

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

rpa

CRIMINAL REVISION APPLICATION NO. 495 OF 2013

Sanjay Ahiwale	.. Applicant
Vs.	
SAKHEE & Ors.	.. Respondents

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Mr. Shekhar Jagtap i/b. M/s. J. Shekhar & Co., Advocate for the Applicant.
Mr. P.M. Havnur a/w. Najafiya, Advocate for Respondent No.1.
Ms. P.P. Bhosale, A.P.P. for Respondent – State.

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CORAM : M. L. TAHALIYANI, J.

DATED : FEBRUARY 3, 2015.

P.C. :

Heard the learned counsel Mr. Jagtap for the applicant.
Heard the learned counsel Mr. Havnur for the respondent no.1. Heard the learned Additional Public Prosecutor Ms. Bhosale for the respondent no. 3 – State of Maharashtra.

2 The applicant is a police officer and is facing trial for the offence punishable under Section 21 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act',

for short), and Section 166A of the Indian Penal Code (IPC) at the instance of SAKHEE (N.G.O.). The co-accused is namely Shree Suhas Garud who is also a police officer. The victim girl was subjected to rape by four persons near Shindawane. She had gone to the police station to lodge the report. The report was not taken by the police officer present on the police outpost situated at Uruli Kanchan, District Pune. It is alleged in the complaint filed by the respondent no.1, a public trust namely SAKHI that the applicant and other co-accused avoided and failed to record the offence though an oral statement made by the victim girl disclosed offence of rape.

3 The incident in question had occurred on 22nd February, 2013. Victim did not disclose the incident to anybody atleast for four days. On 26th February, 2013 she had gone to Uralikanchan police outpost alone, and reported the matter to the police officer present at the police out post situated at Uruli Kanchan. Police officer directed the victim girl to wait upto 6.00 p.m. and then he would decide the further course of action after approval of the superior officer. On 27th February, 2013, she again visited Uruli Kanchan police outpost at about 10.30 a.m. It is alleged that the applicant and one Ghuge, police constable were present in the outpost. The victim narrated the incident to the applicant and others. The applicant had allegedly asked

her to bring her parents. The victim inquired from the applicant as to why her parents have needed for recording the FIR. However, her FIR was not recorded despite the insistence on the part of the victim. She, therefore, returned home. Her uncle Balasaheb Kunje came to know about the incident from the police officer. The FIR was again delayed because of intervention on the part of her uncle. He felt that their family will be defamed due to the reporting of matter to the police.

4 The question which may arise for determination before the trial Court in the present complaint is not the delay caused in recording the FIR. The question which may come for determination before the trial Court is that as to whether on 27th February, 2013, the applicant being a police officer incharge of Uruli Kanchan police outpost failed to record the offence, as provided under Section 19(2) of the Act. The next question which may arise for determination before the trial Court is that as to whether the applicant being a public servant disobeyed the direction under law, an offence punishable under Section 166A of the IPC.

5 The learned counsel for the applicant has submitted that the complaint was filed on 18th May, 2013 and the learned Magistrate

directed police inquiry on 28th June, 2013. Police submitted their report on 17th September, 2013. The learned counsel for the applicant has submitted that the police in their report dated 17th September, 2013 have referred to the statement made by the victim girl on 11th March, 2013. It is submitted that the statement, if any, of the victim should have been recorded after the order was passed by the learned Magistrate for holding an inquiry under Section 202 of the Code of Criminal Procedure. As per the statement of victim, she is absolutely clear that despite her narration of the incident to the applicant, he failed to record the information at Uruli Kanchan police outpost. Whether the police could have relied upon the statement of the victim recorded on 11th March, 2013 for preparing their report dated 17th September, 2013, is the matter to be considered by the trial Court, and not by this Court under revisional jurisdiction.

6 In my opinion, there is sufficient material to proceed against the applicant for the offences punishable under Section 21 of the Protection of Children from Sexual Offences Act, 2012 and Section 166A of the Indian Penal Code.

7 I do not find any substance in the petition.

8 The petition is dismissed.

9 Interim order, if any, stands vacated.

(JUDGE)