



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

CRIMINAL APPLICATION (APL) NO.1060/2024

Deepak S/o Babarao Poharkar,
aged 28 Yrs., Occ. Private Service,
R/o Bhamtipura, Wardha.

... Applicant

- Versus -

1. The State of Maharashtra,
through Police Station Officer,
Police Station Wardha (City),
Wardha.

2. XYZ in C.R. No.486/2024,
registered at Police Station,
Wardha (City)

... Non-applicants

Mr. R.M. Daga, Advocate for the applicant.
Ms. M.H. Deshmukh, A.P.P. for non-applicant No.1/State.
Ms. Seema Dhotre, Advocate for non-applicant No.3.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 19.8.2024.

ORAL JUDGMENT (Per Vinay Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. This is an application seeking to quash criminal prosecution Special Case No.51/2024 pending on the file of Special Judge (POCSO Act) and Sessions Judge, Wardha arising out of Crime No.0486/2024 registered by non-applicant No.1 for the offence punishable under Sections 376(2)(n) of Indian Penal Code and Sections 4 and 6 of Protection of Children from Sexual Offences Act on account of settlement. It is informed that yet the trial Court has not framed charge.

3. At the instance of First Information Report dated 23.3.2024 lodged by informant lady of 18 years age crime has been registered. It is informant's case that she is taking education in the college. She got acquainted with applicant on which intimacy was developed. Later on friendship has been converted into love relationship. Both of them used to meet each other as and when they got the opportunity. Informant stated that on 9.1.2024 applicant took her at his house and had sexual intercourse. Again on 14.1.2024 the things were repeated. The

informant started to suffer a bleeding problem for which she went to the hospital where it was learnt that she was pregnant. Since informant was a minor at the time of conception she went to police station and lodged the report.

4. Learned Advocate appearing for the applicant would submit that it is a case of consensual relationship. It is argued that at the time of first sexual intercourse the informant was hardly two and half months short of attending majority. Our attention is invited to the informant's application dated 22.3.2024 wherein she herself has stated about their consensual relations. She also stated that she has no grievance against the applicant. It is submitted that though the act of applicant technically amounts to rape, however, the informant was well educated college going girl knowing consequences of the act. She has also stated that prior to F.I.R. that it was consensual relationship and she has no objection.

5. The informant lady has appeared through Advocate Ms. Dhotre. The informant is accompanied with her mother. Reply affidavit is filed by informant's mother stating that her daughter (informant) is taking education in the college and wants to pursue her higher studies. She has urged to quash the proceedings by stating that the informant is of marriageable age and for her better future the prosecution be quashed.

6. The informant who has attained majority has also filed an affidavit stating that out of friendship they developed intimacy and by her consent everything had happened. Particularly she stated that she desires to prosecute her academic career and the pendency of criminal prosecution would become a hurdle. She wanted to forget the past and for her better future she has no objection to quash the proceedings.

7. The applicant's learned Advocate relied on the decision of this Court dated 11.3.2022 in Writ Petition

No.272/2022 (Ganesh Shankar Pilane V/s. The State of Maharashtra and another) wherein under similar circumstances this Court has exercised discretionary powers to quash the proceedings. In said case equally the victim was at the verge of majority. Similar penal provisions were invoked and on account of settlement and more particularly considering the future of the girl the proceeding was quashed. This Court has quoted several decisions and ultimately held in such scenario the prosecution needs to be quashed.

8. We have examined the police papers. The F.I.R. was lodged on 23.3.2023. It requires to be noted that prior to the lodging of F.I.R. the victim gave a statement to the police that it is a case of consensual relationship and she do not wish to prosecute. It appears that since the victim has conceived she was referred to the hospital where it was found that she was two months less than attending majority. In such a background, Medical Officer advised her to report the matter to the police. In the

circumstances, victim finally stated about the consensual relations but on the next day lodged the report about alleged offences.

9. It reveals that there was relationship between young boy and girl who were taking education in the college. The victim had sexual relations with boy with her consent but at relevant time she was two and half months less than 18 years. Notably it is not a case where the applicant has forcibly exploited the minor by use of force or fraud. In case of Ganesh Pilane (*supra*) this Court after considering the various pronouncements in the field has exercised the inherent powers to secure the education and future prospects of a minor victim. In said case the facts are more worst as the then accused has allegedly had sexual relationship by overpowering the minor and also threatening her for not disclosing the things. In case in hand victim, who was at the verge of majority, had sexual relationship with her consent but as doctor advised she went to police for lodging the report.

10. Victim is present before us who has stated about her settlement. At present victim is studying in college and she wants to pursue her education. Victim's mother also expressed her concern that pendency of this case would become a hurdle in marital prospects of the victim. Victim's mother also stated that due to pendency of prosecution she herself as well as victim are under great mental stress. She submitted that pendency of case has disturbed their normal life. Since the victim do not wish to prosecute the case chances of securing conviction are very less as victim may not support the prosecution case. Moreover, the parties have settled the dispute. The applicant is also young and taking education. Having regard to peculiarity of facts that relationship was a consensual, prior to police report the victim disclosed about her consent, her educational and marital prospects, we deem it appropriate to exercise our inherent jurisdiction. This Court is invested with inherent powers to secure the ends of justice. There are no limitations on the powers of Court. Peculiar facts shows that both do not wish to continue

the prosecution. Particularly victims mother is scared about marriage of victim. The laws are made to give justice and not to disturb the life of people. In such peculiar facts, we are inclined to exercise our inherent powers.

11. In view of the above, application is allowed.

We hereby quash and set aside the criminal prosecution namely Special Case No.51/2024 pending on the file of Special Judge (POCSO Act) and Sessions Judge, Wardha arising out of Crime No.0486/2024 for the offence punishable under Sections 376(2)(n) of Indian Penal Code and Sections 4 and 6 of Protection of Children from Sexual Offences Act.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)