



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

CRIMINAL APPLICATION [APL] No. 1041 OF 2023.

1.Sonu @ Dilip Vitthalrao Gawande,
Age 30 years, Occupation – Driver,

2.Amol s/o Ramrao Gawande,
Age 31 years, Occupation – Labour,

Both residents of Babhulgao, Taluq
District Akola.

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APPLICANTS.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
P.S. Akola, Civil Lines, Akola,
Tq. District Akola.

2.XYZ [Victim] in Crime No.59/2015
P.S. Civil Lines, Akola,
Tq. District Akola.

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NON-APPLICANTS.

Mr. S.V. Sirpurkar, Advocate for Applicants.
Mr. S.S. Doifode, A.P.P. for Non-applicant No.1 – State.
Mr. D.S. Patil, Advocate for Non-applicant No.2.

**CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.**

DATE : NOVEMBER 01, 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 seeking to set aside the charge sheet No.211/2015 arising out of Crime No.59/2015 registered with Civil Lines Police Station, Akola for the offence punishable under Section 354B, 323, 504 read with Section 34 of the Indian Penal Code, Sections 7 and 8 of the Protection of Children from Sexual Offences Act (POCSO) and Section 3[1]10] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act on account of settlement. The said proceeding bearing Sessions Trial No.160/2015, is pending on the file of Additional District and Sessions-I, Akola.

3. At the instance of a report lodged by the victim girl aged

Rgd.

16 years, the aforesaid crime came to be registered. It is the case of prosecution that on the date of occurrence, around 10 a.m. the victim was returning from dispensary along with her elder sister. When they came near the house of one Shri Bhatkar, applicant no.1 Sonu intervened and pulled her scarf. The victim questioned as to why he is doing so, on which the applicant no.1 abused her. After hearing the quarrel, mother of the victim came to the place, to which the applicant no.1 Sonu gave her a kick. Co-accused Amol also manhandled the victim's uncle Chandrakant, but, due to intervention of strangers both of them went away.

4. On the basis of report lodged by the victim regarding the occurrence, the prosecution has carried investigation and filed charge sheet. The trial has commenced, in which evidence of few witnesses including the victim has been recorded. At this juncture, parties have arrived at a settlement and requested to quash the proceeding on account of settlement.

5. The State has opposed the application by stating that the offences are of serious nature, and particularly the accused are

involved in the offence under the provisions of POCSO Act. Moreover, it is submitted that by the time, partial evidence has been recorded.

6. The learned Counsel appearing on behalf of applicants by placing reliance on the decision of this Court in case of **Sheshrao Makhram Jadhav .vrs. State of Maharashtra and another – Criminal Application No.1367/2023 decided on 09.10.2023**, would submit that irrespective of the commencement of the trial, this Court has uncontrolled inherent powers to be exercised in befitting cases. Particularly, our attention has been invited to paragraph no.27 of the said decision, which reads as under :

“27. Legislature has not limited the powers of this Court as guided by the decisions in case of Narendra Singh and Gian Singh (supra). No limitation is imposed by the statute in exercise of powers. The very purpose of investing uncontrolled self guided powers is to achieve the object of preventing the misuse of the process of the Court, and to secure the ends of justice. These powers are purposefully vested only with higher Courts so that on case to case basis, with a tomb of experience, the Court would exercise it in befitting cases to achieve the ultimate object. It is apparent that acceptance of settlement resulting

into quashing would not be at anybody's detriment, rather it would be in the interest of both parties. Conversely, there is every possibility that the informant and her child probably may not be allowed to stay with her husband. The very purpose and object of the rule of law is to see the well being of society. After all, the law exists to cater the need of society and not to become an obstacle in the life of common man. In the above peculiar facts, we are of the considered view that the case falls in the exceptional category to exercise the inherent powers to save the matrimonial life of the informant as well as secure the future of a minor child. The inherent powers of the High Court are designed to achieve a salutary public purpose. Our conscience does not permit us to give the upper hand to technicalities over the lives of the people for whom the law is meant. The ends of justice are higher than the ends of mere law though justice has got to be administered according to law made by the legislature."

7. Apart from that, the learned Counsel for applicants would submit that by the time the victim girl is married and is residing happily with her husband. The learned Counsel appearing for the victim would submit that pendency of the trial would become a hurdle in her smooth marital life. Besides that, it is submitted that both applicants are young and carrier oriented. There are no

criminal antecedents, and conviction, if any, may affect their future prospects.

8. The informant lady remained present in the Court along with her mother and uncle. The informant has filed her reply-affidavit stating that the matter is amicably settled and she do not want to prosecute the criminal case. Particularly, it is stated that she got married on 22.06.2020 and is having a small kid from the wedlock. Considering her future marital life, she is not inclined to go with the prosecution. Likewise the victim's uncle and mother have also filed affidavit stating that the matter is settled and they do not wish to prosecute the matter any further. The victim, her mother and uncle accepted the settlement and gave their no objection to quash the proceedings.

9. We have considered the allegations leveled in the first information report. The allegation is restricted to pulling of scarf of a young girl, giving abuses and causing hurt to the mother of the victim. The said offences cannot be termed as against the society. Relying on the decision of this Court in case of **Shiva Chanappa**

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Odala .vrs. Stae of Maharashtra and another – Writ Petition No.1366/2022 (Bombay) decided on 22.02.2023, it is submitted that there is no hurdle in quashing the proceedings under POCSO Act on account of settlement. Similarly, reliance is placed on the decision of Delhi High Court in case of **Rohan Pandey .vrs. State through SHO PS Palam Village and another – Crl.M.C.No.5392/2023 decided on 21.09.2023,** to contend that in special circumstances the Court can exercise the powers under Section 482 of the Code of Criminal Procedure even in cases under the provisions of POCSO Act. Since the trial is not concluded, still the accused has a presumption of innocence in their favour. Applicants have relied on the decisions of Supreme Court in case of (1) **State of Madhya Pradesh .vrs. Laxmi Narayan and others – [2019] 5 SCC 688** and (2) **Gian Singh .vrs. State of Punjab and another – [2012] 10 SCC 303,** to contend that seriousness of the crime and its social impact are key considerations in quashing the proceeding on account of settlement. In several decisions it has been ruled by the Supreme Court that it is not possible to lay down any inflexible rule which would govern the exercise of High Court's inherent jurisdiction. The only

consideration is to prevent the abuse of the process of the Court and to secure the ends of justice.

10. In case at hand, the informant lady is apprehensive about her matrimonial life. Likewise the accused are young persons, having repentance on their act. Certainly continuation of trial would be against the interest of both the parties. The alleged offence is not punishable with death or imprisonment for life. The maximum sentence which may attract would be to the extent of 7 years of imprisonment.

11. We have brought to the notice of the parties that due to registration of crime, police have investigated the matter, filed charge sheet and the Court has devoted much time in going on with the prosecution. At this juncture, the learned Counsel for applicants makes a statement that the applicants would deposit an amount of Rs. 25,000/- towards costs.

12. Considering all above peculiar facts and particularly the married lady do not wish to prosecute the case, we are inclined to

exercise our exceptional powers, hence following order is passed.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The Charge Sheet No.211/2015 dated 21.03.2015 arising out of Crime No.59/2015 registered with Civil Lines Police Station, Akola for the offence punishable under Section 354B, 323, 504 read with Section 34 of the Indian Penal Code, Sections 7 and 8 of the Protection of Children from Sexual Offences Act (POCSO) and Section 3[1]10] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act as also the Sessions Trial No.160/2015 pending on the file of Additional District and Sessions-I, Akola is hereby quashed and set aside.
- (iii) Applicants to deposit an amount of Rs. 25,000/- towards costs in the account of M/s. High Court Gazetted Officers Association, Nagpur with Union Bank of India, High Court Branch, Civil Lines, Nagpur, by 09.11.2023.
- (iv) List the matter for reporting compliance on 10.11.2023.

JUDGE

JUDGE