

Vidya Amin.

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

CRIMINAL WRIT PETITION NO. 4540 OF 2018

Aakaram Ganpati Patil	...	Petitioner
VS.		
The State of Maharashtra	...	Respondent

Mr. Satyavrat Joshi, Advocate for the petitioner.
Mr. A.R. Patil, APP for the respondent/State.
Mr. Pravin Jadhav, P.S.I., Shiralu Police Station present in the Court.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 13th March, 2019**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission, as short issue is involved in this Petition.

2. This Writ Petition is directed against the order dated 12th September, 2018 passed by the learned Additional Sessions Judge, Islampur in Special Case (POSCO) No. 12 of 2017. The petitioner has filed an Application under section 216 of Code of Criminal Procedure challenging that the charge for the offences under sections 366-A and 354-A of Indian Penal Code is groundless and therefore, it is to be deleted. The

petitioner/accused is facing prosecution for the offences punishable under sections 366A, 354A and 506 of Indian Penal Code and under section 8 of Protection of Children from Sexual Offences, 2012. The said Application is rejected by the learned Additional Sessions Judge, Islampur below Exhibit 23 in Special Case (POSCO) No. 12 of 2017.

3. The learned counsel for the petitioner pointed out the statement of the prosecutrix so also the statements of other witnesses and has submitted that when the accused is prosecuted under section 8 of POSCO Act, there is no need to frame charge under section 354-A of Indian Penal Code. He submitted that the offence under section 366-A is not made out.

4. The learned APP supported the order passed by the learned Additional Sessions Judge and submitted that at this stage, no hairsplitting is required, so the charge can be framed under sections 354-A and 366-A.

5. On perusal of the complaint given by the prosecutrix and the statements of other witnesses, it is found that the victim at the time

of incident was 14 years old, so she was within the definition of child under POSCO Act. On perusal of the statement of girl, I am of the view that the charge is to be framed under section 8 of Protection of Children from Sexual Offences Act and therefore, the charge under section 354-A is not required. It is better to reproduce Section 366-A for clear understanding:

“366A. Procuration of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

The Section requires that the accused should have taken the girl with knowledge that she will be forced or seduced to illicit intercourse with another person. Section 366-A of Indian Penal is inserted in pursuance to the few Articles of International Convention for Suppression of Traffic in Women and Children. Thus, the offences committed under section 366-A is entirely different from one under section 366 of Indian Penal Code. If a person takes the girl from one place to another for the purpose of

seducing her for sexual intercourse with himself then it may fall under section 366 but it is not one which comes within the purview of Section 366-A. There should be another man and for the satisfaction of his lust, the girl is taken away, so she is forced or seduced to illicit intercourse not for himself but with another person. Thus, the word used is illicit intercourse with another person (emphasis placed), section 366-A cannot be ignored and due weightage is to be given in understanding of the said section.

6. In the present case, no such material is found and therefore, it is groundless to frame charge under section 366-A of Indian Penal Code.

7. Rule is made absolute to the extent of not framing charges under sections 354-A and 366-A of Indian Penal Code and the Court may frame rest of the charges.

8. Writ Petition is allowed.

(MRIDULA BHATKAR, J.)