

CRIMINAL REVISION APPLICATION NO.135 OF 2021

Mr.K.P.Anilkumar with Mr.Chimay Apte i/by Ms.Priyanka Kumar,
Advocate for applicants.
Dr.Prakash K. Deshmukh, Avocate for respondent no.3.
Mr.A.d.Kamkhedkar, APP for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th July 2022

PC :

1. The applicants are aggrieved by judgment and order dated 3rd April 2021 to the extent of directions issued by the Court to lodge complaint against applicants for offence under Section 193 of Indian Penal Code.

2. Respondent no.3 was prosecuted for the offences under Sections 354, 354D, 506 of Indian Penal Code and under Sections 8, 12 of Protection of Children from Sexual Offences Act, 2012. The applicant no.1 is the father of applicant no.2. Applicant no.2 is the victim girl. The FIR was registered at the instance of applicant no.1. On completing investigation charge sheet was filed.

3. The applicants were examined as PW-1 and PW-2 during the trial. They did not support the prosecution case. Vide judgment and order dated 3rd April 2021 passed by learned Extra Joint Additional

Sessions Judge, Pune in Special Case (POCSO) No.525 of 2017, respondent no.2 has been acquitted. However, the Trial Court directed Office Superintendent of District and Sessions Court, Pune to lodge complaint against applicants under Section 193 of Indian Penal Code.

4. Learned advocate for applicants submit that applicant no.2 is the victim girl who has already suffered. She was aged about 16 years at the time of incident. The order directing registration of FIR for offence u/s.193 of IPC is contrary to law. It is not in accordance with Section 340 of Cr.P.C. He relied upon decision of Supreme Court in case of **Sh.Narendra Kuar Srivastava Vs. The State of Bihar and others**¹. Relying upon said decision it is urged that Trial Court has not conducted inquiry in consonance with Section 340 of Code of Criminal Procedure and directed lodging of complaint under Section 193 IPC. The victim girl who was minor at the time of incident and her father shall not be prosecuted.

5. Respondent no.3 (accused) is present in Court. He is represented by learned Advocate Mr.Deshmukh appointed through legal aid. The respondent no.3 has no objection for setting aside the order directing registration of complaint against applicants for offence u/s.193 of IPC.

6. On the basis of nature of evidence adduced before Trial Court, respondent no.3 was acquitted vide judgment and order dated 3rd April 2021. The trial Court had given a finding that there is no evidence against accused to prove his guilt and he is entitled to be acquitted. However, the Trial Court has observed that applicants

1 Criminal Appeal No.211 of 2019, decided on 4th February 2019

have given false evidence and hence directed the Superintendent of District and Sessions Court, Pune to lodge complaint against them for offence under Section 193 of IPC.

7. Section 340 of Code of Criminal Procedure provides the procedure in cases mentioned in Section 195 of Cr.P.C. As per Section 340 of Cr.P.C, when, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary record a finding to that effect; make a complaint thereof in writing; sent it to a Magistrate of the first class having jurisdiction; take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and bind over any person to appear and give evidence before such Magistrate.

8. The provision contemplates a preliminary inquiry. The said provision also indicate that directions could be given where the Court is of the opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to therein. Apparently learned Trial Court has directed lodging complaint for offence u/s.193 of IPC. The judgment of Trial Court does not indicate that any inquiry was conducted.

9. Thus, no such inquiry was conducted while issuing such direction. It is also pertinent to note that Trial Court has directed the Superintendent of the Court to lodge complaint against applicants for offence punishable under Section 193 of IPC. Taking into consideration all the aforesaid circumstances, the directions which are impugned in this application deserves to be set aside.

ORDER

- (i) Criminal Revision Application No.135 of 2021 is allowed and disposed of;
- (ii) The judgment and order dated 3rd April 2021 passed by Extra Joint Additional Sessions Judge, Pune in Special Case (POCSO) No.525 of 2017 to the extent of clauses (v) and (vi) of the operative part of the said judgment is quashed and set aside.

(PRAKASH D. NAIK, J.)

MST