

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

CRIMINAL WRIT PETITION NO.871 OF 2019

Gopinath @ Anand S/o. Rajaram Supekar,
Age 28 years, Occupation Labour,
R/o. Presently at Ghargaon, Shrigonda, District
Ahmednagar.
Permanent address – Takili Kadewalit,
Taluka Shrigonda, District Ahmednagar.

.. Petitioner

Versus

1 The State of Maharashtra
Through the Police Station Officer,
Mukundwadi Police Station,
Aurangabad

2 Shital Bhagwan Harnul @ Shital Gopinath Supekar,
Age 18 years, Occupation Household,
R/o. Shrigonda, District Ahmednagar,
Permanent Address – Takili Kadewalit,
Taluka Shrigonda, District Ahmednagar.

.. Respondents

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Mr. Chandrakant P. Patil, Advocate for Petitioner.
Mr. A. S. Shinde, APP for Respondent No.1.
Mr. Ujwal Subhash Patil, Advocate for Respondent No. 2.

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 12th JULY, 2019.

ORAL JUDGMENT :-

(PER : T. V. NALAWADE, J.)

Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The proceeding is filed for quashing of proceedings bearing Special Case (Child Protection) No. 102 of 2016, which was pending before the Court of learned Additional Sessions Judge, Aurangabad, for

the offence punishable under Sections 363, 366A and 376(2) of Indian Penal Code read with Section 3(A), 4, 5(L) and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

3. During arguments, learned counsel for respondent No.2 – first informant – victim girl and learned counsel for the petitioner submitted that there is no dispute between petitioner and victim girl. They submitted that victim girl has crossed age of 18 years. It was submitted that the marriage took place between victim girl and petitioner. The victim girl gave birth to a female child from the petitioner on 08-11-2018 and they are living together. The respondent No.2 – first informant has filed affidavit to that effect. It shows that parents were against this marriage as she was not marrying with a person chosen by her parents, who was not as per her choice. Due to oppose of parents to the marriage, step was taken and under threat, she was required to give report.

4. The learned counsel for the petitioner has placed reliance upon Judgment in a case - *Ashok Dhondiba Kale Versus State of Maharashtra and others* [Criminal Application No. 7038 of 2016, dated 16-07-2018] and submitted that similar situation was involved in the present matter and the relief needs to be given in favour of petitioner.

5. On the other hand, learned APP has relied upon a Judgment in a case - *State of Madhya Pradesh Versus Laxmi Narayan and others*, reported in (2019) 5 Supreme Court Cases 688. Learned APP drew attention towards paragraph No.15, wherein the Honourable Apex Court has observed that when the offence is against society which involved heinous and serious offence of mental depravity or offences

like murder, rape, dacoity, etc., such offences are not private in nature and have a serious impact on society, and so the Court should not exercise powers of quashing such cases. In the same case, Honourable Apex Court has laid down that quashing would depend upon facts and circumstances of each case and Court is expected to apply his mind with a view like - (i) Whether crime against society or against individual alone and kind of dispute, whether civil or criminal, (ii) Seriousness, nature and category / kind of crime / offence and how committed, and other things like conduct and antecedents of accused, whether accused absconding, why absconding and how he managed to compromise with complainant. Court can consider gravity of offence nor conduct and antecedents of the accused and also the category of crime of offence and how it was committed. The facts and circumstances of each case is always different. In view of nature of dispute, nothing can be achieved by asking the petitioner to face the trial.

6. In view of aforesaid circumstances, this Court holds that the relief needs to be granted in favour of petitioner. In the result, following order :-

ORDER

1. The Criminal Writ Petition is hereby allowed.
2. The relief is granted to the petitioner in terms of prayer clause 'A'.
3. Rule made absolute in those terms.

Sd/-.

[K. K. SONAWANE]
JUDGE

Sd/-.

[T.V. NALAWADE]
JUDGE