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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1332/2017

Shivaji s/o Surendra Palajkar,
age 32 yrs., occu.agri.,
r/o at post Virsoni
Tq.Himayatnagar Dist.Nanded.
...Petitioner..

Versus

The State of Maharashtra.
...Respondent...

.....

Shri A.R. Vyawahare, Advocate h/f Shri G.P. Shinde,
Advocate for petitioner.
Shri A.A. Jagatkar, APP for respondent.

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CORAM: PRAKASH D. NAIK, J.

DATE: 05.12.2017

ORAL JUDGMENT :

- 1] With the consent of parties, the petition is heard for final disposal.
- 2] Rule. Rule made returnable forthwith.
- 3] the petitioner has challenged the criminal proceedings pending vide Special Case No.6/2016. The

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petitioner has assailed the order dated 25.10.2016 passed by the learned Additional Sessions Judge, Bhokar Dist.Nanded, below Exhibit 65.

4] The petitioner is prosecuted in connection with Crime No.17/2016, which was registered with Himayatnagar Police Station, Nanded, for offences punishable u/s 363, 366(A), 376 r/w 34 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act). The FIR was lodged on 17.5.2016 at the instance of the father of the victim.

5] Brief facts of the prosecution case are as follows:-

a] In the FIR lodged by Nanaji Punjaram Kadam, it was alleged that the victim Vaishnavi is his daughter. She is aged about 15 years 9 months. She had visited the house of her maternal uncle. On 17.5.2016, he saw the victim Vaishnavi and accused Tanaji running away and he tried to chase them. He failed to apprehend them. The FIR was lodged for offence u/s 363 r/w 34 of the Indian Penal Code on 17.5.2016.

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b] The statement of the victim was recorded and thereafter the offences u/s 366-A, 376 of the Indian Penal Code and u/s 4 and 8 of the POCSO Act were added. On completing the investigation, the charge-sheet was filed on 19.8.2016 against seven accused.

c] The prosecution case in the charge-sheet is that accused Tanaji had kidnapped the minor girl Vaishnavi from the lawful custody of her parents by giving false assurance of marriage. She was taken to Chandannagar Dist.Dhar in Madhya Pradesh and the said accused committed sexual intercourse with her. The allegation against the other accused is that they have assisted Tanaji in commission of the crime.

6] The petitioner preferred an application for discharge before the Court of learned Additional Sessions Judge, Bhokar. The application of the petitioner was rejected on 25.10.2016. The application preferred by the accused nos.4 to 6 was allowed.

7] The learned counsel for the petitioner submits that there is no evidence to prosecute the petitioner for

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the alleged offences. The co-accused have been discharged by the trial Court. The name of the petitioner had appeared for the first time in the remand application dated 25.5.2016. The allegations in respect of the offence u/s 376 of the Indian Penal Code as well as Sections 4 and 8 of the POCSO Act are attributed to accused Tanaji. The statement of the victim, which was recorded u/s 164 of the Cr.P.C. states that the petitioner had given money to Tanaji on the Bus Stand. It is submitted that accepting the said statement as it is, it is not sufficient to prosecute the petitioner by invoking Section 34 of the Indian Penal Code. The statement of Vaishnavi Kadam dated 26.5.2016 clearly states that she had love affair with accused Tanaji for one and half year. On reading the statement, it is clear that she had eloped with the said accused. In the said statement, she has not attributed any role to the petitioner. She has not disclosed in any manner that the petitioner had enticed the victim to go along with the co-accused Tanaji. She had, however, stated that the friends of Tanaji namely Sandip Jadhav and Mohan Surwase had helped them to elope. None of the prosecution

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witnesses attribute any overt-act of enticement or participation in kidnapping of the victim. The offences, as alleged, are not made out against the petitioner and the trial Court ought to have discharged him. No case is made out to proceed against the petitioner. The charge cannot be framed on inferences and, therefore, the petitioner should have been discharged by the Court.

8] The learned APP submitted that the petitioner has played a role in helping the co-accused to abduct the victim. The petitioner has paid money to accused Tanaji at the Bus Stand and facilitated him to run away with victim Vaishnavi. It is submitted that *prima facie* case is made out against the petitioner and, therefore, he was not entitled for discharge. It is submitted that the statement of the victim recorded u/s 164 of the Cr.P.C. shows involvement of the petitioner. She has stated that the petitioner was instrumental in giving money to accused Tanaji at the Bus Stand. It is submitted that the accused is involved in serious crime and the trial Court has rightly rejected his application for discharge.

9] On perusal of the record, it can be seen that the First Information Report was registered at the

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instance of Nanaji Punjaram Kadam on 17.5.2016. Initially, the offence was registered u/s 363 of the Indian Penal Code. The first informant has stated that the victim girl, who is the daughter of the informant, was enticed by the accused Tanaji and both of them ran away from the house of maternal uncle of the victim. The supplementary statement of first informant was recorded on 24.5.2016. The first informant has also stated that he tried to search the victim but could not trace her. It was alleged that the uncle of the victim had seen the victim running away with accused Tanaji Palajkar. The said accused was helped by the other accused in kidnapping the victim. The names of the said accused were stated in the complaint. It is alleged that the accused Tanaji Palajkar was helped by his father Madhav Palajkar, uncle Maroti Palajkar and cousin Amol Palajkar. The name of the petitioner is not appearing in the First Information Report. On the basis of the statement, the offence was registered u/s 363 r/w 34 of the Indian Penal Code. The supplementary statement of the informant was recorded on 24.5.2016. In the said statement, it was stated that Tanaji Palajkar was also assisted by the

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other persons in kidnapping the victim. In the said statement, names of friend of Tanaji Palajkar, Shri Sandip Jadhav and Shivaji Palajkar were mentioned. Thereafter, investigation was conducted and statements of several witnesses were recorded. The statement of Vaishnavi Kadam, aged about 15 years 9 months was recorded on 26.5.2016. In the said statement, she has stated that she is in love with Tanaji Palajkar. Both of them had decided to marry. They realized that the family would not permit them to marry. Hence, they decided to elope. On 17.5.2016, as decided, she proceeded to the house of her uncle Vijay Pawar residing at Sonari. The accused Tanaji came near the house of her uncle and at about 5-00 a.m. On 17.5.2016, she left the house with the bag of clothes. Both of them went to Nanded and thereafter to Karanja. Tanaji called his friends Sandip Jadhav and Mohan Bansiram Surwase. They were informed that both of them had run away from the house and requested them to drop them at some place. At that time, Mohan told them that he would drop them at Mahu in Madhya Pradesh. All of them went to Pritampur in Madhya Pradesh and stayed there for five days. It is further stated by

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the victim that at that time, accused Tanaji had sexual relationship with her. On 25.5.2016, the Police attached to Nanded Police Station visited the said place and both of them were brought back to Nanded. She also stated that she had taken away gold weighing 14 Gms., which was mortgaged by her and received an amount of Rs.20,000/-. The said amount was repaid and the gold was received by her. They were handed over to Himayatnagar Police Station on 26.5.2016. In the said statement, she stated that she was enticed by the accused to run away with accused Tanaji. Accused Tanaji had promised her of marriage. In concluding paragraph, she had stated the names of accused including the petitioner as one of the person who was instrumental in enticing her to run away with the accused Tanaji who committed the alleged act.

10] On reading the said statement dated 26.5.2016, except stating the name of the petitioner in the concluding paragraph, the victim has not referred to his presence in any manner and no role was attributed to him. The victim has referred to the names of other persons, who had accompanied her and Tanaji to Madhya Pradesh. Thereafter, the statement of the victim was recorded u/s

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164 of the Cr.P.C. on 10.6.2016. In the said statement, she has stated that she left the house of her maternal uncle alongwith accused Tanaji. Both of them went to Bus stop at Nanded. Accused Shivaji Palajkar met them at the Bus stop. He gave some money to accused Tanaji and helped them in boarding Bus proceeding to Karanja. Thereafter, accused Tanaji gave call to other persons and all of them went to Madhya Pradesh. In the earlier statement dated 26.5.2016, the victim has not referred to the presence of the petitioner at the Bus stop. In the statement u/s 164 of the Cr.P.C., which was recorded belatedly, she has referred to the aforesaid act of the petitioner – accused. Taking the said version as it is, no offence can be attributed to the petitioner. The statement merely states that the petitioner was at the Bus stop and he gave money and guided them to board the Bus proceeding to Karanja. This would not constitute commission of any offence. It cannot be said that the co-accused and the present petitioner had acted in furtherance of common intention. The victim has left with accused Tanaji out of her own willingness and merely on account of the allegations, as stated, the petitioner

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cannot be prosecuted for the alleged offences. In the circumstances, the trial Court ought to have discharged the petitioner. The crime u/s 376 of the Indian Penal Code is attributed to accused Tanaji. The petitioner is not even a person who accompanied them to Madhya Pradesh where the co-accused had sexual intercourse with the victim.

11] The Sessions Court has rejected the application for discharge preferred by the petitioner. While rejecting the said application, the Court has observed that in the statement of the victim recorded by the Police on 26.5.2016, the victim has not stated as to how and in what manner, the accused have helped Tanaji. In a statement recorded u/s 164 of the Cr.P.C., however, she has stated that the petitioner i.e. the accused no.7 had met her and accused no.1 Tanaji at Nanded Bus Stand and gave money and boarded them in Karanja bound Bus. This shows that there was some role attributed to the petitioner. However, in the statement u/s 164 of the Cr.P.C., the victim has not stated in what way and how the accused nos.4 to 6 have helped her and accused no.1 – Tanaji. The Court has also observed that on perusal of

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statement of Vikas Chavan, the cousin of the victim, it appears that the accused Tanaji had come to Sonari and the victim eloped with him. This shows that the accused nos.4 to 7 did not accompany Tanaji to village Virsoni or any other place. It is further observed that witnesses Bansilal Yadav and Pappu Parihar were residing in Chandannagar, Dhar, Madhya Pradesh, have not deposed any incriminating evidence against the accused nos.4 to 7. The Court, therefore, rejected the application of the petitioner only on the basis of the statement of the victim, as stated above. The other accused were discharged. The trial Court has, therefore, erroneously rejected the application of the petitioner. Except the handing over of money as alleged in the statement recorded subsequently u/s 164 of the Cr.P.C., no other statement referring to the involvement of the petitioner is available on record. Accepting the said statement as it is, the same would not be sufficient to prosecute the petitioner for the said offences. There is no evidence to frame charge against the petitioner herein. The petitioner is, therefore, entitled to be discharged. Hence, I pass the following order.

O R D E R

a] Criminal Writ Petition No.1332/2017 is allowed.

B] The impugned order dated 25.10.2016 passed by learned Additional Sessions Judge, Bhokar, below Exhibit 65 in Special Case No.6/2016 is quashed and set aside and the petitioner is discharged from the said proceedings.

(PRAKASH D. NAIK, J.)