

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 807 OF 2021

Dr. Meghsham S/o. Pramodrao Anjankar,
Aged about 39 years,
Occupation : Assistant Professor,
R/o. Flat No.101, Govind Vatika Apartment,
New Subhedar Layout, Nagpur.

.....**APPLICANT**

... **VERSUS** ...

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Nandanwan,
Nagpur City, Nagpur.
2. Ku. Shital D/o. Ramsevak Kushwah,
Aged about 16 years, through her
natural guardian i.e. mother namely
Smt. Sunanda Wd/o. Ramsevak Kushwah,
Aged about 42 years,
Occupation – Household,
R/o. Plot No.412, Near N.I.T. Ground,
Darshan Colony, Nagpur.

.....**NON-APPLICANTS**

Shri N. B. Kalwaghe, Advocate for the Applicant.
Shri V. A. Thakare, Additional Public Prosecutor for the Non-applicant No.1.
Shri A. Y. Kamble and Shri V. N. Patre, Advocate for the Non-applicant No.2.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 24.08.2021.

ORAL JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.
2. Rule. Rule is made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the First Information Report No.370/2021 dated 08.07.2021 registered with the non-applicant No.1 - 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.

4. The First Information Report came to be registered by the non-applicant No.2 represented through her mother stating that on 05.07.2021 she had been to Radhika Clinic which is being run by Dr. Ravindra Gundalwar due to pain in abdomen and Nausea with mild fever. Dr. Gundalwar prescribed her medicine and asked her to revisit, if pain continues. Therefore, on 07.07.2021, the non-applicant No.2 again revisited the clinic with her elder sister. It is alleged that at that time, one Ayurvedic doctor attended her and checked her. The Non-applicant No.2 therefore, lodged report with the non-applicant No.1 – Police Station for offence punishable under Section 354 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 on 08.07.2021.

5. The applicant was allegedly unaware of registration of the First Information Report and came to be arrested on 09.07.2021 and was released on regular bail on 12.07.2021.

6. During the pendency of the investigation, the applicant and the mother of the victim have resolved their dispute. The applicant has therefore, filed present application challenging registration of the First Information Report and continuation of the investigation against the applicant.

7. The non-applicant No.2 has filed affidavit before this Court dated 31.07.2021 affirmed by the mother of the victim. It is stated in the said reply that the First Information Report was lodged due to misunderstanding. It is stated that the non-applicant No.2 after recovery from the pain and illness realised her mistake and therefore, she told the same to her mother. It is stated that her mother on behalf of the victim has filed affidavit stating that the applicant never misbehaved with her daughter. The non-applicant No.2 and her mother have realised the mistake and therefore, they are withdrawing all the allegations made against the applicant.

8. We have carefully considered the allegations in the First Information Report and the memo of application. It is undisputed that the applicant is a medical practitioner. At this stage, it is necessary to note Section 41 of the Protection of Children from Sexual Offences Act, 2012, which read as under :

“Section 41 – Provisions of sections 3 to 13 not to apply in certain cases. - The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.”

9. On perusal of the provisions of Section 41 and on consideration of the First Information Report lodged against the applicant, it appears that the incident mentioned in the First Information Report making allegations against the applicant was due to misunderstanding. Since, the applicant is medical practitioner and had medically examined the victim, provisions of Section 3 to 13 of the Protection of Children from Sexual Offences Act, 2012 shall not be applicable. Therefore, the ingredients of the offence under the provisions of the Protection of Children from Sexual Offences Act, 2012 are not fulfilled.

10. The next offence alleged against the applicant is under Section 354 of the Indian Penal Code. On consideration of the affidavit filed by the non-applicant No.2, we are satisfied that the First Information Report came to be registered against the applicant due to misunderstanding.

11. Today, the mother of the victim is present in the Court. She categorically stated before the Court that there is no pressure or coercion on her to resolve the dispute with the applicant. She

has also stated that she has not been offered any money for settling the matter with the applicant. Therefore, in view of the affidavit filed by the non-applicant No.2, we are satisfied that there is no impediment in quashing the First Information Report against the applicant.

12. The Hon'ble Apex Court in the case of *Narinder Singh & others Vs. State of Punjab & anr.* reported in *(2014) AIR SCW 2065*. The decision of the Hon'ble Apex Court makes it clear that the Court cannot declare to quash the First Information Report merely because the First Information Report incorporates a particular provision which is a serious offence or offence against society. The Court has to make an endeavour to find out whether the information in the First Information Report indeed discloses the ingredients of such offence and the Court can accept the settlement and quash the report/charge-sheet only after the Court is of the opinion that such an offence is unnecessarily incorporated in the First Information Report/charge-sheet.

13. From the perusal of the First Information Report and the material produced in the Court, we are satisfied that the ingredients of the offence under Section 354 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012, are not fulfilled. Since the applicant and the

non-applicant No.2 have mutually resolved their dispute, chances of conviction are bleak.

14. In view of the Section 41 of the Protection of Children from Sexual Offences Act, 2012, ratio laid down by the Hon'ble Apex Court in the case of ***Narinder Singh*** (*supra*) and the affidavit filed by the non-applicant No.2 dated 31.07.2021, we pass the following order :

The First Information Report No.370/2021 dated 08.07.2021 registered with the non-applicant No.1 - Police Station for the offence punishable under Section 354 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012, is quashed and set aside against the applicant.

15. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE