



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

CRIMINAL REVISION APPLICATION NO. 132/2023
Suraj s/o Lallan Tripathi Vs. State of Maharashtra and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C. S. Dharmadhikari, Advocate for applicant.
Ms S. Haider, A.P.P. for non applicant no.1-State.
Mr. S. M. Mate, Advocate for non applicant no.2.

CORAM : ANIL L. PANSARE, J.
DATE : 06.09.2023

The challenge is to the order dated 19.05.2023 passed by learned Additional Sessions Judge, Nagpur below Exh.-4 in Special Child Case No.162/2022, thereby rejecting the application preferred by the applicant seeking discharge from Crime No.85/2022 registered with Police Station, Ranapratap Nagar, nagpur for offences punishable under Sections 354, 376 (2)(f) of the Indian Penal Code, 1860 (For short the, 'IPC') and Sections 6 and 8 of the Protection of Children From Sexual Offences Act, 2012 (For short the, 'POCSO'). The learned Special Court, after having considered the judgments cited by the applicant, has held that the allegations against the applicant are serious and further that the applicant failed to show that if the entire allegations in the charge-sheet are accepted to be true, the offence is not made out.

Briefly stated the facts are that on 15.02.2022, the applicant visited the house of the non applicant no.2.

Her daughter was sleeping. Non applicant no.2 went for bath. She came out sooner than the usual time, which she takes for bathing. She saw that the applicant has pulled down the night pant of her six years old daughter and was moving his hand on her private part. The non applicant no.2 shouted, to which the applicant aggressively approached her to deter her but was asked to leave the house. On 16.02.2022, the non applicant no.2 filed report with Ranapratap Nagar Police Station, Nagpur and the first information report came to be registered.

Learned counsel for the applicant has invited my attention to the statement of non applicant no.2 as also of the child. According to him, the statement of child would completely exonerate him.

The statement of child indicates that she is aware of good touch and bad touch. She states that the applicant is mama's friend. On the point of incident, when the question was asked that on 15.02.2022, when the applicant had been to her house, did she speak to him, she stated that she was sleeping but got up because her mother was shouting on the applicant. When further asked as to what had happened thereafter, she stated that her mother has made her sleep and as regards touch, she does not know.

Learned counsel's emphasis is on the other part of statement of the child which indicates that she enjoy the company of the applicant. The counsel further submits that there is absolutely nothing incriminating in

the child's statement and the child does not support her mother's version.

The learned A.P.P. as also the learned counsel appearing for the non applicant no.2 have rightly argued that if carefully observed, the statement of child would support her mother's version. The presence of the applicant in the house of non applicant no.2 is disclosed by mother as also the child. The statement of mother indicates that usually she takes substantial time for bathing. On that day, since she was not feeling well, she came out of the bathroom immediately and saw that the applicant has pulled down night pant of her daughter and was moving his hand on her private part. In the supplementary statement, she stated that the daughter had not wore knickers. It is not her case that her daughter was awake. If her statement is read conjointly with that of the child, the version of prosecution gets cemented. The child has categorically stated that since she was sleeping, she didn't feel the touch. She woke up of hearing shouts of her mother. This statement, in a way, supports the prosecution version. The contention that the child has completely exonerated the applicant is far fetched.

Learned counsel for the applicant then submits that statement of none of the independent witnesses residing in the neighborhood has been recorded. He submits that if the non applicant no.2 was shouting so loudly that the daughter woke up of the shouts, the

neighbors ought to have heard the shouts and inquired about the incident.

This submission presumes that whenever noise of the neighbors is heard, they will come out of the house to inquire of the matter. Usually, the tendency is to keep oneself away from the quarrels. The submission is, thus, devoid of merit.

Learned counsel for applicant has relied upon the judgments in the cases of *Sajjan Kumar Vs. Central Bureau of Investigation* reported in (2010) 9 SCC 368 and *State of Bihar Vs. Ramesh Singh*, reported in (1977) 4 SCC 39, to contend that the Court shall consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court along with basic infirmities, etc. and if two views are possible and one of them gives rise to suspicion only, which is distinct from the grave suspicion, the Court will be empowered to discharge the accused.

As against, learned counsel for non applicant no.2 has relied upon judgment of the Supreme Court in the case of *Hazrat Deen Vs. State of Uttar Pradesh and anr.* reported in 2022 SCC OnLine SC 1781 and *Asim Shariff Vs. National Investigation Agency* reported in (2019) 7 SCC 148 to contend that where the material placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing the charge.

The proposition of law is well settled. The question is whether prima facie case exists for framing of

charge. The learned Special Court has found so and rejected the application. The allegations against the applicant are well supported by the statement of the non applicant no.2 as also the child. Considering the statement of non applicant no.2, there is hardly any room to say that the applicant has no nexus with the crime. The prosecution has definitely made out a case to permit it to lead the evidence. There is absolutely no substance in the revision. The same is dismissed.

(Anil L. Pansare, J.)

Kahale