

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 354 OF 2021**

Jayesh Dilip Jadhav

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr.M.M. Chaudhari for Petitioner.

Mr.S.S. Hulke, A.P.P for Respondent-State.

Ms.Hemlata M. Whaval, Appointed Advocate for Respondent No.5.

PI Mr.Dilip Thakur, Bhadrakali Police Station, Nashik.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.****DATE : 28th March 2023.****P.C. :**

1. By the present Petition, the Petitioner (Accused No.6 as per Chargesheet) has prayed for quashing of F.I.R. No. 320 of 2020 dated 3rd July 2020 registered with Bhadrakali Police Station, Nashik for the offence punishable under Sections 376(2)(i)(n), 201, 328, 323, 504, 506 read with 34 of Indian Penal Code ("I.P.C.") and Sections 4, 8, 12 of The Protection of Children from Sexual Offences Act, 2012 ("P.O.C.S.O. Act") and Sections 4 & 5 of The Immoral Traffic (Prevention) Act; to direct Respondent No.1 to hold necessary departmental inquiry against Respondent No.4 for the allegations made in the present Writ Petition; to direct the Respondents to initiate necessary penal proceedings against Respondent Nos.4 & 6 for their corrupt

and illegal business and for other consequential reliefs.

2. Heard Mr.Chaudhari, learned Advocate for Petitioner, Mr.Hulke, learned A.P.P for Respondent Nos.1 to 4 and Ms.Whaval, learned Advocate for Respondent No.5. Perused record.

3. At the outset it is to be noted here that, though Section 228A of IPC and Section 33(7) of P.O.C.S.O. Act, do not permit to disclose identity of a minor victim, the Petitioner in violation of those provisions has mentioned her name in the cause title and body of the Petition.

4. Present case discloses horrendous situation and pathetic agony suffered by the victim (Respondent No.5), who was aged about 15 years at the time of commission of initial offence by the accused persons, who subjected her to sexual exploitation. In the First Information Report (F.I.R.) dated 3rd July 2020 lodged by victim, she has stated her age as 15 years and 11 months.

4.1 Perusal of F.I.R. reveals that, the victim became orphan and therefore she was residing at Girls Observation Home, Nashik for last about four years and was taking education at Ramabai Ambedkar Girls High School, Nashik in 10th standard. That, in the month of September 2019, her grandmother took her legal custody. Thereafter the victim went to reside with her maternal aunt at Nashik Road, Nashik. Her aunt performed love marriage and went away by leaving the victim behind. As there used to be regular quarrels between the victim and her grandmother, the victim was not

desirous of going back to her grandmother's house. She therefore went near Untwadi Hostel and sat there. A woman approached and made affable inquiries with her. The victim told the said lady her background. The said lady told victim to accompany her with an assurance that, she would maintain victim as her own daughter. The said lady disclosed her name as Sultana @ Alisha. Sultana @ Alisha gave food to victim and took to her house at Panchshil Nagar. Sultana @ Alisha maintained victim properly for about 10 to 15 days. The victim started calling Sultana @ Alisha as "Mummy".

4.2 Sultana @ Alisha subsequently started impressing upon the victim that, if she wants to reside with her and have food, then the victim will have to keep physical relations with the person to whom she would tell. Victim bluntly refused to do the same. However on one day Sultana @ Alisha stupefied her food due to which victim got inebriated and unconscious. When she regained consciousness, she found herself in her undergarments only. Her nicker was soaked with blood and there was bleeding per vagina. At that time, Sultana @ Alisha mummy and three boys were standing there and they were laughing at her. The said three boys told her that they are having her videos and left the said place.

4.3 On the next day, out of the said three boys, one boy came with a white colour four wheeler at Panchsheel Nagar. Sultana @ Alisha made the victim to sit in his car along with her. The boy thereafter took them at a

distant place. Sultana @ Alisha was calling the said boy as 'Aakdewala'. The boy halted his car and due to darkness victim could not locate the said place. The said boy i.e. 'Aakdewala' forcibly committed rape on her. Sultana @ Alisha took victim to her house. Immediately on next day Sultana @ Alisha took victim to the house of one boy namely 'Ganesh', who was out of the said three boys referred earlier. Sultana @ Alisha told victim to do whatever she was directing to. Though the victim resisted, Ganesh performed forcible sexual intercourse with the victim. Thereafter on the next day, out of the said three boys referred above, one boy namely 'Jayesh Jadhav' came to Sultana @ Alisha. He was having a golden colour car. Sultana @ Alisha made victim to sit in the car of Jayesh Jadhav along with her. Jayesh Jadhav took the said car at a distant place, where there was darkness. Sultana @ Alisha got down from the said car. Jayesh Jadhav committed forcible sexual intercourse with the victim in the said car. Subsequently the said 'Aakdewala', 'Ganesh' and 'Jayesh Jadhav' by extending threats to the victim that, they were having her obscene videos, called her and sexually exploited victim. Due to the fear of her reputation in the society and the threats that, the said boys would make the said videos viral, the victim submitted herself to her sexual exploitation to satisfy the lust of the accused persons.

4.4 It is stated by the victim that, Sultana @ Alisha and her friends namely Sajjo, Shabbo, Hajara and Manisha were conducting the racket of prostitution and were partners in business. That Sultana @ Alisha used to

drop the victim to the houses of her said friends and there also the victim was subjected to forceful sexual relations with many unknown persons. The victim tried to runaway from the house of Sultana @ Alisha, however Sultana @ Alisha used to trace her, beat her and threaten her that her obscene videos would be made viral. Sultana @ Alisha also threatened her to kill and due to the said fear victim was suffering the said torture and did not tell her agony to anybody. Three days prior to the lodgment of the crime, the victim realised that, Sultana @ Alisha along with friend Sajjo had decided to sell victim. Sultana @ Alisha therefore took victim out of her house. The victim under the pretext of going to washroom ran away towards Khadkali signal. She met a boy there, who asked her what happened, upon which the victim narrated her ordeal. The said boy took her to Mr.Shahid Multani (Respondent No.6), who inter-alia took her to Bhadrakali Police Station. In this brief premise present crime is registered.

5. Learned Advocate for Petitioner submitted that, there is a delay of about one year in reporting case to the Police and no explanation has been offered by the victim. He submitted that, the Police are unnecessarily harassing the Petitioner, as there is a similarity in the name. The Petitioner did not commit the said act and the person referred to in the F.I.R. i.e. Jayesh Jadhav is a totally different person. That, there is a mistaken identity by the Police in indicting Petitioner in the present crime. He submitted that, though there is no evidence against the Petitioner, the Police have unnecessarily

impleaded him in the present crime. By pointing out to the averments in the additional affidavit dated 6th March 2023 of the Petitioner and the transcript of telephonic conversation between Respondent No.4 and other persons, learned Advocate for Petitioner contended that, as the Petitioner has not satisfied the illegal demand of gratification of Respondent No.4, the Police are bent upon to implead the Petitioner in the present crime. He therefore prayed that, the F.I.R. No. 320 of 2020 and the subsequent proceedings thereof including filing of chargesheet be quashed and set-aside.

6. The facts recorded in para Nos.4 to 4.4 above are deduced from the F.I.R. lodged by the victim (Respondent No.5) herself.

6.1 As far as the contention of the Advocate for the Petitioner about the delay in lodging F.I.R. is concerned, the Hon'ble Supreme Court in the case of *Bharwada B. Hirjibhai Vs. State of Gujrat*, reported in AIR 1983 SC 753 : 1983 Cri.L.J. 1096, has held that, the testimony of a victim of sexual assault cannot be disbelieved at the inception. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. It is held that, why should the evidence of the girl or the woman, who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society. It is further held that, a girl or a woman in the tradition bound non-permissive Society of India would be

extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. That, over much importance cannot be attributed or given to minor discrepancies.

In the case of *State of Himachal Pradesh Vs. Shree Kant Shekari*, reported in AIR 2004 SC 4404, the Hon'ble Supreme Court has held that, mere delay in lodging the F.I.R. *per se* is not a mitigating circumstance for the accused when there was accusation of rape. That being so, the mere delay in lodging F.I.R. does in any way render prosecution version brittle.

6.2 A bare perusal of F.I.R. *prima-facie* discloses that, it is a clear case of rape committed by the Petitioner and other accused persons upon the victim. The victim was minor on the date of commission of offence by the Petitioner and other accused persons and therefore the provisions of P.O.C.S.O. Act are also applied to the present crime.

7. Record indicates that, after completion of investigation, police have submitted Chargesheet on 31st August 2020 against other accused persons, as at the relevant time the Petitioner was absconding, as contemplated under Section 299 of Criminal Procedure Code.

7.1 There is a legal presumption as to commission of certain offences under Section 29 and also legal presumption of culpable mental state as contemplated under Section 30 of P.O.C.S.O. Act.

7.2 Petitioner will have to rebut the presumption under Sections 29 & 30 of the P.O.C.S.O. Act, which is against him at this stage. Even otherwise,

as noted earlier, a bare perusal of F.I.R. clearly discloses an offence of serious nature committed by the Petitioner along with other two accused persons with the victim.

8. It is the settled position of law by a catena of decisions of the Hon'ble Supreme Court that, for the purpose of exercising its power under Section 482 of Cr.P.C. to quash a F.I.R. or a complaint, the High Court would have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same per se. If the allegations in the complaint taken at their face value disclose a criminal offence, complaint cannot be quashed, merely because it relates to commercial transaction of breach of contract for which civil remedy is available or has been availed. It is further held that, the High Court is not supposed to embark upon the enquiry whether the allegations in the F.I.R./complaint are reliable or not and thereupon to render a definite finding about the truthfulness or veracity of the allegations. It is also settled that the High Court can exercise such power in exceptional cases and when the defence of the accused can be accepted on the basis of documents as contemplated under the Evidence Act. It is also held that the power under Section 482 of Cr.P.C. should be exercised sparingly and only in exceptional cases only to save the abuse of process of Court or to secure the ends of justice. It is further held by the Hon'ble Supreme Court that, it is of course open to the accused at the trial to take whatever defence that is open to him, but High Court need not deal with the

merits of the case at the stage of quashing of proceeding.

9. The contention of '*mistaken identity*' is the defence of Petitioner which he will have to establish by leading cogent evidence at the time of trial and the same cannot be accepted as a gospel truth in a Petition for quashing the F.I.R.. The arguments advanced by the learned Advocate for the Petitioner are amounting to putting forth his defence in a criminal trial which cannot be considered at the stage of quashment of F.I.R.

9.1 It is the settled position of law that, the defence of an accused cannot be adjudicated in a Petition under Article 226 of the Constitution of India. In view of above, undoubtedly the alleged defence put forth by the learned Advocate for the Petitioner gives rise to contentious issues and disputed questions of fact which also cannot be adjudicated in the present proceedings.

9.2 It is to be noted here that, the Petitioner has made various allegations against the Investigating Officer i.e. Respondent No.4 herein by filing Additional Affidavit dated 6th March 2023. According to us, the allegations made against the Respondent No.4 or other Police Officers by the Petitioner gives rise for a separate cause of action, which need not be considered in the present Petition for quashing of F.I.R., wherein the Petitioner is an accused facing serious charges under the provisions of P.O.C.S.O. Act.

The allegations made against Respondent No.4 and stated in Additional Affidavit dated 6th March 2023 by relying on the transcript of telephone conversations, according to us, gives rise to a separate cause of action and for that reason the present F.I.R. which *prima-facie* discloses clear involvement of the Petitioner, cannot be quashed.

10. In view of above, we find no merits in the Petition.

Petition is accordingly dismissed.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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