

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

943 CRIMINAL APPLICATION NO.1733 OF 2021

**VINOD PITAMBAR AHIRE
VERSUS
STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant: Mr. Chaitanya V Dharurkar
APP for Respondent No.1: Mr. M. M. Nerlikar
Advocate for Respondent No.2: Mr. R. V. Gore

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**CORAM: SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE: 05th JULY, 2022

PER COURT:

1. This is an Application for quashing the F.I.R. registered vide C.R. No.0423/2018 dated 28.10.2018 registered at Jhilla Peth Police Station, Taluka and District - Jalgaon under Sections 376, 377, 506 of the Indian Penal Code, 1860 and under Section 3A, 4, 11, 12, 16 and 17 of the Protection of Children from Sexual Offences Act, 2012. The charge-sheet in this case was filed and further prayer was made for quashing of the charge-sheet.

2. Heard learned Counsel for the respective parties.

3. The Applicant was 39 years of age. He is a married man with three children. The victim was 16 years and 8 months of age at the time of lodging of the F.I.R. on 28.10.2018.

4. Learned Counsel for the Applicant initially argued the matter on merits. Thereafter, he submitted that the victim i.e. Respondent No.2 has filed *affidavit-in-reply* giving her consent for quashing of the proceedings. The F.I.R. is lodged by the victim on 28.10.2018. At the time of lodging of the F.I.R., the victim was 16 years 8 months of age. She has stated that she was studying in 12th Standard. In April 2018, she had joined Karate Classes. The Applicant was an Instructor there. Slowly the Applicant developed close relations with her through some inducements. He started chatting with her on mobile phone. The F.I.R. further mentions that he started getting physical. On one occasion the victim was taken by the Applicant to his house. At that time no one was in the house. He took advantage of the vulnerable position of the victim and had physical

relations against her wish. He threatened her that she should not disclose that to any one else and that he was a Police Officer. He threatened to defame her in the city. The victim got scared and succumbed to his lust time and again. This was repeated on 3 occasions in May-2018. The F.I.R. describes the details of the ordeal the victim had to go through during that phase. The allegations in the F.I.R. are quite serious. She has stated that from June to September 2018 she was taken to a hotel. He used to ask her to cover her face with a scarf and in the Hotel also he had physical relations with her. In October 2018 he repeated this act in the informant's Aunt's house. After some time her uncle returned to that house and found that the Applicant was present in the house. The harassment became unbearable to the victim. She finally told about her plight to her mother and with the support of her parents she lodged the F.I.R. The investigation was carried out, the charge-sheet was filed, the medical evidence supports her case. In the charge-sheet there are

statements of her uncle who had supported her case. He has stated that the victim had visited his house. At that time no one was in the house. After some time when he returned he found the Applicant in the house. There is statement of the Manager of the Hotel referred to by the victim in the F.I.R. He has also corroborated the victim's statement. Thus on merits, there is a strong case against the Applicant.

5. Learned Counsel for the Applicant submitted that the reply affidavit on behalf of Respondent No.2 should be taken into consideration to quash the proceedings by consent. Learned Counsel for Respondent No.2 also supported the learned Counsel for the Applicant in this submission. Learned Counsel for the Applicant relied on the order passed by a Division Bench of this Court in Writ Petition No.272 of 2022 dated 11.03.2022 in the case of Ganesh Shankar Pilane Vs. The State of Maharashtra and another. He relied on the Judgment of the Hon'ble Supreme Court in the case of Narinder Singh and others Vs.

State of Punjab and another reported in 2014 AIR SCW 2065. He also relied on another Division Bench order of this Court in case of Mohd. Bablu Kasiruddin Shaikh Vs. State of Maharashtra and another in Writ Petition No. 2821 of 2017, to support his case that the offences under the Protection of Children from Sexual Offences Act, 2012 or cases involving offence of rape can be settled by consent of the victim. Learned APP, however, strongly opposed this Application. He relied on the observations of the Hon'ble Supreme Court in the case of Narinder Singh and others Vs. State of Punjab and another (*Supra*) as well as in the case of Gian Singh Vs. State of Punjab and another reported in (2012) 10 SCC 303.

6. We have considered these submissions and we have perused the *affidavit-in-reply* of Respondent No.2.

7. The *affidavit-in-reply* mentions that after registration of the crime the victim and her mother came to know that the complaint registered

by her was improved to the extent that serious allegations and offences mentioned above were added in the said complaint. After knowing that; the victim and her mother had submitted an application before the Superintendent of Police, Jalgaon wherein it was pointed out that her original complaint was improved without her consent. In that Application it was mentioned that the victim was pressurized to give improved statement so that serious offences would be added in the complaint. She has further stated that the said Application is not forming part of the charge-sheet. In Paragraph No.5 of the *affidavit-in-reply* she has stated that considering her future life and academic career she has decided that she did not want to prosecute this case. The accused - Applicant had removed misunderstanding and misconception. Both the parties and their relatives had arrived at settlement and they had decided to put an end to all the disputes between them. She has stated that the settlement was arrived at without any influence, coercion or

without getting pressurized from any one. She has finally given her no objection for quashing of this proceedings.

8. As far as the merits of the matter is concerned, there is no question of quashing these proceedings. Offences alleged are under Section 376 (b)(c), 354, 377, 506 of the Indian Penal Code, 1860 and under Section 3, 4, 5(a), 11, 12, 16 and 17 of the Protection of Children from Sexual Offences Act, 2012. The F.I.R. of the first informant is supported by her medical evidence and statements of the 2 witnesses we have referred to hereinabove. Therefore, there is no substance in the stand now taken by the victim that the contents in the F.I.R. were exaggerated and were not recorded as per her say. In fact, this is a case wherein it needs to be investigated whether the victim is pressurized into filing this *affidavit-in-reply*; particularly, looking at the supporting material mentioned in the charge-sheet.

The Investigating Officer is directed to look into this aspect of the matter.

9. As far as the legal aspect whether offence under the Protection of Children from Sexual Offences Act, 2012 and offence of rape in such circumstance where victim is minor can be allowed to be quashed by consent is concerned; this issue can be looked at from the ratio laid down in the aforementioned Judgments cited by both the sides.

10. As far as the case of **Mohd. Bablu Kasiruddin Shaikh Vs. State of Maharashtra and another** (*supra*) is concerned; that case is not applicable because in Paragraph No.6 of that order, it was clearly mentioned that both the Petitioner and the Respondent in that case were adult and were in consensual relations. It was specifically observed that the offence under Section 375 of the Indian Penal Code, 1860 was not made out and therefore the proceedings was quashed. This certainly is not the case in the present case.

11. No doubt that the Division Bench of this Court in the order dated 11.03.2022 in Criminal Writ Petition No.272 of 2022 in the case of Ganesh Shankar Pilane Vs. The State of Maharashtra and another, has permitted quashing of the offence under the Protection of Children from Sexual Offences Act, 2012. In our opinion that order does not lay down a binding precedent in view of the clear observations and ratio laid down by the Hon'ble Supreme Court in the case of **Narinder Singh and others Vs. State of Punjab and another** and **Gian Singh Vs. State of Punjab and another** (*supra*).

12. In the case of **Narinder Singh and others Vs. State of Punjab and another** (*supra*) in category III of Paragraph No.31, the list is given in which cases the proceedings cannot be quashed on the ground of settlement. Category III reads thus-

"Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or

offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not be quashed merely on the basis of compromise between the victim and the offender."

13. Similar view is expressed by the Hon'ble Supreme Court in the case of **Gian Singh Vs. State of Punjab and another** (*supra*) in Paragraph No.61 of that Judgment it was categorically observed that, in what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and the victim have settled their dispute; would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be

fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society.

14. Based on these observations made by the Hon'ble Supreme Court; in the facts of the present case, the quashing of the proceedings by consent cannot be permitted.

15. In that view of the matter, we are not inclined to allow this Application. The Criminal Application is rejected.

16. It is made clear that when the matter comes for trial before the Trial Court, it shall be decided on its own merits in accordance with law.

[BHARAT P. DESHPANDE, J.] [SARANG V. KOTWAL, J.]

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