



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

99 CRIMINAL WRIT PETITION NO. 811 OF 2008

GOVIND BAPURAO SHINDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Petitioners : Mrs. S. G. Chincholkar
APP for Respondent/State : Mr. A. S. Shinde

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CORAM : S. G. MEHARE, J.

DATE : 12.08.2024

PER COURT :

1. Heard the learned counsel for the petitioners and the learned A.P.P for the respondent/State.

2. The petitioners / accused were acquitted for the offences punishable under Sections 376, and 417 read with Section 109 of the Indian Penal Code. However, in clause No.3 of the judgment of acquittal, the learned Adhoc Additional Sessions Judge, Nanded, imposed the condition against the petitioners to pay Rs. 50,000/- within three months, and in the alternative, the prosecutrix, her parents and accused shall settle the marriage of the prosecutrix with accused no.1 – Govind, if existing law permits.

3. The petitioners have impugned the above clause No.3 of the above judgment dated 13.05.2003.

4. Learned counsel for the petitioners argued that the order imposing the condition to pay a lump sum amount of Rs. 50,000/- was without provisions of law. The reasons mentioned in paragraph no.23 are also perverse, illegal, and unacceptable under the law. She would submit that there were no compromise terms for paying the costs / compensation of Rs. 75,000/-. A statement from her parents that the petitioners agreed to compensation of Rs 75,000/- to the victim was the surmise of the Court. If really the offer was given, then why did the Court reduce it to Rs. 50,000/-. No such offer was ever given. The judgment was delivered after the full-fledged trial. Therefore, the findings and conditions imposed are illegal.

5. Per contra, learned APP would submit that though the accused were acquitted, the lump sum amount was directed to be paid, on the fact brought before the Court that Rs.75,000/- was agreed to be paid towards the compromise. The Court considered the financial background of the parties and correctly directed them to pay Rs. 50,000/- to the victim.

6. In the Code of Criminal Procedure, 1973, the only Section at the relevant time was 357, which provides for the order to pay the compensation. It has been provided therein that the order to pay compensation should only be passed when the accused has been convicted. Except for this provision there was no other provision directing the accused to pay a lump sum amount as the trial Court has granted in the Cr.P.C. Therefore, the order imposing condition no. 3, is without a legal foundation.

7. Regarding the finding in paragraph 23 of the judgment and order, it does not reflect that there was a compromise to pay the compensation for the settlement. It appears that the information supplied to the Court by the prosecutrix and her parents was the only source of information with the Court. However, nothing is mentioned in the observations that the accused were agreeable to their submissions. If the accused were agreeable to such an amount, the Court had no reason to reduce the amount to Rs. 50,000/- from Rs. 75,000/-. This finding is also without legal foundation. The second part of the condition to perform the marriage of the accused with the prosecutrix if he did not pay the compensation is also contrary to the criminal law. No such direction could be given by the criminal

Court to perform the marriage. The learned trial Court has acquitted the accused on merit. Therefore, there was no reason to exercise the power to pay compensation under Section 357 of the Code of Criminal Procedure. Therefore, the Writ Petition deserves to be allowed.

ORDER

1. The Writ Petition is allowed.
2. The order imposing condition no. 3 in Sessions Case No. 207/2001 by 1st Ad-hoc Additional Sessions Judge, Nanded, dated 13.05.2003 stands quashed and set aside.
3. No order as to costs.

(S. G. MEHARE, J.)

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