

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1427/2019

MARTIN LOPES **PETITIONER**

VERSUS

THE STATE OF MAHARASHTRA **RESPONDENT.**

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Mr.Shirish Gupte, Senior Counsel i/b Karansingh Rajput for the
Petitioner.

Mr.R.M. Pethe, APP for the State.

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CORAM : A. M. BADAR, J.

DATE: 30TH JANUARY 2020.

P.C.:

1. By this petition, the petitioner against whom charge for offences punishable under Section 376 and 506 of the Indian Penal Code as well as under Section 4 of the Protection of Children from Sexual Offences Act, 2012, is framed by the learned Additional Sessions Judge, Vasai in Special Case

No.71/2017 pending on its file, is praying for quashing proceedings in connection with the subject special case.

2. Heard the learned senior counsel appearing for the petitioner/original accused. Learned senior counsel argued that the petitioner is more than 72 years of age and false report came to be filed against him because of dispute over refund of money. Learned senior counsel further argued that with passage of time, male child borne to the victim female child was subjected to D.N.A. test. Report of DNA Test has been received and now it is conclusively proved that petitioner/original accused is not biological father of the male child born to the victim female child. Therefore, according to the learned senior counsel, proceedings of the subject criminal case, deserves to be quashed and set aside. Reliance is placed to buttress this submission on the judgment of Hon'ble Apex Court in **the matter of Mukesh & Anr vs State (NCT Of Delhi) & Ors, (2017)3 SCC 719** and ii) **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and Anr. (2014)2**

SCC 576. It is further argued that on the date of first of the alleged incident, there was death of the brother of the petitioner and as such it is virtually improbable that the petitioner would commit penetrative sexual assault on the victim on such occasion.

3. Learned APP opposed the petition by contending that charge has already been framed. He drew my attention to the F.I.R. lodged by the victim female child and argued that the petitioner may not be the biological father of the child born to the victim female child but, that by itself is not sufficient to quash the proceedings in the light of averments made in the F.I.R.

4. To narrate the facts briefly, victim female child who happens to be 13 years of age at the time of alleged incident reported the incident to the police on 4.10.2016. As per her version in the F.I.R., her mother was working as a maid servant at the house of the petitioner. She used to

accompany her mother on many occasions to the work place. It is further reported that on 24.4.2015, she accompanied her mother to the house of the petitioner. Leaving her at the house of the petitioner, her mother had been to some other house for doing the work as maid servant. The victim female child disclosed to police that then the petitioner took her to his bedroom, closed the door of the bedroom, threatened her by knife and committed penetrative sexual assault. She stated that thereafter the petitioner threatened her that if the incident is disclosed to any body, he would kill her family members. The F.I.R. further states that such incidents were repeated upto 4/09/2016 and ultimately, on 5.9.2016 when she declined to work at the house of the petitioner, her mother questioned her and then she told all incidents to her mother. That is how the report came to be lodged after getting the victim medically examined. During that medical examination she was found to be pregnant.

5. With passage of time, the victim female child delivered

a male child and then DNA test came to be conducted. Order dated 12.07.2017 passed by this court in Bail Application No.1297/2017 filed by the petitioner shows that he came to be released on bail as the DNA test revealed that the petitioner is excluded to be the biological father of male child delivered by the victim female child. I am afraid that by itself would not result in quashment of proceedings. Exclusion of the petitioner to be a biological father of the child delivered by the victim female child, at the most, constitute defence of the petitioner which needs to be taken in the trial. Ultimately, during the course of the trial, the prosecution is entitled to show that there is some other evidence to connect to the petitioner to the crime in question. Result of DNA test is always dependent on the procedure undertaken in collecting and transmitting blood samples to the Forensic Laboratory. Hon'ble Supreme Court at paragraph 20 of the judgment in **Mukesh and Another (supra)** has stated

so by observing that if the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted. Similarly in the matter of **Nandlal Badwaik (supra)** it is observed that, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former. Importance of DNA test is impressed in this judgment. However, this aspect will have to be considered at the time of trial because it is well settled that if version of the victim of sexual offence is found to be reliable and trustworthy then it can be accepted as it is, even in absence of medical evidence or other corroborative evidence.

6. In the result, no case for quashing proceedings for offence u/s 376 and 506 of the Indian Penal Code as well as under Section 4 of the Protection of Children from Sexual Offences Act, 2012, is made out. Petition, as such is

dismissed. Needless to mention that all these observations are prima facie in nature and shall not have any bearing on the result of the trial.

(A. M. BADAR, J.)