

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

CRIMINAL APPLICATION NO. 743 OF 2021

01 Mukesh Baban Rawtale @ Pawara;

02 Rajesh Baban Rawtale @ Pawara;

03 Archana Ravindra Kharde Applicants

Versus

01 The State of Maharashtra;

02 Mahesh Jaysing Pawara Respondents

Mr. Pawan D. Pawar, advocate for the applicants

Mr. M. M. Nerlikar, A. P. P. for Respondent No.1

Mr. G.D. Jain, advocate (appointed) for Respondent No.2

**WITH
CRIMINAL APPLICATION NO. 779 OF 2021 IN
CRIMINAL APPLICATION NO. 743 OF 2021**

Aishwarya Mahesh Pawara @
Aishwarya Mukesh Rawtale Applicants

Versus

01 Mukesh Baban Rawtale;

02 Rajesh Baban Rawtale;

03 Archana Ravindra Kharde;

04 The State of Maharashtra;

05 Mahesh Jaysing Pawara Respondents

Mr. G. R. Syed, advocate for the applicant

Mr. Pawan B. Pawar, advocate for Respondents No.1 to 3

Mr. M. M. Nerlikar, A. P. P., for Respondent No.4
Mr. G. D. Jain, advocate (appointed) for Respondent No.5

**CORAM : SUNIL P. DESHMUKH &
NITIN B. SURYAWANSHI, JJ.**

DATE : 20th September, 2021.

PC :

1. By this Criminal Application, filed under Section 482 of the Code of Criminal Procedure, the applicants seek quashing of the First Information Report in Crime No. 94 of 2019 dated 13th March, 2019, registered with Shahada Police Station, for the offences punishable under Sections 363, 376 (2) (n), 344, 506 read with Section 34 of the Indian Penal Code and under Sections 5 (I) and 6 of the Protection of Children from Sexual Offences Act (for short, "the POCSO Act"). After filing of the charge sheet, it is numbered as Special Case No. 4 of 2020 and is pending for trial before the learned Special Judge, Shahada.

2. Respondent No.2 – father of the victim, on 13.03.2019 lodged the First Information Report in question alleging that his daughter / victim aged 17 years and 7 months, at the relevant time, was taking education in the 11th Standard in the College, on 24th February, 2019, at about 2.30 noon went to her friend's place and did not return back. In spite of inquiry with the relatives,

friends in the adjoining villages, she could not be traced and, therefore, she is abducted by unknown persons.

3. On 16.03.2019, the victim was brought by her mother and relatives at Shahada Police Station. On 18.03.2019, her statement was recorded wherein she has stated that she was abducted by applicant no.1 on the false pretext that his sister has called her at village Kodid. She accompanied him on motorcycle and he kept her in captivity from 24.02.2019 to 16.03.2019 and by giving threats of life, he forcibly established physical relations with her. Applicants no.2 and 3 instigated applicant no.1 in that behalf. Therefore, Sections 363, 376 (2) (n), 344, 506 read with Section 34 of the Indian Penal Code and under Sections 5 (I) and 6 of the POCSO Act were added in the crime. On completion of the investigation, charge sheet came to be filed against the applicants and the case is numbered as Special Case No.4 of 2020.

4. The learned advocate for the applicants strenuously urged that the applicant no.1 and the victim had a love affair which subsequently has culminated into their marriage. The marriage certificate and the declaration of the marriage of applicant no.1 and the victim are part of charge sheet. Affidavit of the victim is

also in the charge sheet wherein she has specifically stated that since long she had love affair with the applicant no.1. He, therefore, submits that in view of these facts, the proceedings against the applicants may be quashed in the interest of justice.

5. Learned A.P.P. opposes the prayer of the applicants contending that the victim was minor at the relevant time when the offence was registered and after conducting the investigation, charge sheet is filed.

6. The father of the victim – Respondent No.2 was duly served, but he has chosen to remain absent. His absence indicates that he has lost interest in prosecuting the matter.

7. Mr. G. D. Jain, learned advocate was appointed to represent Respondent No.2. Advocate Mr. Jain fairly concedes that in view of marriage between the victim and applicant no.1, conducting trial against the applicants would be a futile exercise and, therefore, present application deserves to be allowed.

8. On oral directions, statement of the victim is recorded by the Investigating Officer. She has made a statement that her

father – Respondent No.2 was against her love affair with applicant no.1 and, therefore, he had lodged the First Information Report in question. She has further stated that after attaining majority, she, on her own volition, had married with applicant no.1 on 08th August, 2019, as per the Scheduled Tribe customary rites and also in the Court. The applicant no.1 is her husband, applicant no.2 is brother-in-law and applicant no.3 is sister-in-law. At the time of marriage, she was not under any pressure and she has willingly married with applicant no.1. The present application is preferred by the applicants who are her relatives and she has no objection if the prosecution against them is quashed.

9. The victim has filed an intervention application bearing Criminal Application No. 779 of 2021 stating that her father was against her love affair with applicant no.1. Hence, First Information Report, in question, was lodged. He was also against her marriage with applicant no.1. She has stated that she is married with applicant no.1 and has no complaint whatsoever against applicant no.1. She is leading happy married life with applicant no.1. She has further averred that her statements, recorded during the course of investigation, were not out of her free will and she was under fear and pressure of her parents. She has

apologized for giving such statements. She, therefore, has supported the case of the applicants for quashing of the proceedings.

10. The record indicates that except the statements of the victims that she was abducted and kept in captivity and the applicant no.1 has forcibly established physical relation with her, there is no other material to substantiate charges under Sections 363 376 (2) (n) and 344, 506 read with Section 34 of the Indian Penal Code and under Sections 5 (l) and 6 of the POCSO Act. The C.A. reports as well as the Medical Certificate do not support the prosecution case. The entire prosecution rests on the statements of the victim. Though the father of the victim has lodged the First Information Report, it appears that because of the marriage of the victim with applicant no.1, he has lost interest in the prosecution. It is apparent from the fact that he has not appeared in the present proceedings.

11. It is a matter of record that the victim attained majority on 20th July, 2019 and that applicant no.1 and the victim have performed marriage on 08th August, 2019. The marriage certificate, declaration of marriage and the photographs of

marriage are part of the charge sheet, so also the affidavit of the victim, dated 16.09.2019, wherein she has confirmed the fact of her love affair and marriage with applicant no.1.

12. The averments made in the intervention application are self explanatory and they indicate that while giving statements during the course of investigation as well as while recording statement under Section 164 of the Code of Criminal Procedure, the victim was under the pressure of her parents and she had given the statements under coercion. This goes to show that the victim is not likely to support the prosecution even if trial is conducted against the applicants. In that view of the matter, conducting of trial against the applicants would be a futile exercise.

13. Considering the peculiar facts of the present case and the material in the form of charge sheet, affidavit of the victim and the fact that applicant no.1 and the victim had a love affair and they are happily married, we are of the considered view that proceedings against the applicants needs to be quashed in the interest of justice.

14. In the result, Criminal Application No.743 of 2021 is allowed in terms of Prayer Clause “B” and the proceedings of First Information Report in Crime No. 94 of 2019 dated 13th March, 2019, registered with Shahada Police Station, for the offences punishable under Sections 363, 376 (2) (n), 344, 506 read with Section 34 of the Indian Penal Code and under Sections 5 (l) and 6 of the Protection of Children from Sexual Offences Act, which, after filing of the charge sheet, is numbered as Special Case No. 4 of 2020 and is pending for trial before the learned Special Judge, Shahada, are quashed and set aside.

15. Criminal Application No.779 of 2021, for intervention, is allowed.

16. Legal fees and expenses of Mr. G. D. Jain, learned advocate, appointed to represent Respondent No.2, are quantified at Rs. 2500/- (Rs. Two Thousand Five Hundred), to be paid by the High Court Legal Services Sub-Committee at Aurangabad, within four weeks from today.

NITIN B. SURYAWANSHI
JUDGE

adb

(SUNIL P. DESHMUKH)
JUDGE