

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

CRIMINAL REVISION APPLICATION NO. 319 OF 2015

Rangnath Dagdu Gajare & Anr.	... Applicants
V/s.	
The State of Maharashtra	... Respondent

Mr. D.S. Mhaispurkar a/w. Mr. Sameer M. Mangaonkar for the Applicants.

Ms. S.V. Gajare, A.P.P. for the State.

CORAM : A. V. NIRGUDE, J.

DATE : 27th NOVEMBER, 2015.

P.C. :

1. This application challenges the order dated 28.05.2015 passed by the learned Additional Sessions Judge, Khed- Rajgurunagar, rejecting applicants application seeks discharge from Special Case No.5 of 2014.

2. This is a case of rape and offences punishable under various provisions of the Protection of Children from Sexual Offences Act, 2012. The facts leading to the prosecution in short can be stated as under :

3. Complainant Damini is a physically challenged minor girl, aged about 16 years. She was resident student of a residential school specially established for physically challenged students. She alleged that original accused No.1

raped her on 05.02.2013. She reported this incident to caretaker one Smt. Kachole. In turn, this information was passed over to the teachers Mr. Gite, Mr. Pacharne and one Smt. Gopane. They hurriedly took her for medical treatment and provided the same but they did not take the victim to police station. On 06.04.2013, the school got closed for summer vacation and, therefore, the victim was taken to her house. The victim then narrated the incident of 05.02.2013 to her parents and on 09.04.2013, information was given to police. Offence was registered. As stated above, as many as 14 persons were roped in as accused. Accused No.1 is the main accused but others were made accused mainly because they failed to inform the incident of sexual abuse to police. Not reporting an incident of others nature to police, is also punishable under the provisions of the Protection of Children from Sexual Offences Act. The question is whether there is sufficient material on record to frame charge against the applicants. The learned Judge of the lower Court rejected their plea that they deserved discharge. I am however inclined to discharge them. The reasons are – the victim's statement is treated as F.I.R. In this statement the victim did not state that she disclosed this information to the applicants either directly or they learnt about it from Smt. Kachole. She even did not say that the applicants were present when she was provided medical help on 05.02.2013. She did not mention in the statement that applicants came with her in the car when she

left school for vacation. On 06.04.2013, she did not say as to what transpired between the applicants when she was with them travelling to her house. In view of this, there is no direct material against the applicants.

4. The prosecution placed reliance on victim's parents statements. The parents stated that the victim informed them that the applicants and one Smt. Anita told her not to disclose the untoward incident to her parents while they were travelling in the car to the house of the victim. This statement admittedly is hearsay material. It would not be admissible in evidence. The police could not have recorded these statements even as statements under Section 161 of Cr.P.C. The police could have recorded additional statement of the victim herself. But if the same was not done, I am constrained to observe that there is no direct material against the applicants as well as Smt. Anita Sonsale. All the three accused thus, deserves discharge. Since the application is filed only by applicant-accused Mr. Gajare. The applications are moved before this Court by accused Nos.5 and 6. They should succeed in getting discharge from this case.

5. The applicants stand discharged. The Revision Application is allowed in above terms and accordingly stands disposed of.

(A.V.NIRGUDE, J.)