



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

CRIMINAL APPLICATION (APL) NO. 1102/2023

1. Akash s/o. Narayan Dhurandhar,
Aged about 27 yrs., Occ. Labour,
2. Narayan s/o. Daval Dhurandhar,
Aged about 58 yrs., Occ. Labour,
3. Vimal w/o. Narayan Dhurandhar,
aged 47 yrs., Occ. Labour,

Sr.No. 1 to 3 R/o. Gautamnagar,
Barshitakli, Tq. Barshitakli,
Dist. Akola.

4. Tejrao s/o Jagdev Sadnshiv,
Aged about 57 yrs., Occ. Labour,
5. Jaya w/o. Tejrao Sadanshiv,
aged about 44 yrs., Occ. Labour,

Sr.No.3 to 5 R/o. Vizora,
Tq. Barshitakli, Tq. Barshitakli,
Dist. Akola.

APPLICANTS

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Barshitakli Police Station,
Tq. Barshitakli, Dist. Akola.
2. XYZ,
Barshitakli Police Station,
Tq. Barshitakli, Dist. Akola.
Crime No. 100/2023 dt. 03.7/2023.

NON-APPLICANTS

Mr. A. Ahmad Abdul h/f Mr. A. Jamdar, Advocate for the applicants.
Mr. M.J.Khan, Addl. Public Prosecutor ('APP') for non-applicant No.1.
Ms. Sonali S. Khobragade, Advocate (appointed) for non-applicant No.2.

CORAM

: **VINAY JOSHI AND**
MRS.VRUSHALI V. JOSHI JJ.

DATE OF JUDGMENT

: **04.01.2024**

JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. By this application, the applicants are seeking to quash charge-sheet vide Special Case No.69/2023 pending on the file of Extra Joint District Judge and Additional Sessions Judge, Akola arising out of Crime No.100/2023 registered with Barshitakli Police Station, Tq. Barshitakli, Dist. Akola for the offence punishable under Sections 376 of the Indian Penal Code, Sections 4, 6 of the Protection of Children from Sexual Offences Act ('POCSO') and Sections 9, 10 of the Child Marriage Restraint Act on account of mutual settlement.

4. The facts are somewhat unusual as neither the victim nor her family members have approached to the Police putting her grievance, but at the instance of Medical Officer, the Police got a clue which resulted into filing of report. Victim girl aged 17 years was agricultural labour. She was living with her elder married sister at Pune. The

applicant (accused) is younger brother of victim's sister's husband. Love relationship was developed between them. Both liked each other which has culminated into performing a marriage on 25.05.2021. Out of wedlock, victim became pregnant. While she was in advanced stage of pregnancy, she was admitted into the Government Hospital, Akola for delivery. The victim has delivered a baby girl on 06.03.2023. Concerned Medical Officer realized that victim became pregnant during her minority, hence he has informed to the Police who in turn has lodged report for aforesaid offences.

5. The Police carried out investigation and on completion, filed charge-sheet. The victim appeared with her minor baby in the Court and filed reply stating the aforesaid facts and her no objection to quash the proceeding. Particularly, victim stated that since marriage, she is living with the applicant (accused) as wife alongwith their ten months old baby. She has stated that pendency of criminal prosecution would be detrimental to her marriage rather her marriage would be at stake, if the prosecution continues. The victim appeared through her Advocate Ms. Khobragade and reiterated the above facts and stated about her no objection to quash the proceeding. Rather in the same tune, she has also urged to quash the proceeding for securing her marital life.

6. The learned counsel appearing for the applicants relied on the decision of this Court in case of **Ganesh Shankar Pilane Vs. The State of Maharashtra and another** (Writ Petition No.272/2022, decided on 11.03.2022), wherein this Court took a view that quashing of the prosecution for the offence of rape and under the provisions of POCSO Act in given circumstances would secure the ends of justice. In several decisions of the Supreme Court, it has been expressed that while exercising the powers under Section 482 of the Code of Criminal Procedure, the Court will have to consider all the relevant factors and the seriousness of the crime cannot be a sole factors, but one of the consideration. Though the offence of rape is serious one, however, we find that this is an exceptional case.

7. The victim was at the verge of majority i.e. just one month short to her marriageable age. She has already married with the applicant (accused) and having a baby girl from wedlock. Marriage Certificate as well as Birth Certificate of a child has been tendered. The victim is living happily with the applicant (accused) and new born child. The purpose of vesting inherent powers with this Court is two-fold i.e. to prevent the abuse of the process of the Court and to secure the ends of justice. If the prosecution is put to an end, resultantly the poor coupled would continue to live happily. Converse, there would be matrimonial dispute, and the future of lady and child would be in lurch. We may

emphasize that the victim never put any grievance, but only because she was one month short to the age of marriage, report was lodged. The Laws are made to protect the society and not to put them in lurch.

8. In above peculiar facts, we are of the considered view that quashing of the proceeding would certainly achieve the goal of securing the ends of justice. In short, the case for quashing is made out and therefore, the application is allowed. We hereby quash and set aside the charge-sheet vide Special Case No.69/2023 pending on the file of Extra Joint District Judge and Additional Sessions Judge, Akola arising out of Crime No.100/2023 registered with Barshitakli Police Station, Tq. Barshitakli, Dist. Akola for the offence punishable under Sections 376 of the Indian Penal Code, Sections 4, 6 of the Protection of Children from Sexual Offences Act ('POCSO') and Sections 9, 10 of the Child Marriage Restraint Act on account of mutual settlement.

9. Application stands disposed of in above terms.

10. Fees for appointed counsel for non-applicant No.2 be paid as per Rules.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)