

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.569 OF 2021

ABC].... Applicant/Org.Accused
versus

1] The State of Maharashtra]
Through Senior P. I.]
P. S. Vithalwadi, Dist. Thane.]
2] XYZ]..... Respondents.

Mr. Sudhir C Halli for the Applicant.

Mr. V B Konde-Deshmukh, APP for the Respondent/State.

CORAM : S. S. SHINDE,
N. J. JAMADAR, JJ

DATE : 11th August 2021

JUDGMENT : (PER S.S SHINDE, J)

1 At the outset it is required to be noted that since the allegations levelled by the Respondent No.2 i.e. the First Informant against the Applicant are in respect of alleged molestation of her daughter, the identity of Petitioner and the 2nd Respondent needs to be concealed. Therefore in the cause title, the Petitioner is referred to as “ABC” and the 2nd Respondent is referred to as “XYZ”. Registry is directed to main the record accordingly.

2 Rule. Rule made returnable forthwith and heard with the consent of the learned counsel appearing for the parties.

3 This Criminal Application is filed by the Applicant for the following substantial relief :-

“(b) This Hon’ble Court may kindly be pleased, after going into legality, propriety and substantivity of the case, to quash and set aside the F.I.R. No.64/2021 registered with P. S. Vithalwadi Dist. Thane against the Applicant, on such terms and conditions as deems fit and proper.”

4 It is the allegations of the 2nd Respondent that the alleged incident occurred on 27/02/2021 at 10.30 pm. whereby the Applicant was found to be moving his hands on the stomach and chest of the victim girl of the 2nd Respondent. It is alleged that the the Applicant has committed the offence of molestation with the victim girl of the 2nd Respondent. On being narrated the aforesaid act of the Applicant by the victim girl to the Respondent No.2, the 2nd Respondent lodged a complaint being FIR No.64 of 2021 at the Vithalwadi Police Station for the offences punishable under Section 354 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”).

5 The learned counsel for the Applicant and the 2nd Respondent – Original Complainant jointly submit that the parties have amicably settled the dispute and, therefore, the impugned FIR may be quashed.

6 The learned counsel appearing for the Applicant invites attention

of this Court to the averments made in the affidavit filed by the 2nd Respondent and submits that the 2nd Respondent has no objection to quash and set aside the impugned FIR.

7 We have carefully perused the contents of the impugned FIR and the affidavit filed by the 2nd Respondent – original complainant who is the mother of the victim girl. There is a reference in the FIR about the allegations made by the victim girl against the present applicant. At the relevant time, the age of the victim girl was 8 years.

8 We have carefully perused the allegations made in the FIR. It appears that the victim girl has narrated in detail the alleged act of the applicant to her mother i.e. the Respondent No.2. It is alleged against the present applicant that the applicant came in the house of 2nd Respondent at about 10.30 pm on 27/02/2021 and misbehaved with the victim girl. It is alleged that the applicant started moving his hands over the stomach and chest of the victim girl. It is further alleged that the Applicant also kissed the neck, cheeks and lips of the victim girl. The act of the Applicant prima facie shows the intention of the Applicant to molest the victim girl, who was 8 years of old at the time of the alleged incident. The offences alleged against the Applicant are under Section 8 of the POCSO ACT, and Section 354 of the Indian Penal Code. Admittedly, the victim was minor at the time of incident and the alleged

activities of the Applicant not only prima facie attract the provisions of Section 354 of the Indian Penal Code, but also attract the provisions of Section 8 of the POCSO Act.

9 In view of the settled position in law, as also the fact that, the alleged offences levelled against the Applicant are under the Special Act and have a serious impact on the society, the prayer of the applicant to quash the impugned FIR cannot be acceded to. The alleged offences are not individualistic in nature and indicate mental depravity. Such offences have serious impact upon the society. In such FIRs the Investigating Officer should be allowed to carry out the investigation, and at this pre-mature stage, acceding to the prayer of the applicant and the 2nd Respondent to quash the impugned FIR on the basis of alleged settlement would not be in conformity with the exposition of law by the Supreme Court in the case of *Giansingh v. State of Punjab and anr*¹

10 The reliance placed by the learned counsel appearing for the Applicant on the judgment of the Madras High Court in the case of *Prasanath and anr v/s. The State and ors. in Cri. O. P (MD) No.3463 of 2020* is misplaced in the facts of the present case.

11 The same view, as aforementioned, in the case of Gian Singh

1 2012 (10 SCC 303)

(supra) has been reiterated/confirmed by the Hon'ble Supreme Court in the case of State of **Madhya Pradesh Vs. Laxmi Narayan and ors**², wherein it is held that :-

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6 *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are truly speaking, not private in nature but have serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.”*

12. For the reasons stated in the foregoing paragraphs, we are not inclined to allow the prayer of the Applicant to quash the impugned FIR on the basis of the alleged settlement. In that view of the matter, the Criminal Application is required to be rejected, and the same stands rejected.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]

² 2019 (5) SCC 688