

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.103 OF 2020

1. Shaikh Yasin Patel @ Shaikh
Age 39 years, Occu. Agri.,
2. Gaus Yasin Patel @ Shaikh,
Age 38 years, Occu. Agri.,
Both R/o. Bolegaon,
Tq. Shiruranantpal, Dist. Latur .. Applicants

Versus

1. State of Maharashtra
Through its Investigating Officer
Police Station Shiruranantpal
Dist. Latur
2. X.Y.Z.,
(Name and address of guardian
is furnished in seal envelope.) .. Respondents

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Mr. P. S. Mantri h/f. Mr. Parag Vijay Barde, Advocate for Applicants
 Mr. S. B. Narawade, APP for Respondent No.1 / State
 Mr. V. D. Gunale, Advocate for Respondent No.2

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CORAM : S. G. MEHARE, J.

DATE : 13-07-2022

ORAL JUDGMENT :-

1. Being aggrieved by the order passed by the learned Additional Sessions Judge, Nilanga, in Special Case (POCSO) No. 8 of 2018 below Exhibit-59, dated 21.01.2020, the applicants have preferred this revision under Section 397 of the Code of Criminal Procedure.

2. The few relevant facts for adjudication of the matter may be summarized as follows –

The applicants are the brothers of the main culprit, who eloped the minor girl. It has been alleged against the main accused that at odd hours in the night, he knocked on the door of the house of the victim and took her in one Omni car to Hyderabad. Thereafter, the applicants went to fetch them back. When she was with them in the vehicle, she was threatened not to disclose the incident to anybody.

3. The learned counsel for the applicants has vehemently argued that the impugned order is out of the record. There was no material before the learned Sessions Court that the present applicants had knowledge about the location of accused no.1 and the victim. He vehemently argued that the learned Sessions Judge did not consider the evidence witness Bapurao Dattatraya Bandgar, who has specifically and categorically stated that the victim was not threatened in the vehicle when he was travelling with them. Besides this, the statement of the victim is not corroborated by the other witnesses. Hence, the applicants are entitled to discharge.

4. Per contra, the learned APP has vehemently argued that the statement of the victim is very specific. She has categorically stated against both the accused. They had been to Hyderabad to

bring the main accused and the victim back. Therefore, the learned Sessions Judge has rightly observed that the applicants continuously contacted the main accused and knew the location of the main accused and the victim. He would submit that *prima facie* material is available against the applicants. The statement of the victim cannot be discarded at this stage. Therefore, the applicants have no case for discharge.

5. Mr. Gunale, the learned counsel for respondent No.2 /the victim, has argued that the learned Sessions Court has correctly recorded the findings. The victim and the accused are neighbours. Hence, they were well aware that there was chaos in the village. Therefore, both the accused went to Hyderabad. They have arranged for the vehicle. The victim stated before the police about the place where the applicants threatened her. He also pointed out that the learned Sessions Judge has correctly recorded the findings in paragraph no. 10 of the order. Therefore, revision deserves to be dismissed.

6. Following points arise for determination of the Court, and findings thereon are recorded for the reasons to follow;

Points

- (i) Whether the impugned order is legal, proper and correct?
- (ii) What order?

REASONS

Point No.1 :

7. It has been provided in section 227 of the Code of Criminal Procedure, if, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the Court considers that there is not sufficient ground for proceeding against the accused, it shall discharge the accused and record its reasons for doing so.

8. The provision regarding discharge is clear that the Court should satisfy on considering the record and the material that there is no sufficient ground to proceed with the trial. If the record and material are insufficient for proceeding against the accused, then the Court may discharge the accused. At the time of framing the charge, it is not necessary for the prosecution to establish beyond all reasonable doubts that the accusation is bound to be brought home against him. The Court has to weigh the prosecution evidence to find out whether a *prima facie* case is made out or not against the accused. These are the broad rules to exercise the powers under section 227 of the Code of Criminal Procedure.

9. Section 227 of Cr.P.C. imposes a heavy burden on the applicant to satisfy the Court that the material collected by the prosecution is insufficient to proceed against him. In the case of

Century Spinning and Manufacturing Co., (1970) 72 Bom.L.R. 585, the Bombay High Court has interpreted the term “ There is no sufficient ground for proceeding” as that mean that no reasonable person could come to the conclusion that there is ground whatsoever to sustain the charge against the accused. In other words, even on the face of the record, if the material against them is considered, no offence is made. Applying these tests the case of the applicants would be examined.

10. In the present case, the victim categorically stated the role played by the accused/applicants. She had explicitly stated that the accused/applicant threatened her when they were fetching her back in the vehicle. At that time, witness Bapurao Dattatraya Bangar, was not with them. It was the incident before, Bapurao joined them. Therefore, merely a statement of witness Bapurao Dattatraya Bandgar that no threats were given in his presence would certainly not damage the statement of the victim. Her statement is *prima facie* against them. She is the best witness on such facts subject to the material brought in her cross-examination. Normally the testimony of the female victim does not require corroboration and is sufficient to proceed against the accused. The said incident of threatening the victim happened when no other than the accused and victim were in the vehicle. The testimony of the witness Bapurao would be evaluated during the trial. The victim is the best witness for the alleged atrocities

committed against her. Barely for want of any corroboration, a statement of the victim cannot be thrown at this juncture. The material available on record appears sufficient to form an opinion that it is sufficient evidence against the accused/applicants to frame the charges. Viewing the case from the legal principles to be adopted for discharge of the applicants/accused, this Court is of the view that the applicants have no case for discharge.

11. There appears no substance in the arguments of the learned counsel for the applicants that the learned Sessions Judge has recorded the findings out of the record. Considering the reasons recorded by the learned Sessions Judge, this Court is of the view that the learned Sessions Judge has committed no error of law in passing the impugned order. Hence, point no.1 is answered in the affirmative.

Point No.2 :

12. The discussion made above led this Court to arrive at the conclusion that the impugned order is free from illegality or error of law. Therefore, the revision application is liable to be dismissed.

13. The revision application is dismissed.

**(S. G. MEHARE)
JUDGE**