



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

CRIMINAL APPLICATION (APL) NO.690/2024

(Ku. Kajal D/o Dilip Dhore and others Vs. The State of Maharashtra and another)

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

Court's or Judge's orders

Mr. J.K. Matala, Advocate for the applicants.

Ms. Kalyani Marpakwar, A.P.P. for non-applicant No.1/State.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 15.7.2024.

Present application has been filed under Section 482 of the Code of Criminal Procedure for quashing the Chargesheet No.2/2013 filed by Old Kamptee Police Station, Nagpur on 23.1.2023 before learned Special Judge under Sections 354, 294, 323, 143 and 147 of I.P.C. and Sections 8 and 12 of Protection of Children from Sexual Offences Act.

2. Heard learned Advocate for the applicants and learned A.P.P. for non-applicant No.1. It is not even necessary to issue notice to non-applicant No.2.

3. At this stage itself we would say that the learned Advocate for the applicants is pointing out that in respect of co-accused Criminal Application (APL) No.1001/2023 has been filed and by order dated 25.7.2023 notice has been issued. We are of the firm opinion that role of each accused is required to be considered and, therefore, issuance of notice in the matter of co-accused will not grant any benefit to the applicants.

4. It has been tried to be submitted that the alleged incident in fact happened due to property dispute and it is not in the way it has been painted in the F.I.R. There is also a cross case filed on behalf of the accused persons. The incident

never happened wherein applicant No.4 was allegedly present. So also as regards applicant Nos.2 and 3 are considered due to the lodging of the F.I.R. their marital life is in trouble. Learned Advocate for the applicants have taken us through the F.I.R. and the statements of witnesses and submitted that all the contentions therein are false. It would be a futile exercise to ask the applicants to face the trial.

5. At the outset, when the present application is filed under the inherent powers of this Court under Section 482 of the Code of Criminal Procedure what is required to be considered is the *prima facie* facts which are coming out of the chargesheet and beyond that, that is like plea of alibi is concerned is required to be proved by the accused at the time of trial. Another fact to be noted that when there is cross case, as per the contentions of the applicants itself, then the presence of at least some of the accused is admitted and, therefore, on that count itself there cannot be quashment of the F.I.R. and the chargesheet.

6. Perusal of the F.I.R. would show that the husband of the informant expired on 7.11.2022 around 3.30 p.m. but it is then stated that her sister-in-law restrained her from even touching the death body of the husband. She has made allegations against her son on the count of house which was in the name of her husband. She states about the incident that had taken place allegedly around 5 p.m. on 8.11.2022 and it appears that on the same day around 23.05 Hrs. F.I.R. came to be lodged. We need not go into such details of the F.I.R. but it can be seen that as regards each of the accused is concerned she has attributed a role. Now considering the role attributed to each of the accused; the Special Judge is

then required to consider as to what offence is transpiring and then at the time of framing charge appropriate charge will have to be framed. When on the perusal of the F.I.R. some role is attributed to the present applicants, so also the statements of the witnesses are reiterating the same facts that two of the girls i.e. daughters of the informant, who were aged 17 and 9 years respectively, against them it is stated that offence has been committed and, therefore, POCSO Act had been invoked. Her statement under Section 164 of Cr.P.C. has been recorded. Therefore, taking into consideration all these facts, so also as regards the alleged injuries are concerned, the medical certificates are there but they are showing that there was no fresh injury and taking into consideration that Section 323 of I.P.C. i.e. simple hurt has been invoked, we are of the opinion that no case is made out to exercise our inherent powers under Section 482 of Cr.P.C. Application deserves to be rejected at the threshold. Accordingly, it is rejected.

(MRS.VRUSHALI V.JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)