

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 355 OF 2021

Sheshrao s/o Palasram Puratkar
Aged about 73 years,
Occ.: Labour, R/o. Selu Muparpad,
Tah. Hinganghat, Dist. Wardha.

.... Applicant

Versus

1. The State of Maharashtra
Through P.S.O. Alipur,
Tq. Deoli, Dist. Wardha.
2. Sau. Ayodhya Dashrath Kuradkar
(Minor) Through her Natural Guardian
Mother Smt. Sangeeta Maroti Alone,
R/o. Kangaon, Tq. Hinganghat,
Dist. Wardha.

.... Non-applicants

Mr. Mohd. Ateeque Abdul Mushtaque, Advocate for petitioner.
Mr. I.J. Damle, APP for respondent No.1.
Ms. Jaya Mishra, Advocate (appointed) for respondent No.2.

CORAM : MANISH PITALE & G.A. SANAP, JJ.

DATE : 17/08/2022

ORAL JUDGMENT: [PER : Manish Pitale, J.]

Admit. Heard finally with the consent of the learned counsel
appearing for the rival parties.

2. The applicant is accused No.3 pursuant to FIR No.152/2020 registered on 22.08.2020 at Police Station, Alipur, District Wardha, for the offences under Section 376(I)(M), 363, 504, 506, 34 of Indian Penal Code and under Section 6 of the Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as “**the POCSO Act**” for short) and under Sections 9 & 10 of the Prevention of Child Marriage Act, 2006 (hereinafter referred to as “**the Act of 2006**” for short).

3. The non-applicant No.2 is the victim herself, who is the original informant, at whose behest the FIR has been registered. The grievance of the non-applicant No.2 is that she being a minor, aged about 15 years, was forced into marriage with accused No.1 and that the other accused persons, including the applicant before this Court, had actively connived and assisted in the said marriage.

4. A perusal of the oral report, leading to registration of the FIR and the statements of witnesses that have come on record pursuant to completion of investigation and filing of the charge-sheet, show that the role attributed to the applicant is that he had accompanied the accused No.1 i.e. the person who married non-applicant No. 2 (minor), on two occasions prior to the marriage and that he was present in a temple when the non-applicant No.2 was

allegedly picked-up from her house and marriage was performed in the temple. The mother of non-applicant No.2 has also stated, during the course of investigation, that she was under an impression that only an engagement ceremony would be performed and that marriage would be solemnized only after the non-applicant No.2 turns major. In her statement, the mother of respondent No.2 also submitted that when the non-applicant No.2 was allegedly ill-treated in the matrimonial house and she had gone to redress the grievances of non-applicant No.2, amongst the persons who tried to settle the matter, was the applicant before this Court. These appear to be the nature of allegations levelled against the applicant, on the basis of material that has come on record pursuant to the investigation.

5. Mr. Mohd. Ateeque, learned counsel appearing for the applicant submitted that even if the contents of the FIR, the charge-sheet and the accompanying documents are to be taken as it is, no case is made out against the applicant for facing trial for the aforesaid offences. It is submitted that if the offences are taken into consideration in the backdrop of the allegations made by the non-applicant No.2, perhaps Section 376 (3) of the I.P.C. can be invoked because offence under Section 376(I)(N) cannot be found on the statute book. By referring to Section 376(3) of the I.P.C. as also Section 363, 504 and 506 of the I.P.C., the learned counsel submitted that none of the

ingredients of the said offences can be invoked against the applicant, even if the material on record is taken against the applicant as it is. The learned counsel submitted that the same would apply to the offences under Sections 3 and 6 of the POCSO Act and Sections 9 and 10 of the Act of 2006.

6. In respect of Section 10 of the Act of 2006, the learned counsel specifically submitted that ingredients of the offence would require the allegations and material to indicate that the applicant either directed or abetted the child marriage in the present case. According to the learned counsel for the applicant, the material available on record was not sufficient to invoke even the said provision of law and that therefore, the entire FIR and charge-sheet needs to be quashed insofar as the applicant is concerned.

7. Mr. I. J. Damle, learned Additional Public Prosecutor appearing on behalf of the non-applicant-State submitted that the first information report, charge-sheet and the accompanying documents would indicate involvement of the applicant in the aforesaid offences and the matter needs to go to trial.

8. Ms. Jaya Mishra, learned counsel appointed for non-applicant no.2 submitted that in the present case, presence and involvement of the

applicant at various stages is evident in view of the material on record and that he cannot, at this stage, claim that not even a *prima facie* case is made out against him. The learned counsel, by inviting our attention to the statements that have come on record pursuant to the investigation as also the documentary evidence on record, submitted that this Court may not exercise inherent powers in favour of the applicant.

9. We have heard learned counsel for the rival parties in the backdrop of the material placed on record. The first information report shows that the offences have been registered against the applicant and other accused persons under the Indian Penal Code, POCSO Act and the Act of 2006. It needs to be examined whether the material that has come on record is sufficient for the applicant before this Court to face trial in respect of all the offences or the nature of allegations made in the present case would indicate that either the applicant does not have to face the trial in respect of any of the offences or that the ingredients of only specific offence can be said to have been made out.

10. At this stage, this Court is not supposed to conduct a mini trial and the material that has come on record has to be accepted as it is, in order to examine as to whether the ingredients of the offences alleged against the

applicant can be said to be, even prima facie, made out.

11. Insofar as the offences under the Indian Penal Code are concerned, we find that according to the investigating authority, even the applicant is liable to be tried for the offences punishable under Section 376(I) (M), 363, 504,506 read with Section 34 of the Indian Penal Code. As noted above, there is no provision of Section 376(I)(M) of the IPC and the closest that we could conclude was that the material on record would perhaps lead to invoking Section 376(3) of the IPC. This is because, according to the victim-informant and the investigating authority, at the time of the incident, the victim was about 15 years of age. The other offences i.e. Section 363 of the IPC pertains to punishment for kidnapping and Sections 504 and 506 of the IPC pertain to intentional insult and criminal intimidation.

12. The material on record, if accepted as it is, indicates that according to the informant i.e. non-applicant no.2, the applicant was present on two occasions when the marriage between accused no.1 and non-applicant no.2 was fixed. Thereafter, it is alleged that after non-applicant no.2 was picked up by the other accused persons and taken to a temple for performing marriage, the applicant was present in the temple. The material further indicates that according to the mother of non-applicant no.2, when she had

visited the house of accused no.1 after marriage, in order to discuss the grievances raised by non-applicant no.2 about the manner in which she was treated in the matrimonial house, the applicant was also one of the persons who had played active role in trying to settle the matter. These are the references available on record as regards alleged role of the applicant.

13. We are of the opinion that even if the statements on record and the other material are taken into consideration as it is, none of the ingredients of the aforesaid offences under the Indian Penal Code can be alleged against the applicant, even at this *prima facie* stage. The material on record may indicate that such allegations are relatable to accused no.1 and others. Insofar as the applicant is concerned, not even *prima facie*, can the material available on record push him to face trial for the offences alleged against him under the IPC.

14. Similarly, the offence under Sections 3 and 6 of the POCSO Act pertain to penetrative sexual assault and punishment for aggravated penetrative sexual assault. Section 5 of the said Act defines aggravated penetrative sexual assault. According to us, even if the material placed on record is accepted as it is, not even *prima facie* a case is made out for the aforesaid offences against the applicant herein. There is not even an iota of

material to indicate that the applicant had indulged in any activity that would indicate ingredients of the aforesaid offences defined under Sections 3 and 5 of the POCSO Act, punishable under Section 6 thereof.

15. Insofar as the offences under the the Act of 2006 are concerned, Sections 9 and 10 have been invoked against the accused persons, including the applicant herein. Section 9 of the Act of 2006 pertains to punishment to be inflicted upon a male adult above 18 years of age, who contracted the child marriage. In the present case, it is not even the case of non-applicant no.2 or the investigating authority that the applicant had contracted child marriage. Therefore, ingredients of said offence are absent, even if the material on record is to be accepted as it is.

16. That leaves only Section 10 of the Act of 2006, pertaining to punishment for solemnising a child marriage. The said provision reads as follows :

“10. Punishment for solemnising a child marriage – Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.”

17. In this context, learned counsel appearing for the applicant strenuously urged that even the said provision could not be invoked insofar as the applicant is concerned for the reason that he has not performed, contracted, directed or abetted child marriage in the present case. We have perused the material on record and while the contentions raised on behalf of the applicant may have some substance as regards performing, conducting or directing of the child marriage, but insofar as abetment is concerned, it may not be said on the basis of the material on record that there is not even *prima facie* case made out against the applicant for having abetted child marriage. This is not to say that we have expressed any final opinion on whether the level of involvement of the applicant would attract the offence under Section 10 of the Act of 2006. Nevertheless, the material on record indicates presence of the applicant, as per the allegations made, twice before solemnization of the marriage, also at the time of marriage and once after marriage when the mother of the non-applicant no.2 had visited the matrimonial house. Presence of the applicant in the temple at the place and time when the marriage was allegedly solemnized is specifically stated by the non-applicant no.2. Therefore, it would not be safe to conclude at this stage that there is not even a *prima facie* case made out against the applicant, insofar as offence under Section 10 of the Act of 2006, is concerned.

18. In view of above, we are of the opinion that it would be futile to push the applicant to face trial for the offences alleged against him, except for the offence alleged under Section 10 of the Act of 2006. Therefore, the present application deserves to be allowed to that extent.

19. In view of above, the application is partly allowed, by quashing the first information report and charge-sheet as against the applicant before this Court for the offence punishable under Section 376(I)(N) [sic. 376(3)], 363, 504, 506 read with Section 34 of the Indian Penal Code, under Sections 3 and 6 of the POCSO Act and Section 9 of the Act of 2006. Resultantly, the applicant will have to face trial only as regards the offence alleged under Section 10 of the Act of 2006.

20. Needless to say, the observations made in this order pertaining to Section 10 of the Act of 2006 are *prima facie* in nature and that the trial Court shall proceed with the matter uninfluenced by the observations of this Court.

[G. A. SANAP, J.]

[MANISH PITALE J.]

Prity / Diwale