

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2320 OF 2021

Mahesh Narayan Nazare

.Petitioner

Vs.

The State of Maharashtra & anr.

.Respondents

Mr. Tejesh Dande a/w Mr. Bharat Gadhavi & Mr. Vikrant Khare i/b.  
Shama Mulla, Advocate, for the Petitioner

Ms S. D. Shinde, APP, for the Respondent No. 1 - State

Mr. Pravin Mengane & Ms Pallavi Karanjkar i/b. Mr. Sandeep  
Koregave, Advocate, for the Respondent No. 2

CORAM : NITIN JAMDAR AND  
N. R. BORKAR, JJ.

DATE : 17 AUGUST 2022

P. C.

. Heard Learned Counsel for the parties.

2. The Petitioner has sought to quash the proceedings in Special Case Child Prot/104/2019 pending before the District and Sessions Court, Kolhapur, pursuant to the charge-sheet No. 159 of 2019.

3. The Respondent No. 2 – father of the survivor girl (minor), aged 17 lodged an FIR bearing No. 56 of 2019 invoking

Sections 354-A of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act. In the FIR, it was stated that on 9 February 2019, the minor was sexually molested by the Petitioner, who was the neighbour of the Petitioner. The Complainant stated that this incident was narrated to him by the minor. A supplementary statement was recorded on 12 February 2019. The minor also gave her statement. In her statement, she has stated that when the Petitioner approached the minor girl, asked for History Book which the girl sought to give at that time she was sexually assaulted. Her parents confronted the Petitioner, who at that time apologized and stated that he will not do such thing again and let the matter be closed. Investigation is proceeded, statements of witnesses were recorded and charge-sheet has been filed. On the last date, the Petitioner had specifically stated that the Petitioner intends to invoke the extraordinary jurisdiction of this Court and not the remedy of filing discharge application.

4. The Learned Counsel for the Petitioner submitted that in the first statement, father of the minor has given completely different version. It is also submitted that the FIR is lodged with the delay of two days. The Learned Counsel also submitted that in her statement, the minor has given the third version. Learned Counsel further submitted that it is clear that the FIR is lodged only to somehow implicate the Petitioner in a false case. The Learned Counsel submitted that the delay coupled with contradictions,

which are apparent on record can be made basis for quashing of the proceedings.

5. The Respondent No. 2 supported the statement of the minor survivor girl which was recorded on 12 February 2019. In the said statement, she has given the version as to what happened on 9 February 2019 and how she was abused/assaulted. Though there is a different version given by the Petitioner, the gist remains the same as to the actual incident. Further more, the contradictions, omissions etc. is a matter of trial. The delay is only of two days and the circumstances in which the incident took place, the said delay can always be explained by the prosecution. It is settled that the scope of quashing of the proceedings invoking inherent and extra ordinary jurisdiction, is limited. Going by the statement of the minor, it cannot be said that no offence whatsoever is made out. The arguments advanced before us by the Learned Counsel for the Petitioner will have to be advanced at the time of trial as a defence of the Petitioner. According to us, no case is made out for exercise of extra ordinary jurisdiction for quashing the proceedings.

6. The Writ Petition is accordingly dismissed.

( N. R. BORKAR, J. )

( NITIN JAMDAR, J. )