, Aane, District-Pune. He allegedly

made an attempt to commit rape on one Asma Dagadu Shaikh, aged about 12 years. She was inmate of Apang Kalyan Kendra. There were other accused, including the principal of the institution. The Applicant was admittedly working as vice president of the institution. It is not denied that he was looking after the affairs of the institute. Main allegation against the Applicant is for the offence punishable under section 21 (1) for violating the provisions of section 19 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act'). The prime accused is facing trial for various offences under the Act in addition to the offences punishable under section 376 r/w section 511 of the IPC. The prosecution /State alleges that the Applicant being vice president of the institute was aware of the alleged acts on the part of Mahadu Borade. It is submitted that Mahadu Borade had made an application for voluntary retirement, which was accepted. As such, it is the case of Respondent /prosecution that the Applicant had knowledge of commission of the offence under the Act and that he failed to report the said offence to the police and thereby committed offence under section 21 (1) of the Act. I have gone through the impugned order passed by the learned Special Judge, refusing to discharge the Applicant.

4. I have heard the learned Advocate Mr. Mohite for the Applicant and learned APP Mr. More for the State. Mr. Mohite states that there is no evidence at all of any nature to show that vice president had knowledge of the commission of the offence before the same was reported to the police. Learned Special Judge had relied upon presumption which can be drawn under section 30 of the Act. Section 30 of the Act can be reproduced as under.

“30. Presumptionn of culpable mental state.- (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.”

5. Bare reading of section 30 will show that presumption under section 30 can be pressed into service for other offences where the mental state is ingredient of the offence. Section 30 cannot be pressed into service for offence under section 21 of the Act. The view taken by the learned Special Judge does not appear to be correct.

6. As such, there is no material on record to indicate that the Applicant had knowledge of commission of the crime under the Act

and he failed to report the same to the police. As far as the other offences are concerned, there is no evidence that Applicant had either opted or shared the intention of other accused.

7. Order passed by the Special Judge is set aside. The Applicant is discharged of all the charges made against him in Special case No.4 of 2014. His bail bonds shall stand cancelled.

8. The application stands disposed of.

(JUDGE)