

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

CRIMINAL REVISION NO. 45 OF 2021

PETITIONER : Noorjaha W/o. Salim Gigani, Aged about 50 years, Occ.: Household, R/o. Bagwanpura, Mehkar, Tq. Mehkar, Dist. Buldana.

//VERSUS//

RESPONDENTS : 1. Mudassar @ Umed Shabbir Bagwan, Aged about 21 years, Occ: Business,
2. Mohammad Tohit (Tohid)
Mohammad Shabbir Bagwan,
Both R/o. Bagwanpura, Mehkar, Tq. Mehkar, Dist. Buldana.
3. State of Maharashtra, through P.S.O. P.S. Mehkar, Tq. Mehkar, Dist. Buldana.

Mr. Sk. Sibghatullah Jagirdar, Advocate for the Applicant.
Mr. A.V. Wankhede, Advocate for Respondent Nos.1 & 2.
Mr. A.R. Chutke, APP for Respondent No.3.

CORAM : G. A. SANAP, J.
DATED : 12th JANUARY, 2023.

ORAL JUDGMENT

01] Heard.

02] **Admit.** Matter is taken up for final disposal by consent

of the learned advocates for the parties.

03] In this revision application, filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, challenge is to the order dated 9th December, 2020, passed by the Principal Magistrate, Juvenile Justice Board at Buldana (for short “Board”) in the Juvenile Case No.176/2014, whereby the Board was pleased to held that the respondents, who are the children in conflict with law (for short “CICLs”) have not committed the offences punishable under Sections 143, 452, 354, 294 and 506 read with Section 149 of the Indian Penal Code, 1860.

04] On 6th March, 2014, the informant, who is the applicant in this revision application, lodged a written report at Mehkar Police Station. In the said report, she made allegations of the serious offences committed by 17 persons including CICLs. The motive according to the informant for commission of this crime was a civil dispute, pending between the informant and the adult accused. In the civil dispute, the injunction was granted in her favour and against one Shaikh Yunus-adult accused. The adult accused and CICLs got annoyed due to the said order. The adult offenders namely Yunus, Saeed, Shabbir and Raees on 6th March, 2014 at about 6.30 to 7.00 hrs. entered into her house and

manhandled her. They touched her in indecent manner. They tried to grope her. They attempted to commit sexual assault on her. She raised hue and cry, thereafter the remaining 13 persons including two CICLs came on the spot. They laughed on her and ridiculed her. They uttered obscene words and threatened to kill her. It is stated that the child namely Mudassir spitted on her face. They damaged her household articles and threatened to kill her. On the basis of such report, Crime bearing No.55 of 2014 was registered on 29th March, 2014. The investigation was carried out. The Investigating Officer after nine months submitted the final report against two CICLs before the Board. The CICLs were blamed for commission of the above offences.

05] The Board took cognizance of the offences on 19th January, 2018. The substance of the accusation was read over and explained to the children. Both of them pleaded the grounds of defence before the Board and opted to face the inquiry. The prosecution examined two witnesses. Witness No.1 is the informant and the witness No.2 is another witness. Witness No.2 is the panch witness to the spot panchnama. After completion of the inquiry, the Board found that the children have not committed the offences and, therefore, given the benefit to the children. Being

aggrieved by this order, the informant has filed this revision application. The State has not filed any proceeding to challenge the order passed by the Board. The State is the non-applicant No.3 in this revision application.

06] I have heard the learned advocate for the applicant/informant, the learned advocate for the respondent Nos.1 and 2/children and the learned Additional Public Prosecutor for the respondent No.3/State. Perused the record and proceedings.

07] The learned advocate for the informant submitted that the Board has not properly appreciated the evidence of the informant. The learned advocate took me to the evidence and submitted that she has specifically stated about the role played by the children in the commission of the offences. The learned advocate submitted that the specific role of spitting on her face by the child namely Mudassir and the threat given to her by both the children was specifically stated in the report as well as in her evidence. The learned advocate submitted that the Board has not properly appreciated the evidence and, as such, came to the wrong conclusion and given the benefit to the children.

08] The learned advocate for the children submitted that

the perusal of the evidence clearly indicates that the informant had concocted the story. The learned advocate submitted that the report lodged was to take the revenge of the civil dispute. The learned advocate submitted that the Board rightly found the evidence of the informant, without corroboration, insufficient to accept the allegations against the children. The learned advocate pointed out that Investigating Officer was not examined to depose in support of the stand of the informant. The learned advocate pointed out from the evidence of the informant that in the past as well, the informant had lodged the report against 19 persons for outraging her modesty. The learned advocate, therefore, submitted that there is no substance in the revision and, therefore, it is required to be dismissed.

09] The learned Additional Public Prosecutor for the State submitted that the State has not challenged the order. The learned Additional Public Prosecutor submitted that the State is supporting the order passed by the Board.

10] In order to appreciate the submissions, I have minutely perused the record and proceedings. It is true that the particular number of witnesses is not necessary to prove a fact. The fact can be proved on the basis of the evidence of the single witness. It is

the settled legal position that the Court has to see the quality of evidence and not the quantity of the evidence. It is trite law that the evidence of sole witness of sterling quality can be relied upon to prove the criminal offence. In this backdrop, it is necessary to consider, whether the evidence of the informant is of sterling quality or not to accept her contention.

11] Perusal of her evidence would show that initially four adult accused had entered her house. The remaining adult accused and the children came at the spot when the informant raised hue and cry, when she was tried to sexually abused. It is, therefore, seen that the children did not accompany the main accused at the house of the informant. According to her, they came at the spot after she screamed for help. It is seen that she has attributed a specific role to the children. According to her, the child namely Mudassir spitted on her face and both the children threatened to kill her.

12] The evidence of the informant was subjected to searching cross-examination. The Board has taken into consideration some of the answers given by the informant in her cross-examination to come to a conclusion, as to the credibility of her evidence. She has admitted that the dispute was going on between her and the adult accused in respect of the house. The

injunction order was passed in her favour and against the adult members by the Civil Court. The allegations, if considered at a face value, appear to be serious. In the backdrop of the serious nature of the allegations, the answers given by her in the cross-examination would be relevant. The husband of the informant is not residing with her. She has admitted that a case is pending between her and her husband in the Court of Law. She has admitted that against the grandparents of the children, she had lodged another complaint. She has admitted that in that complaint, 19 persons are made accused for the commission of offence of outraging her modesty under Section 354 of the Indian Penal Code. Further perusal of her evidence would show that certain important facts stated by her in her examination-in-chief have been found to be omissions from the report. It is to be noted that the quarrel took place in broad daylight. There is no independent witness to support the case of the informant against the children. She has further admitted in her cross-examination that her sister is advocate. Her sister was present in the Court on the date of her evidence. It was suggested to this witness that her advocate sister by applying the pressure lodged the false report.

13] The Board has taken into consideration the evidence and found that the evidence is not worth credible and reliable to hold the children liable for the offences. The Board has found that in her evidence, she has not categorically stated the actual indecent words used by the children. The perusal of the evidence and the record would show that the main allegation was against the four adult offenders, who had allegedly come in her house before the children. The Board found that there was no nexus between the allegation of molestation and the children. On minute scrutiny of the material, I am of the opinion that the Board has not committed any mistake while arriving at the conclusion as above.

14] It is to be noted that this is a revision against the order of giving benefit to the children. The scope of the revisional jurisdiction is not as wide as the scope of the jurisdiction of the Appellate Court. While exercising the revisional jurisdiction, the exercise of re-appreciation of evidence cannot be undertaken as a matter of course and right. In order to undertake such an exercise, it must be proved to the satisfaction of the Court that the evidence on record has not been properly appreciated or the same has not at all been taken into consideration to arrive at a particular finding. It is further pertinent to note that the order passed giving benefit to

the children has a trappings of the order of acquittal. It is the rule of the criminal jurisprudence that against the order of acquittal, interference is not warranted, if on the basis of the said evidence, two views are possible. In my view, therefore, applying this legal position to the facts and evidence on record, I am of the view that on both the counts, there is no substance in the revision.

15] The revision, therefore, stands dismissed.

16] It is made clear that the observations made in this order are relevant for the inquiry against the children in the proceeding before the Board. The same shall not be held to have any bearing while deciding the criminal case against the adult accused.

(G. A. SANAP, J.)

Vijay