

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1224 OF 2022

Shankar Guruling Awate and Anr. ...Applicants

Versus

The State of Maharashtra and
Anr. ...Respondents

....

Mr. Shrirang Katneshwarkar for the Applicants.

Mr. Ajay Patil, APP for Respondent No.1-State.

CORAM: SMT. ANUJA PRABHUDESSAI &

N.R. BORKAR, JJ.

DATED: 31st JANUARY, 2024.

P.C.:-

1. Learned counsel for the Applicant under instructions seeks leave to withdraw the application on behalf of Applicant No.1. Leave is granted. The application is dismissed against Applicant No.1 as withdrawn.

2. The Applicant No.2 is a child, below eighteen years of age. He seeks to quash Crime No. 454 of 2022 registered with Chikhali Police Station, District-Pune, for offences punishable under Sections 354 and 506 r/w 34 of the IPC and SCC No.792 of 2022

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arising therefrom and pending before the learned Presiding Officer, Juvenile Court, Yerawada, Pune.

3. The aforesaid crime was registered pursuant to the FIR lodged by Respondent No.2. A perusal of the FIR reveals that there was some altercation between the Respondent No.2 and the father of Applicant No.2 herein. Respondent No.2 claims that on 30/08/2022 at about 9.00 p.m., father of Applicant No.2 came to her house and outraged her modesty. It is stated that the Applicant No.2 was present at the place of the incident and he too had threatened to cause death of Respondent No.2. On the basis of the FIR lodged by the Respondent No.2 aforesaid crime has been registered against Applicant No.2 as well as his father for offences under Sections 354 and 504 r/w 34 of the IPC.

4. The FIR does not indicate that Applicant No.2 was involved in any manner in outraging the modesty of Respondent No.2. He has been roped in with the aid of Section 34 of the IPC, which makes a co-perpetrator equally liable on the principle of joint liability. It is well settled that to attract Section 34, there should be

commonality of purpose and common design as pre-arranged plan with prior meeting of mind. In the instant case the only allegation against the Applicant No.2 is that he was present at the place of the incident when Applicant No.1 had allegedly outraged the modesty of Respondent No.2. Apart from the said fact there is absolutely no material on record to indicate that the Applicant No.2 had by his act or omission agreed to assist, encourage, promote or facilitate commission of crime by the Applicant No.1. There was no prior concert or pre-arranged plan between Applicant Nos.1 and 2 as to attract common intention under the provision of Section 34 of IPC. Under the circumstances, Applicant No.2, who is a minor could not have been roped in such a serious offence, by invoking Section 34 of the IPC.

5. Having gone through the contents of the FIR and the material placed before us, we are of the considered view that cognizable offence is not made out as against Applicant No.2. Continuance of the proceedings against Applicant No.2 will be sheer abuse of process of law. Hence, the following order :

(i) The application is dismissed as withdrawn as

against Applicant No.1.

(ii) The Crime No. 454 of 2022 registered with Chikhali Police Station, District-Pune and SCC No.792 of 2022 arising therefrom and pending before the learned Presiding Officer, Juvenile Court, Yerawada, Pune stand quashed qua Applicant No.2.

6. The application stands disposed of.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)