



Judgment

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

CRIMINAL APPLICATION NO. 1155 OF 2024.

1.Gajanan Daulat Thakre,
Aged about 28 years, Occupation -
Agriculturist/Labour.

2.Daulat Gomaji Thakre,
Aged about 61 years, Occupation -
Agriculturist/Labour.

3.Sakubai Daulat Thakre,
Aged about 55 years, Occupation -
Agriculturist/Labour.

Applicant Nos.1 to 3 all residents of
Nimbi Dhaba, Tq. Barshitakli,
Nimbi, Tah. Akola.

4.Vilas Ukanda Mentange,
Aged about 55 years, Occupation -
Agriculturist/Labour.

5.Rita Vilas Metange,
Aged about 50 years, Occupation -
Agriculturist/Labour.

Applicant No. 4 and 5 both resident
of Ganagawadi, Tah. Malegaon,
District Washim.

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APPLICANTS.

Rgd.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Barshitakli,
Taluq Barshitakli, and District
Akola.

2.XYZ Victim,
Crime No.0611/2023, dated 24.12.2023. .. NON-APPLICANTS.

Mr. P.L. Sagdeo, Advocate for Applicants.
Mrs. K.H. Bhondge, A.P.P. for Non-applicant No.1 - State.
Ms A. Agrawal, Advocate for Non-applicant No.2.

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

DATE : SEPTEMBER 09, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Admit. By consent of the learned Counsel for the parties,

Rgd.

the matters are taken up for final disposal.

2. By this application, applicants are seeking to quash the Final Report/Special Case No.30/2024 pending on the file of Principal District and Sessions Judge, Akola arising out of first information report bearing Crime No.611/2023 registered with Barshitakli Police Station, Akola for the offence punishable under Sections 376, 376[2][n] of the Indian Penal Code and Sections 4,5,6,9,10 and 11 of the Protection of Children from Sexual Offences Act, on account of settlement.

3. At the instance of a girl who was at the verge of majority, the aforesaid crime came to be registered on 24.12.2023. It is her contention that since 2-3 years preceding to the lodgment of report, she got acquainted with the applicant Gajanan. Their casual acquaintance turned into love relationship. Both of them desired to marry, accordingly their marriage was arranged and performed by their parents on 22.03.2023. After marriage the informant started to reside with the applicant and his family.

Rgd.

4. Out of the wedlock, the informant girl remained pregnant. On 23.12.2023, she was in delivery pains, hence was taken to the hospital where she delivered a baby on the very day. The concerned Doctor has verified the age proof of the girl on which the Doctor understood that she was just below 18 years, and therefore, at his behest the informant girl lodged the report with the police.

5. The investigation was carried and charge sheet has been filed. The informant lady has appeared before us and is identified by her Advocate. She has filed an affidavit stating that since marriage she is residing with her husband, as well as now they are having a baby. She has stated that her marriage is still subsisting, but, as the Medical Officer insisted she has filed the report. She has stated that she has no grievance against the applicants and added that continuation of prosecution may lead to complications in her matrimonial life. The informant has filed copy of her aadhar card as well as marriage certificate. She has reiterated before us about the contents of the reply and urged to quash the proceeding to save her matrimonial life.

Rgd.

6. It reveals from the prosecution case itself that there was marriage in between the couple, however, at the time of marriage she was just few months less then the age of majority. As per aadhar card her date of birth is 01.01.2006. Thus at the time of marriage she was 17 years of age. The learned Counsel appearing for the applicant has invited our attention to the contents of valid marriage and submitted that at the most the marriage would be voidable that too if a minor seeks annulment of marriage. In support of said contention, he has relied on the decision of Supreme Court in case of **Bhagwati @ Reena .vrs. Anil Choubey – [2017] 13 SCC 582**, wherein it is held that the child marriages are voidable at the option of the minor spouse at the time of marriage. Admittedly till date the minor did not exercised the option and thus, the marriage is still in subsistence. It is apparent that the victim has no grievance against the applicant, but, some how out of love relationship by consent of parties, they got married on 23.03.2012. One of the contents of the valid marriage is that the bride should have attained age of 18 years, at the time of marriage. Only on the said count, the Medical Officer has directed

Rgd.

her to file report as obviously there was sexual relation preceding to her attaining the age of majority.

7. Normally the offence punishable under Section 376 of the Code, coupled with the provisions of POCSO Act would be considered as serious and antisocial offence. However, facts of this case is quite distinct wherein there are no allegations that the applicant had ever committed sexual intercourse by force or by deceitful means. Rather prior to the girl attaining the majority, the couple got married. The victim has no grievance at all. The inherent powers are unlimited which are to be exercised for advancing cause of justice.

8. The facts are such that by the time they are living as husband and wife and since the minor has not exercised her option, the marriage is still subsisting. More particularly, the couple has a baby. Certainly if criminal prosecution is continued it would become a hurdle in their matrimonial life, which may lead to serious consequences. Rather the future of the newly born child would be in dark if the trial is continued. Considering all the above facts and to

Rgd.

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do complete justice, we feel that a very exceptional case is made out to exercise our inherent powers. Further the informant is not ready to go on with the prosecution, therefore, there is no chance that she would support the prosecution case. In view of above, following order is passed.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The Special Case No.30/2024 pending on the file of the Principal District and Sessions Judge, Akola arising out of first information report bearing Crime No.611/2023 registered with Barshitakli Police Station, Akola for the offence punishable under Sections 376, 376[2][n] of the Indian Penal Code and Sections 4,5,6,9,10 and 11 of the Protection of Children from Sexual Offences Act is quashed and set aside.

JUDGE

JUDGE