

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.811 OF 2022

Shriram Ganpat Gaikwad

... Applicant

Versus

1. The State of Maharashtra

2. XYZ

... Respondents

...

Mr. M. V. Thorat, Advocate for applicant.

Mr. M. M. Nerlikar, APP for respondent No.1 – State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 5th August, 2022.

ORDER :-

. By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, the applicant, who is original accused No.2, seeks quashment of the FIR vide Crime No.30 of 2021 dated 06.10.2021 for the offence punishable under Section 363 of Indian Penal Code and the charge-sheet, which came to be filed before the learned Special Judge under POCSO Act, Mukhed, Dist. Nanded for the offences punishable under Sections 363, 366-A, 376(2)(j)(n), 468, 471 read with Section 34 of Indian Penal Code and Section 4, 6 and 17 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the “POCSO Act”).

2. Heard learned Advocate Mr. M. V. Thorat for the applicant and learned APP Mr. M. M. Nerlikar for respondent No.1 – State.

3. It has been vehemently submitted on behalf of the applicant that original accused No.1 had love affair with the informant – girl and, therefore, the girl had ran away and got married with him. It is alleged that the applicant had changed the date of birth of the girl. In fact, the applicant has been roped only on the ground of alleged manipulation. The applicant was honorary peon serving in the Grampanchayat. Maintenance of the concern register under the Birth and Death Registration Act is the responsibility of the Gram Vikas Adhikari or Gram Sewak. It could not have been the duty of the applicant to carry out such entry. Only on the basis of documents, which is written by the Gram Vikas Adhikari that the entry in the register is in the handwriting of the applicant, he cannot be roped in. It will have to be considered that as per the prosecution story itself, before the alleged incident, the Gram Vikas Adhikari was not on duty, because of his death three months prior to that date. Then it should have been investigated as to who would be the ordinary custodian of the concerned registers/office record of the Grampanchayat. It should have been with the Sarpanch. At no point of time, such record could have been with a peon. The applicant is a senior citizen and with such allegations, it would be a futile exercise to

ask him to face the trial. Learned Advocate for the applicant has relied on the decision in ***Vineet Kumar and Ors. Vs. State of Uttar Pradesh and another, [(2017) 13 SCC 369]***, wherein it was held that :-

“ Inherent power given to the High Court under Section 482 Cr.PC. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure to quash the proceedings.”

4. Per contra, the learned APP strongly opposes the application and submitted that the document, which the applicant had supplied, created a picture that the girl is major and then the original accused No.1 was misusing it to contend that since she is major their marriage is legal, when in fact she was only 17 year old girl. During investigation, it has been transpired that her actual date of birth is 15.01.2004, however, the record with the Grampanchayat shows that the birth of the daughter of the informant and his wife was noted on 31.03.2001 as 15.03.2001, as a

result of which she has been shown by original accused No.1 as major. No doubt, in the statement, the girl says that she had love affair with accused No.1, but since she was minor, she could not have married. In her statement, she has clearly stated that accused No.1 had made arrangements to have birth certificate, 8 days prior to the date of elope. Definitely, this could be in connivance with accused No.1 which has been made by the applicant and, therefore, no case is made out to quash the FIR as well as the proceedings.

5. It is to be noted that initially when the FIR came to be lodged it was only under Section 363 of the Indian Penal Code stating that the daughter of the informant – respondent No.2, who was born on 15.01.2004, has been kidnapped. Thereafter, after the investigation was started, further Sections have been added and ultimately, the charge-sheet is under the above-said Sections. We are definitely concerned only with the applicant, who is the accused, against whom as per the charge-sheet it is alleged that he had made available the birth certificate or extract of the birth register. Statement of the girl would indicate that 8 days prior to her statement under Section 161 of the Code of Criminal Procedure dated 07.08.2021, accused No.1 had given a phone call to his friend and told that her birth certificate should be taken. She was not knowing the name of the friend to whom accused No.1 had entrusting

this work. But then she says that after they came to their village, the said friend of accused No.1 gave that certificate to him, in which her birth date was shown as 15.03.2001 instead of 15.01.2004. Thereafter, further investigation has been carried out and at present, there is letter by Gram Vikas Adhikari stating that those entries are in the handwriting of the present applicant. It appears from the charge-sheet that the Investigating Officer has not taken the sample of handwriting of the applicant and had not sent it for the opinion of the handwriting expert, however, when the nature of such evidence i.e. opinion of handwriting expert is corroborative in nature and if there is any evidence or the prosecution can prove by any other method that the said handwriting is that of the present applicant, then we cannot say that in absence of collection of such evidence, a case is made out for quashing the FIR as well as proceedings. We are also required to consider what were the consequences of such false document and for what purpose that document was got prepared. Under such circumstance, there appears to be *prima facie* evidence against the present applicant and for that purpose, this cannot be the fit case where the powers of this Court under Section 482 of the Code of Criminal Procedure should be exercised. The ratio laid down in the above-said decision cannot be made use by the applicant, as by assessment of the material this Court comes to the

conclusion that there is *prima facie* evidence against the applicant.
Hence, the application stands rejected.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

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