

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.139 OF 2018

The State of Maharashtra
Through Police Station Officer,
M.I.D.C. Police Station, Ahmednagar,
Tq. & Dist. Ahmednagar.

... Applicant

... **Versus** ...

Pratik Subhash Mhase,
Age 18 yrs., Occ. Education,
R/o Chetna Colony, Navnagapur,
Tq. & Dist. Ahmednagar,
At present r/o Saint Tukaram Nagar,
Pimpri Chinchwad, Tq. Haveli, Dist. Pune.

... Respondent

...

Mrs. V.S. Choudhari, APP for applicant

...

CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.

DATE : 12th JULY, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the judgment of acquittal dated 23.02.2018 passed by learned Additional Sessions Judge, Ahmednagar in Special Case No.118/2017, thereby acquitting respondent – original accused from the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860 and under Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.

2 Heard learned APP Mrs. V.S. Choudhari for the applicant and with her help we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, is that – the informant – prosecutrix is aged 17 years residing with her parents and two brothers. In the year 2015 she was studying in 12th standard. She had received a phone call from mobile on her mobile stating that he is the accused who is talking and he was acquainted with her cousin. Accused then started talking with her. Though she disconnected the phone by saying that her family members will not like that she would talk to him; yet, after eight days again she received phone call from the accused. She disconnected the same again and put the number in block list. It is stated that after 10-15 minutes she

received phone call of the accused from another number and he insisted that she should talk to him. This is how she started talking to the accused on mobile phone. She states that accused used to state that she should come to Pune to meet him on 25.04.2016 and, therefore, she went to Pune around 8.00 p.m. on that day by saying that she is going to meet to her friend. At the Pune Bus Stand she met accused and his friend. The accused then took her to a lodge at Pimpri Chinchwad, Pune. He told her that he would like to marry her and thereafter committed sexual intercourse with her. On the next day she returned to her house. Thereafter also the accused used to talk to her on phone. When she was asking the accused to perform the marriage, he used to give the promise. When she had made phone call to the accused on 20.06.2016 from the mobile of her friend, accused asked her to come to Pune and on that day also she went to Pune and accused took her to same lodge. By giving promise to marry, it is stated that accused committed rape on her. On 21.06.2016 they both came to Ahmednagar and went to their respective houses. As per the informant, she had gone to the house of the accused and told her father that accused should perform marriage with her, at that time, the parents of the accused told that she should bring her parents. There was meeting amongst the parents and at that time the accused refused to perform marriage with her. Thereafter the parents had arranged for the conciliation from one NGO, but it did not yield positive result and, therefore, she lodged

First Information Report.

4 After the offence was registered, investigation was carried out. After the filing of the charge sheet trial has been conducted. The prosecution has examined in all six witnesses to bring home the guilt of the accused and after considering the evidence and hearing both sides the learned Special Judge, under POCSO Act, Ahmednagar has acquitted the accused from all charges.

5 The prosecutrix PW 1 has proved her First Information Report, however, it is to be noted that for the first time it appears that she had given her birth date in her examination-in-chief as it is missing from her First Information Report. There is no evidence connected to support the said date of birth. In her cross-examination the girl has admitted that there was love affair between herself and accused. PW 2 Durgeshsingh Charan and PW 3 Mahadeo Walhekar are the Managers of the hotel, who were on duty on 22.06.2016 at different times. They have stated that they had obtained ID proofs of the accused. The ID proofs of the prosecutrix appears to have not been collected by them and they have categorically stated that the victim had not made any kind of complaint against the accused. In the present case the parents of the informant have not been examined. Thus, it is to be noted that

the prosecution had not adduced any evidence to prove that the girl was child within the definition of Section 2(1)(d) of the POCSO Act. Therefore, no question arises for invoking the offences under the said Act. As regards the Indian Penal Code section is concerned, it will also not arise as the cross-examination of the girl would show that she was the consenting party. There is no perversity or illegality in the impugned judgment. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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