



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

CRIMINAL APPLICATION [APL] NO. 383/2023.

Sanjay Shivilal Shipne,
Age 41 years, Occupation -
Service, resident of Rajeshwari
Nagar, Buldhana, at present
c/o. Mira Bhayandar
Commissioner, Thane, Taluq
and District Thane.

...

APPLICANT.

VERSUS

1.State of Maharashtra,
through its Police Station Officer,
Washim [Rural], Police Station,
District Washim.

2.State of Maharashtra,
through Sub Divisional Police Officer,
Washim, District Washim.

...

NON-APPLICANTS.

Mr. R.K. Tiwari, Advocate for the Applicant.
Mr. S.S. Doifode, Addl.P.P. for Non-applicants.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES,, JJ.

DATE : OCTOBER 04, 2023

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

By consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure seeking to quash the first information report in Crime No.127/2022 registered with Washim Rural Police Station, for the offence punishable under Sections 166, 201 read with Section 34 of the Indian Penal Code, and Section 21 of the Protection of Children from Sexual Offences Act (POCSO).

3. At the instance of a report lodged by the Deputy Superintendent of Police dated 07.04.2022, the aforesaid crime has been registered alleging that the applicant incharge of police station, though aware that the offence under the provisions of the POCSO Act was committed, has not registered the crime. It is the prosecution case that Section 19 of the POCSO Act mandates on every person having knowledge about the commission of offence under the POCSO Act, to provide such information to the concerned police. The said inaction is made punishable under Section 21 of the Act.

Rgd.

5. It is informant's case that while the applicant was acting as a PSO of the concerned police station, came to know from the hospital that a minor girl aged 17 years was admitted in the hospital carrying pregnancy of 8 months. During course of time, the infant as well as the minor died. Since minor unmarried girl was pregnant, evidently she had sexual intercourse with some one. According to the prosecution, though the applicant was aware about the said fact, he has not reported the matter in terms of Section 19 of the Act.

6. The learned Counsel for the applicant has primely canvassed that the prosecution itself is not maintainable since the provisions of POCSO Act would not attract. In this regard, he took us through the birth certificate of the victim girl issued by the competent Authority under the provisions of Registration of Birth and Death Act, 1969. As per the birth certificate, her date of birth was 24.03.2001 of which entry was registered in close proximity on 31.03.2001. In view of that, the victim attained the age of majority on 24.03.2019. It is the prosecution case itself, that on 16.04.2020 the victim was admitted to the hospital with 8 months pregnancy. Thus, the initiation would revert back till July 2019. The said exercise clearly discloses that on the date of sexual intercourse, the victim was above 18 years, and thus the

Rgd.

applicability of POCSO Act is ruled out.

7. Apart from that on technical ground, it has been argued that all the offences are of non-cognizable nature, and therefore, in view of Section 155[2] of the Code of Criminal Procedure, the police have no authority to register the crime without permission of the Magistrate. To substantiate said contention, reliance is placed on the decision of Supreme Court in case of **Keshav Lal Thakur .vrs. State of Bihar – (1996) 11 SCC 557**.

8. We have examined all the penal provisions invoked by the prosecution. There is no dispute that all the offences are of non-cognizable nature, and thus, it is beyond the capacity of the police officer to initiate investigation without permission of the Magistrate. Considering the aforesaid position of law, the informant without approaching to the Magistrate registered the crime which is against the legal position. In the result the prosecution is wholly untenable and continuation of such prosecution would result into miscarriage of justice. In view of above, criminal application needs to be allowed. Hence, the following order.

Rgd.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The first information report bearing Crime No.127/2022 registered with Washim Rural Police Station for the offence punishable under Sections 166, 201 read with Section 34 of the Indian Penal Code and Section 21 of the Protection of Children from Sexual Offences Act. is hereby quashed and set aside.

(VALMIKI SA MENEZES, J)

(VINAY JOSHI, J)