

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRI.APPLICATION (APPA) NO.619 OF 2018

(SAMIKSHA SUDESHRAO SHENDE (VICTIM)....VS.. THE STATE OF MAH. THR. PSO WARDHA CITY & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.J. Khangura, Advocate for Applicant.
Ms Swati Kolhe, A.P.P. for Respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 14, 2018.

Heard.

2. The victim seeks leave to file appeal to challenge the judgment passed by the Special Court, acquitting the respondent/ accused of the charge of commission of offence punishable under Section 354-A(1)(i)(ii) and Section 506 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The respondent/accused is prosecuted after the investigating agency had undertaken investigation pursuant to the complaint lodged by father of the victim. According to the prosecution, at the time of lodging of the complaint the victim was aged about 17 years and 8 months. The accusations against the accused are that he used to send obscene messages on the cellphone of the victim.

4. After assessing the evidence on record, the learned Special Judge has recorded his conclusion succinctly in paragraph Nos. 25 and 26 of the impugned judgment as follows:

“25. From the over all evidence the prosecutrix was found minor but had attained the age of understanding sufficient to know goods and bads in her life. Therefore, voluntarily meeting the accused after his marriage creates doubt. She has nowhere disclosed the sexual intent of the accused. It was his proposal for marriage. She has not disclosed any indecent behaviour of the accused. Therefore, the sexual intent cannot be inferred from the behaviour as disclosed by the prosecutrix. Besides vague statement that the accused was constantly following the prosecutrix no evidence is put forth to prove the same, and therefore, the ingredient of Section 11(iv) punishable under Section 12 of the POCSO Act are lacking.

26. Though the prosecutrix belonged to caste 'Mahar', there is no evidence nor report was lodged that it was the ground to intentionally insult or intimidate with intent to dishonour or outrage her modesty. In Exh.23, the report, there is no whisper of the caste, therefore, the contents required for offence punishable under Section 3(1)(xi) of Atrocities Act are not proved.”

Though the learned advocate for the victim has argued that the learned Special Judge has not appreciated the evidence properly, it is not pointed out that any relevant and material evidence is not considered by the learned Special Judge.

5. After examining the material on record, I find that the learned Special Judge has rightly appreciated the evidence on record and the conclusions recorded in

paragraph Nos. 25 and 26 of the judgment cannot be faulted with. In my view, this is not a fit case to grant leave to the victim to file and prosecute the appeal to challenge the judgment passed by the Special Judge acquitting the accused.

The application is **dismissed**. Consequently, the appeal is rejected.

JUDGE

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