

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 563 OF 2016

Hussain Mohd. Yusuf Mohd. Shaikh	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Durgesh P. Jaiswal, for the Applicant.

Dr. F.R. Shaikh, APP for Respondent.

CORAM : A.S. OKA &
A.A. SAYED, JJ.
DATE : 28th June 2016

P.C. :

1 . Heard learned Counsel appearing for the Applicant and learned APP for the State. The Prayer in this Application is for quashing the offences registered against the Applicant under Section 354 of the Indian Penal Code and Sections 11 and 12 of the Protection of children from Sexual Offences Act, 2012. According to the case of prosecution, the victim of the offence is a nine years old school going girl of the 1st Informant. Allegation is that on his cell phone the Applicant showed obscene film of a woman to the minor

daughter of the 1st Informant.

2. The learned Counsel appearing for the Applicant relies upon the Remand Report dated 14th December 2015. He submitted that no video clip was found on the cell phone seized from the Applicant. Secondly, he submitted that there is a delay in lodging First Information Report.

3. We have perused the investigation papers tendered by learned APP. We have perused the Remand Report on which reliance is placed. We find that the cell phone and memory card in the cell phone has been seized. All that is recorded in the Remand Report is that the mobile phone and memory card could not be opened and seen by the police.

4. Investigation papers show that the cell phone and the memory card has been already forwarded way back on 31st March 2016 to the Regional Forensic Laboratory, Santacruz and notwithstanding reminder issued, the Report is awaited. Learned APP pointed out that considering the huge pendency of work in the said Laboratory that the Report is delayed. We have perused the statement of the father of the victim on the basis of which the First Information Report was registered. He has stated that in his absence,

the video clip was shown to his daughter. When he came back at 2.30 p.m., he found that his daughter was crying. After talking to the daughter, she disclosed the incident. It appears that the First Information Report has been registered on the same date i.e. 13th December 2015 at 8.50 p.m. From the investigation papers, we find that the statement of the victim under Section 164 of the Criminal Procedure Code, 1973 has been recorded by the learned Judicial Magistrate, 1st Class.

5. According to us, this is a fit case where the investigation needs to be carried out by the police, as *prima facie* case of commission of an offence is made out. Hence, at this stage, the prayer for quashing the First Information Report by exercising powers under Section 482 of the Criminal Procedure Code, 1973 cannot be considered. Accordingly, the application is rejected.

6. We, however, make it clear that we have made no final adjudication on the merits of the contentions raised by the Applicant. All contentions on merits are kept open which can be agitated at appropriate stage.

[A.A. SAYED, J.]

[A.S. OKA, J.]