

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3910 OF 2017

Bapudeo @ Rohit s/o Anirudha Sul,
Age 27 years, Occu. Lecturer,
R/o Bagpimpalgaon, Taluka Georai,
District Beed, at present Kasbekar
House, Kailash Nagar, Aurangabad

.. Applicant

Versus

1. The State of Maharashtra,
Through Investigation Officer,
Jinsi Police Station,
Taluka and Dist. Aurangabad
2. Snehal d/o Kailash Thorat,
Age 17 years, Occu. Education,
R/o Vidyanagar, Harsul Tea Point,
Taluka and Dist. Aurangabad
Through natural guardian
Shri Kailas s/o Ramrao Thorat,
Age Major, Occu. Service,
R/o Plot No.3, Vidyanagar,
Harsool T-Point, Aurangabad

.. Respondents

Mr S.P. Salgar, Advocate for applicant
Mrs P.V. Diggikar, A.P.P. for respondent no.1

**CORAM : S.S. SHINDE AND
A.M. DHAVALÉ JJ.**

**DATE OF RESERVING
THE JUDGMENT : 14.9.2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 29.9.2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule returnable forthwith. With the consent of parties,
matter is taken up for final disposal at admission stage.

2. The applicant has filed this application for quashing the FIR vide Crime No. I-200/2017 registered at Jinsi Police Station, Taluka and District Aurangabad, for the offence punishable under Section 354, 34 of Indian Penal Code and Section 11 and 12 of Protection of Children from Sexual Offences Act, 2012.

3. The F.I.R. is filed by a girl 'S' (name withheld), aged 17 years on 29.6.2017 at Jinsi Police Station, Aurangabad. As per F.I.R., she was studying in 12th Standard on Medical side and she had joined Aakash Classes of I.I.T. NEET situated above the shop of Waman Hari Pethe Jewellers, Jalna Road, Aurangabad. She complained that the Branch Manager Mr Shivhari Wagh he was looking at all the girls with evil eyes. On 28.6.2017, at 6.30 p.m. to 7.00 p.m., she had gone to the classes for getting her batch time changed. That time, the class in-charge Rohit Sul looked at her with evil eyes and told her that her nail paint was fine. She told him that he should listen to what she was saying. That time, he told her that she was having good hight and her hight was well grown. Then, she did not speak to him. She narrated the incident to her father and brother. When they made enquiry, whether the other girls were having similar harassment, it was revealed that several girls had complaints against the branch Manager Shivhari Wagh. Since Shivhari Wagh is not applicant, it is not necessary to consider the allegations against him. Suffice it to say that allegations against Rohit Sul are independent and not connected with the allegations made against Shivhari Wagh. In the F.I.R., it is further alleged that Rohit Sul, the applicant was staring them with bad

intention and was behaving improperly and it was creating mental tension for them.

4. On the basis of such F.I.R., the crime was registered at Jinsi Police Station, Aurangabad, for the offences punishable under Section 354, 34 of Indian Penal Code. Later, the Sections 11 and 12 of Protection of Children from Sexual Offences Act, 2012 were added.

5. The applicant challenges the F.I.R. on following grounds :

(I) The allegations made in the F.I.R. even if taken on the face value do not disclose any offence against the applicant. Shivsena workers demanded Rs.3 lakhs on the occasion of Dasera festival from the class authorities, which was not complied by the branch Manager. The father and brother of respondent no.2 are Shivsena workers. Balasaheb and other 50 to 60 workers of Shivsena and media of newspapers entered the institute on 29.6.2017 and started abusing and assaulting the employees. The applicant was assaulted by Shivsena workers. The police had visited the spot. The mob pressurised. F.I.R was registered against Shivsena workers.

(II) There was illegal demand of money, which was not fulfilled and, therefore, the F.I.R. was lodged as counter blast.

(III) The F.I.R. was politically motivated with malafide motives. No incident had taken place as alleged.

6. After hearing the applicant, the applicant was released by Additional Sessions Judge, Aurangabad on bail. There was deliberate attempt to defame the institute. In addition, proceeding under Section 107 of Cr.P.C. was initiated. The performance and intellectual level of respondent no.2 was not upto the mark, as was revealed in the examination conducted by Aakash Classes. The girls getting average results were motivated to make protest. Respondent no.2, after joining the classes made considerable improvement. The story in the F.I.R. is concocted. Hence, F.I.R. be quashed.

7. Respondent no.2 though served with the notice did not file appearance. Again a fresh notice for final disposal was issued and was served, still nobody appeared for her.

8. Learned A.P.P. Mrs P.V. Diggikar has produced the report submitted to her by the concerned Police Officer along with the relevant documents.

9. Heard learned Advocate for the applicant and learned A.P.P. for respondent no.1. Perused the papers. The investigating Officer has made enquiry with the girls. All of them made complaint only against branch Manager Shivhari Wagh. The statement of brother of respondent no.2 alone supports her F.I.R. as against the present applicant.

10. The offence is registered under Section 354 read with Sec.34 of Indian Penal Code and under Sections 11 and 12 of POCSO Act.

11. Section 354 of Indian Penal Code involves assaults or use of criminal force with intention to outrage the modesty of a woman. In the present case, there is not even whisper about the allegation of assault or use of criminal force. The allegations are also not covered under Section 354-A of Indian Penal Code, which require following acts:

- (I) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

12. Respondent no.2 has described only a solitary incident while no other girl has disclosed anything against the present applicant. It discloses that the applicant told respondent no.2 that her nail paint was fine. This by no stretch can be said to be sexually coloured remark. He also told that her height was good. It is no doubt true that an unknown girl would not like such comments from a person, but the question is whether such remark can be called as sexually coloured remark. In this case, we find that mere appreciation of good height will not amount to a sexually coloured remark.

13. There is also a sentence that the applicant watched to respondent no.2 with evil eyes (वाईट नजरेने). This is a vague statement. It does not disclose what is “वाईट नजरेने”.

Section 11 punishable under Section 12 of the POCSO Act reads as follows :

“11. Sexual harassment : A person is said to commit sexual harassment upon a child when such person with sexual intent,-

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.”

14. After carefully considering the allegations, we find that the act of the accused does not fall in any of the sub-clauses of Section 11 of the POCSO Act. The act of staring at the breast would amount to an offence punishable under Section 509 of the Indian Penal Code, as it is insult to the modesty of the woman, but no such allegation has been made against the present applicant. Respondent no.2, if repeats the allegation in the Court against the applicant that he was staring her with evil eyes and the applicant denies the said fact, it will be impossible for the Judge to decide whether the act of the accused was any offence or not. It was necessary for the Police to properly record the F.I.R. and make enquiry with the respondent no.2 as to what she meant by the words, “evil eyes” (वाईट नजरेने). No other girl is making complaint against present applicant and the respondent no.2 has quoted only a single instance and the utterances stated by her to have been made by the present applicant do not amount to any overt act of sexual nature. The mere statement that the applicant was staring at her with evil eyes would not be sufficient material to make out any offence under Indian Penal Code or POCSO Act.

15. There is no sufficient material to prosecute the present applicant. Therefore, the F.I.R. against the present applicant deserves to be quashed.

16. Hence, we allow the present application in terms of prayer clause (B). The F.I.R. at Crime No. I-200/2017, registered against the applicant at Jinsi Police Station, Taluka and District Aurangabad, for the offence punishable under Section 354, 34 of Indian Penal Code and Section 11 and 12 of Protection of Children from Sexual Offences Act, 2012 is quashed against the present applicant only.

17. Rule is accordingly made absolute with no order as to costs.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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