

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

CRIMINAL APPLICATION (APL) NO. 1074 OF 2018

Pranab Praful Mandal,
Aged about 40 years,
Occupation – Teacher,
R/o. Lagam, Taluka Mulchera,
District – Gadchiroli.

.....APPLICANT

... **VERSUS** ...

1. State of Maharashtra,
Through Police Station Officer,
Police Station Aheri,
Dist. - Gadchiroli.
2. Prakash S/o. Namdeorao Dudhbavre,
Head Master,
Bhagwantrao Madyamik Ashram Shala,
Lagam, Ta. Mulchera,
District – Gadchiroli.

.....NON-APPLICANTS

Shri V. N. Morande, Advocate for the Applicant.
Shri V. A. Thakare, Additional Public Prosecutor for the Non-applicant No.1.
Shri G. M. Shitut, Advocate for the Non-applicant No.2.

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

DATE : 21.08.2021.

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.204/2018 registered with the non-applicant No.1 – Police Station for the offences punishable under Section 354 of the Indian Penal Code, Sections 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

4. The First Information Report came to be registered against the applicant by the non-applicant No.2 with the allegations that on 10.10.2018 the victim girl student of 9th standard aged about 17 years along with other students namely Vimla Gavade and Rajni Madavi came to the office of headmaster, and made a complaint to headmaster that, on 08.10.2018 when the victim was on scooty of the appellant to reach P.H.C. Lagam, by keeping the bag at middle portion of seat. Immediately after the scooty crossed the gate of school the applicant asked her to sit by holding him and by holding her left hand asked her to give that bag to keep at front side of scooty, accordingly she had given the bag to the applicant, and they proceeded to Primary Health Centre at Lagam.

5. The victim is aged about 17 years and allegedly belongs to Scheduled Tribe Category. The victim was taking education in

9th standard in the Ashram School where the applicant is the teacher. The informant is Headmaster of this School.

6. The applicant has therefore, challenged registration of the First Information Report by filing present application. This Court on 24.11.2018 issued notice for final disposal to the non-applicants and in the mean time it was directed that no coercive action shall be taken against the applicant.

7. The non-applicant No.1 Investigating Agency filed its reply stating that after registration of the First Information Report, the Investigating Agency recorded statement of minor girl. It is stated that the minor girl in her statement has mentioned that even though she refused to seat behind back of the applicant on his scooty vehicle, the applicant with an intention caught hold of her hand without her consent which clearly amounts to outrage modesty of girl. The Investigating Agency recorded statement of friends of the non-applicant No.2. It is therefore, submitted that there is *prima facie* material against the applicant.

8. The applicant during the pendency of the present application filed additional affidavit dated 11.12.2020. The applicant by way of said affidavit placed on record caste certificate issued in his favour dated 11.11.1971, which showed the caste of

the applicant as 'Namashudra' which is recognised as Scheduled Caste.

9. We have heard the learned Advocate for the applicant, the learned Additional Public Prosecutor for the Non-applicant No.1/State and the learned Advocate for the Non-applicant No.2.

10. With the assistance of the Advocates for both the parties, we have carefully scrutinised the contents of the First Information Report and the case papers placed on record by the learned Additional Public Prosecutor. On careful perusal of the First Information Report and the case papers produced on record by the learned Additional Public Prosecutor, it appears that there are no allegations or material to prove sexual intent on the part of the applicant. The statement recorded by the Magistrate under Section 164 of the Code of Criminal Procedure is to the effect that the applicant called upon the victim to give him her bag, on which she refused. It is thereafter stated in the statement that the applicant again called upon the victim to give her bag. When the victim was giving bag to the applicant, the applicant held her hand. The victim has specifically stated that nothing more than the incident stated above had occurred. On consideration of the statement recorded before the Magistrate under Section 164 of the

Code of Criminal Procedure, we are of the view that the victim has not stated anything about sexual intend of the applicant.

11. In so far as Section 354 of the Indian Penal Code alleged to have been committed by the applicant is concerned, for fulfillment of the ingredients of Section 354 of the Indian Penal Code, intention to outrage or knowledge that the act will outrage her modesty and assault or use of criminal force are the essential ingredients of the said section. Considering the statement of victim under Section 164 of the Code of Criminal Procedure, we are of the opinion that the essential ingredients of Section 354 of the Indian Penal Code are not fulfilled.

12. The applicant has placed on record caste certificate dated 11.11.1971 certified his caste to be Scheduled Tribe. Therefore, prosecution against the applicant under the provisions of Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989, cannot be continued.

13. On overall consideration of the allegations in the First Information Report, statement of victim under Section 164 of the Code of Criminal Procedure and other material brought on record in the form of case papers produced by the learned Additional Public Prosecutor, we are satisfied that the essential ingredients of

Section 8 of the Protection of Children from Sexual Offences Act, 2012, Section 354 of the Indian Penal Code are not made out. Therefore, continuation of proceedings against the applicant would amount to abuse of process of Court.

14. We therefore, pass the following order :

The First Information Report No. 204/2018 registered with the non-applicant No.1 – Police Station for the offences punishable under Section 354 of the Indian Penal Code, Section 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 8 of the Protection of Children from Sexual Offences Act, 2012 is quashed and set aside.

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

JUDGE

JUDGE