

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 5262 OF 2019

Bharma Rama Dange

..Petitioner.

Versus

State of Maharashtra

..Respondent.

Advocate for Petitioner. _____

A.G.P. for Respondent Nos. _____

CORAM : SARANG V. KOTWAL, J.

DATED : 11th DECEMBER, 2019.

PC :

1. The petitioner has preferred this petition for quashing and setting aside the order below Exh.23 in Special Case No. 10 of 2017 dated 26/09/2019 passed by the learned Special Judge (POCSO), Gadhinglaj, Dist. Kolhapur. Vide Exh.23 in the said case, the petitioner had prayed for separation of his trial. He was being tried with one more accused namely Kamble. The Trial Judge has rejected the petitioner's application vide his order dated 26/09/2019. The charges in this case are already framed and the matter has proceeded to the stage of recording of evidence. At that stage, application vide Exh.23 in the said case was preferred by the petitioner.

2. The prosecution case is based on an FIR lodged by

the victim who was a minor girl aged about 13 years and 10 months at the time of alleged offence. She was studying in a Ashram Shala and was staying in a ladies hostel. In her FIR she has described the incidents dated 04/02/2017, 06/02/2017 and 08/02/2017. On 04/02/2017 one Juvenile in conflict with law committed rape on her. On 06/02/2017 the petitioner's co-accused Kamble committed rape on her and on 08/02/2017 the petitioner committed rape on her.

3. The co-accused Kamble was a teacher and the present petitioner was a Cook in the hostel. Based on her FIR, the offence was registered vide C.R.No.41 of 2017 at Chandgad police station and after investigation the charge-sheet was filed U/s.376, 376(2)(c) and 506 of IPC and U/s.5, 6, 9(d)(f), 10 and 21 of The Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and under section 21 and 23 of the Juvenile Justice Act. However, the charges were framed U/s.376(1), 376(2)(f) and 506 of the IPC, U/s.5, 6, 9(d)(f) r/w. S.10 and 21 of POCSO Act.

4. Heard Shri. Satyavrat Joshi, learned counsel for the petitioner and Smt. Shinde, learned APP for the State.

5. The learned counsel for the petitioner submitted that the joint trial with co-accused Kamble is not permissible. He submitted that, all these three incidents are separate offences and do not form part of the same transaction or series of the same transaction. He invited my attention to the

provisions of S.218 to 223 of the Code of Criminal Procedure. According to him, if all these sections are read together, it is clear that the petitioner cannot be tried with co-accused, because all the incidents were separate from each other. He submitted that, in case of different offences taking place at different time, the joint trial of all these offences is permissible if only the accused is common. In this case, the situation is different because the dates of incidents are different and accused are also different. He, therefore, submitted that, taking into account all these provisions, it is more than clear that joint trial is not permissible.

6. As against these submissions, the learned APP submitted that the investigation was in relation to C.R.No.41 of 2017. The witnesses' names are mentioned in the entire charge-sheet. She submitted that no prejudice will be caused to the petitioner if the trial is conducted as one trial.

7. I have considered all these submissions. After hearing both the parties and after having perused the impugned order, I am of the considered view that the petitioner's prayer cannot be accepted.

8. Shri. Joshi submitted that the entire allegations in the FIR show that there were three separate incidents and therefore there were three separate offences and according to him, there was no common thread in these offences. The victim has referred to three incidents. The FIR gives details of

the incidents which occurred on these three dates i.e. 4th, 6th and 8th February 2017. In all these incidents the victim was the same. On these three occasions three separate accused have committed rape on her. The circumstances show that the victim was staying in a hostel and all these incidents have taken place in her school or hostel. So far as the allegations against the present applicant are concerned, she has narrated in her FIR that the petitioner had committed rape on her on 08/02/2017 at 9.30 p.m. She has further stated in the same narration that, after the incident she was having pains in her stomach, but she did not tell about this incident to anybody, because she was scared of the accused No.2 and the petitioner. While narrating the incident, she did not specifically state that the petitioner had threatened her. However, in the concluding paragraph of her FIR she has stated that the accused No.2 and the petitioner had threatened her and had prevented her from complaining about these incidents to anyone and that both of them have threatened to kill her. Thus, apart from the incidents which had occurred on different dates, threats were issued by the accused No.2 and the petitioner. The narration shows that threats were issued together by the petitioner and co-accused Kamble. Thus, the allegations show that there was conjoint act on the part of co-accused Kamble and the petitioner in respect of S.506 of the IPC.

9. Shri. Joshi submitted that these particular allegations had appeared only in the last paragraph of the F.I.R. by way of narration and it could be a way of writing an FIR at the behest of the police. At this stage, this submission cannot be accepted. The bare reading of FIR show that threats were issued by both of them.

10. Apart from that, the other offences are clearly made out, and in particular, S.5(f) of the POCSO Act covers the case of the petitioner, as well as, co-accused Kamble. S.5(f) of the POCSO reads thus:

“5. Aggravated penetrative sexual assault.

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution.”

11. Thus, at this stage, there is sufficient material to show common thread in these incidents. The ground for separation of trial is raised by the petitioner at belated stage. Till the charges were framed, no protest was lodged by the petitioner at any stage when the investigation was going on. As the impugned order shows that, trial was ripe for the hearing and the victim and other material witnesses were

present in the court for giving their evidence, and at this belated stage, this application was moved. There is considerable force in the observation of the learned Trial Judge that the application vide Exh.23 was made only to prolong the hearing of the case. The petitioner failed to show as to what prejudice is caused to him. Apart from this, it is important to note that, this is an offence under POCSO Act and the victim has to undergo a lot of stress and trauma while giving evidence. The separation of trial will not serve any purpose and no prejudice will be caused to the accused. Even otherwise in law, there is sufficient material to show that the present applicant can be tried with his co-accused in one trial.

12. In this view of the matter, I do not find any merit in the petition.

13. The petition is dismissed.

(SARANG V. KOTWAL, J.)
