

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Revision Application No. 141 / 2022

Nilesh @ Rhushabh Arun Jadhav,
Age : 23 years, Occu: Household,
R/o. Wakod, Tq. Jamner,
Dist. Jalgaon.

...Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Pahur Police Station,
Tq. Jamner, Dist. Jalgaon.

2. XYZ - Victim

(Detailed name and address given in Sealed Envelope)

...Respondents

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Advocate for Applicant : Mr. Wani Girish V.

APP for Respondent/State : Smt. G. L. Deshpande

Advocate for Respondent No.2 : Mr. V. M. Vibhute (Appointed Through Legal Aid)

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CORAM : KISHORE C. SANT, J.

DATE : 14th SEPTEMBER 2022.

Oral Judgment :

1. Rule. Rule made returnable forthwith by consent of the parties.

2. The case of the Applicant is that though his name is shown as accused in Special Case (POCSO) No.23/2018, no role is attributed to him. He submits that from the FIR and also from the statements as recorded by the Police, his involvement is not shown in that offence. The crime was registered vide CR No.14/2018 dated 12.03.2018 for the offences punishable under Sections 354(a)(i), 109, 500, 506 of the Indian Penal Code ('IPC' for short) and Sections 8, 14(1)(4) of the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short) and Section 67(a) of the Information Technology Act, 2000 ('I.T. Act' for short).

3. From the record, he pointed out that the only role ascribed to him, is that when the Informant and his relatives had been to the house of the accused persons, the present Applicant was present. The main allegation is against the Accused No.1 - Atul @ Rahul Arun Jadhav and Accused No.4 namely Sau. Arati @ Kalpana Dipak Jadhav. It is alleged that Accused No.1 has committed the offence punishable under Section 354(a), (1)-(i), (ii) and (iv) of IPC and further he has committed offence punishable under Section 7 alongwith Section 11(i), (ii), (iv)

and (v) of POCSO. It is further alleged that Accused No.4 abetted this crime. The Accused No.1 has taken some photographs of the victim and has circulated those on the WhatsApp. The allegation against Accused No.4 is that she helped the Accused No. 1 in committing offence and thereby she has committed offence punishable under Section 109 of IPC. The allegation is also made against Accused No.4 for committing offence under Section 16 of the POCSO Act. So far as this Applicant is concerned, in the submission of the learned Advocate for the Applicant, no material is available on record to frame charge against him.

4. The learned Advocate pointed out that the learned Special Judge has framed the charges mainly against the Accused No.1 and Accused No.4. So far as the present Applicant and other Accused are concerned, the following charges i.e. Charge No.9 and 10 are framed against them.

“Ninethly, on 04/02/2018 at about 10:30 am, you accused nos.1 to 7, in furtherance of your common intention, committed extortion by putting the informant and his family members in fear of sharing the above referred photographs of the victim minor girl on WhatsApp social media thereby dishonestly

induced them to deliver you Rs.1,00,000/- or one acre land and thereby committed an offence punishable under Section 384 r/w Section 34 of the Indian Penal Code and within my cognizance."

"Lastly, on 10/02/2018, you accused no.1 yourself and on the say of you accused nos. 2 to 7, transmitted the above referred photographs of the victim minor girl i.e. daughter of the informant on WhatsApp social media through mobile phone number of your accused no.1 9657536504 to WhatsApp mobile no. 9049952177 of Vinod Dandge resident of Dabha, Tq. Soygaon, Dist. Aurangabad and thereby committed an offence punishable under Section 67A of the information Technology Act, 2000 and within my cognizance."

5. He further pointed out that the charges are absolutely vague and does not specify as to what exact charge he is to face. He further submits that from the statements of the witnesses, it is seen that he is only shown to be present when the Informant and others had been to the house of Accused persons. He says that his presence in his own house is very natural and this presence will not make him liable to face the prosecution. Moreover, in his presence, no any incident had taken place. It is only that when the Informant and his relatives had come to speak to Accused No.1 and his parents, this Applicant was said to be

present in the house. Therefore, this is a fit case to set aside the charges framed against the present Applicant.

6. On the earlier occasion, learned APP has raised an objection about the maintainability of the Revision Application, since the charge is already framed and no application for discharge was filed prior to framing of charge. Learned APP submits that the offence is serious in nature under the POCSO Act. Now the trial has already begun and one witness is also examined. She states that the trial may not take more than three months from now and at this stage, it is not desirable to discharge the Applicant. She states that the charge is framed on 27.10.2021, whereas the instant application was filed in April, 2022. Thus, the Applicant has waited for long time and therefore no indulgence be shown.

7. The learned Advocate for the Applicant on the last occasion produced on record a copy of judgment reported in 1981 CRI. L. J. 454 in the case of **M/s. Mohanlal Devdanbhai Chokshi and Others Vs. J. S. Wagh and another**, in which it is held that the Revision is maintainable

against the order of framing of charge. He pointed out that this Revision is very much maintainable in view of this judgment.

. At this stage, Mr. Wani, learned Advocate for the Applicant pointed out that the Applicant has already been selected in the recruitment process in the Police Department. Though he is selected since this offence is pending against him, his appointment is withheld. He pointed out a statement is made to this effect in Paragraph No.5 of this application. This Court normally would not have indulged into the exercise in view of the Applicant approaching the Court almost after six months after framing of the charge and secondly that the trial has already began. From the material produced on record, it appears that there is no role of the present Applicant in the offence. There is no material to show his involvement in any of the acts alleged against the accused persons. Even the charge framed against him, does not specify his role under such circumstances to make him to face the trial would be unnecessary. There is no material on record sufficient enough even to proceed against the Applicant.

8. Considering the fact that the Applicant is selected and his

appointment is withheld because of the pendency of this matter, this Court is inclined to exercise the power to entertain the application. Hence the following order.

ORDER

- (i) The Criminal Revision Application stands allowed in terms of prayer clause 'B', 'B-1' and 'B-2'.
- (ii) With this, the Criminal Revision Application is disposed of accordingly.

[KISHORE C. SANT, J.]

Najeeb . .