

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

CRIMINAL APPEAL NO. 147 OF 2020

ABC

...APPELLANT

Versus

1. The State of Maharashtra
Through PI Bharti Vidyapeeth
Police Station, Pune.

2. XYZ

...RESPONDENTS

...

Mr. Rahul Kadam a/w. Mr. Maaz Syed for appellant.

Mr. Rohan Surve appointed advocate for Respondent No. 2.

Mr. Deepak Thakre, PP a/w. Mrs. M H Mhatre, APP for Respondent-State.

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**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON- 31st MARCH 2021.
PRONOUNCED ON- 5th APRIL, 2021.**

JUDGMENT [PER S.S. SHINDE, J.].

. At the outset it is required to be noted that since the allegations against the appellant are in respect of the alleged sexual assault, the identity of the appellant and Respondent No. 2 needs to be concealed, and they are referred to as “ABC” and “XYZ”. The Registry is directed to maintain the record accordingly.

2. Being aggrieved by the order dated 19.12.2017 passed below Exhibit-3 in Special Case No. 422 of 2017 passed by Additional Sessions

Judge, Pune, thereby rejecting the prayer of the appellant to release him on bail, this appeal is filed.

3. Learned counsel appearing for the appellant submitted that the appellant was arrested on 27th June 2017 by Bharti Vidyapeeth Police Station and offence is registered by them punishable under Section 376 (2) (n) of Indian Penal Code read with Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(r), 3(1)(w), 3(2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The allegation against the appellant is that the appellant were residing in the locality where he had made an acquaintance with the victim girl and during the period between 2016 to January 2017 the appellant has committed the above mentioned offences. After registration of FIR, charge sheet came to be filed and thus Special Case No. 422 of 2017 was registered.

It is further submitted by the learned counsel appearing for the appellant that *prima facie* there is no case made out against the appellant under section 376 (2) (n) of Indian Penal Code read with Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(r), 3(1)(w), 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and there is no direct or indirect connection of the appellant with the alleged offence.

4. It is submitted that the alleged incident took place in the months between December 2016 to January 2017 and the complaint is lodged on 27.06.2017 therefore, there is delay in lodging the complaint. At the time of alleged incident the victim girl was aged about 16 years and 5 months and was studying in 12th standard and hence she was matured and her relations with the appellant were consensual. It is submitted that the mother of victim girl pressurized the victim girl to lodge the FIR against the appellant. The appellant is in custody since 27.06.2017. The appellant had filed application vide Cri.B.A. No. 2664 of 2017 which came to be rejected on 18.08.2017, on the ground that the investigation is in progress.

5. Learned PP appearing for Respondent-State invites our attention to the statement of victim girl also other accompaniments of the charge sheet and submits that the appellant has committed very serious offence, therefore, appeal may not be entertained.

6. We have given due consideration to the rival submissions. With the able assistance of learned counsel appearing for the parties, perused the pleadings and grounds taken in the petition and annexures thereto.

7. If the case of the appellant is considered in the light of evidence collected by the Investigating Officer, the involvement of the appellant has

been disclosed in alleged commission of offence. The contention of the learned counsel appearing for the appellant that there was consensual sex, deserves no consideration, since, the Respondent No. 2 was admittedly minor on the date of alleged incident. Recently, the Delhi High Court in the case of Dinesh Sharma & others Vs. State & Another in Para 8 and 9 observed as under:-

8. A perusal of the above mentioned cases shows that the Supreme Court has categorically stated that heinous crime like rape cannot be quashed by the High Court by exercising power under Section 482 Cr.PC. even if the prosecutrix and the accused have entered into a compromise. The said judgments are binding on this Court under Article 141 of the Constitution of India. The petitioner is accused of an offence under POCSO Act. The Statement of Objects and Reasons as to why the Protection of Children from Sexual Offences (POCSO) Act, 2012 was legislated reads as under:

"STATEMENT OF OBJECTS AND REASONS

1. Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Further, Article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires that State Parties to undertake all

appropriate national bilateral and multilateral measures to prevent

(a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials..

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that the offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives."

9. Exercising jurisdiction under Section 482 Cr.P.C to quash an offence under POCSO Act would go against the intention of the legislature which has brought out the special enactment to protect the interests of children.

8. It is an admitted position on record that the victim was minor at the time of alleged incident and during that period she conceived and delivered a baby. Her consent for the sexual act was immaterial. The statement of the victim is recorded under Section 164 (5) of the Code of Criminal Procedure. Perusal of the said statement would show that she never consented the appellant for sex. Apart from the alleged offences under IPC and POCSO, provision of Special Act i.e. SC & ST Act are also attracted.

9. In the light of discussion in foregoing paragraphs, we are not inclined to entertain the present appeal. Hence, the appeal stands dismissed.

10. It appears that the chargesheet is already filed. In that view of the matter, we direct the concerned Trial Court to expedite the trial.

11. The observations made hereinabove are *prima facie* in nature and confined to the adjudication of the present appeal only. The Trial Court shall not get influenced by the said observations during the course of trial.

12. We appreciate the able assistance rendered by Advocate Mr. Rohan Surve, appointed for representing the Respondent No. 2. We quantify his fess at Rs. 7500/- to be paid by High Court Legal Services Committee, Mumbai, within four weeks from the receipt of copy of this order.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)