

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

CRIMINAL WRIT PETITION NO. 323 OF 2023

Dnyaneshwar s/o Kisan Nankar
 Aged 38 years, Occ. Cultivator,
 R/o. Kinhi Naik, Tq. Chikhli,
 Dist. Buldana

}

... Petitioner

Versus

State of Maharashtra,
 Through Police Station Officer,
 Police Station Amdapur,
 Dist. Buldana

}

... Respondent

Mr. A.J. Thakkar, Advocate for petitioner.

Mr. V.A. Thakare, APP for respondent/State.

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

DATE : 18.07.2023.

ORAL JUDGMENT: (PER: Vinay Joshi, J)

Criminal Application (APPW) No.79/2023

Applicant seeks permission to file present petition with deficit Court fees. As per office note, deficit Court fees of Rs.125/- is to be paid by the applicant. The said objection be complied with within a period of one week.

(2) Application stands disposed of accordingly.

(3) **Rule.** Rule made returnable forthwith. Heard finally by consent of both the learned counsel for the parties.

(4) The petitioner seeks to quash show cause notice dated 02.03.2023 issued by the trial Court in terms of Section 344 of the Code of Criminal Procedure alleging that the petitioner led false evidence in the judicial proceeding.

(5) It can be briefly stated one Pramod Giri was prosecuted for the offence punishable under Section 376(1) of the Indian Penal Code. In said trial (Sessions Trial No.63/2020), the petitioner was cited as one of the prosecution witness. During investigation, the police have recorded petitioner's statement in terms of Section 161 of the Code of Criminal Procedure. In said statement, the petitioner stated that on 05.08.2020, victim has disclosed that accused Pramod Giri had sexual intercourse with her and therefore, he has accompanied victim to the Police Station while lodging report.

(6) In aforesaid background, the petitioner was examined as Prosecution Witness No.5 in the trial. The petitioner has completely resiled from his previous statement while giving evidence

in Court. The petitioner was cross-examined by prosecution with permission of the Court, in which also he denied the suggestions about giving such statement. In other words, the petitioner denied that the victim has disclosed the incident and he had accompanied her while lodging FIR. While deciding the Sessions Trial, learned Trial Court has observed that the marked portion of previous statement of the petitioner was duly proved through the Investigating Officer. Therefore, petitioner gave false evidence on oath and thus, it necessitates to initiate action against him in terms of Section 344 of the Code of Criminal Procedure. Precisely, the action was initiated in the shape of impugned show cause notice only because petitioner did not support his previous statement while giving evidence on oath in the Court.

(7) Needless to say that statement made by a person to a Police Officer during the course of evidence shall not be signed by the maker. Previous statement can be used to contradict the witness in the manner provided by Section 145 of the Evidence Act only. Merely because the petitioner did not stick up to his previous statement while giving evidence, it does not mean that he has deliberately made a false

statement on oath. It is not a case that the petitioner made inconsistent statement during the course of evidence i.e. during cross-examination and examination-in-chief. In view of the limited use of such statement in terms of Section 162 of the Code of Criminal Procedure, it cannot be said that the petitioner gave false evidence in the Court of Law. Besides that in order to initiate an action under Section 344 of the Code of Criminal Procedure, the Court must record its satisfaction that, it is necessary and expedient in the interest of justice to initiate the proceeding. Thus, initiation of action under Section 344 of the Code of Criminal Procedure against the petitioner itself is not tenable. Hence, the show cause notice itself is bad in law.

(8) In view of above, the petition is allowed. We hereby quash and set aside the show cause notice along with the related proceeding initiated against petitioner in terms of Section 344 of the Code of Criminal Procedure.

(9) The petition stands disposed of.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]