



Judgment

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

CRIMINAL APPLICATION [APL] No. 51 OF 2024.

1.Sabir Firoj Garave,
Aged about 22 years,
Occupation – Education,

2.Azhar Javed Balapur,
Aged about 25 years,
Occupation – Labour,

Both residents of Gawalipura,
Taluq Digras, District Yavatmal.

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APPLICANTS.

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Police Station Digras, Tahsil Digras,
District Yavatmal.

2.XYZ / Informant
[in Crime No.332/2023, Police
Station Digras,) Resident of
Digras, Tahsil Digras and
District Yavatmal.

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NON-APPLICANTS.

Mr. A.A. Zade, Advocate for Applicants.
Mr. S.B. Bissa, A.P.P. for Non-applicant No.1 – State.
Mr. R.S. Bhoyar, Advocate for Non-applicant No.2.

Rgd.

**CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.**

DATE : MARCH 11, 2024.

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 registered as Special Case No.153/2023 arising out of first information report bearing Crime No.332/2023 registered with Digras Police Station, District Yavatmal for the offence punishable under Section 354, 354A, 354D, 341, 506 read with Section 34 of the Indian Penal Code, Sections 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO) and Section 3[2][va], 3[1][w][i] and 3[1][r] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act on account of settlement.

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

Rgd.

17 years, the aforesaid crime came to be registered. It is prosecution case that at the relevant time the victim girl was studying in 12th standard. She used to attend private tuition classes. Both applicants use to follow her, while she was attending the tuition classes. On 02.06.2023, around 7 to 8 p.m. while the victim was about to return after attending tuition, both applicants accosted her. One of the applicant caught hold her hand and asked as to why she is not remaining friendly with him. They have also insisted her to respond to mobile messages. Both of them use to gaze and follow her, and therefore, the report.

4. On the basis of the report lodged by the victim the police have registered crime, carried investigation and charge sheet came to be filed. At this juncture, parties have arrived at a settlement and requested the Court to quash the entire proceeding. Parents of victim have filed separate affidavits stating about the settlement and their no objection to quash the proceeding. Particularly, mother of the victim stated before us that the victim is a college going girl and continuation of prosecution may become an obstacle in her

educational carrier and marital prospects. The victim who is at the verge of majority has also attended the Court and stated about her no objection.

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. It is submitted that statements of witness have been recorded by the Magistrate in support of the prosecution case.

6. The learned Counsel appearing on behalf of applicants would submit that there is no hurdle in quashing the proceeding pertaining to the offence punishable under the provisions of POCSO Act. In this regard he took us through the observations contained in paragraph no.9 of the judgment of this Court in case of **Sonu @ Dilip Vitthalrao Gawande and another .vrs. State of Maharashtra and another – Criminal Application No.1041/2023 decided on 01.11.2023**. The said paragraph reads as under :

“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 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.”

7. In case at hand, the victim girl was on the verge of attending majority. The accused are young boys. The informant is scared about her future. In the circumstances, certainly continuation of the prosecution case would be against the interest of the victim also. The alleged offence is not punishable with death or imprisonment for life. The parents of victim urged before us to quash the proceedings so as to put an end to the episode.

8. 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. 20,000/- towards costs.

9. Considering all above peculiar facts and particularly the victim girl and her parents do not wish to prosecute the case, we are inclined to exercise our exceptional powers, hence following order is passed.

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ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The Charge Sheet registered as Special Case No.153/2023 arising out of first information report bearing Crime No.332/2023 registered with Digras Police Station, District Yavatmal for the offence punishable under Section 354, 354A, 354D, 341, 506 read with Section 34 of the Indian Penal Code, Sections 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO) and Section 3[2][va], 3[1][w][i] and 3[1][r] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act is hereby quashed and set aside.
- (iii) Applicants to deposit an amount of Rs. 20,000/- 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 20.03.2024.
- (iv) List the matter for reporting compliance on 21.03.2024.

JUDGE

JUDGE