



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

CRIMINAL APPLICATION [APL] NO.1633/2023.

Devrao Laxmanji Patle.

-VERSUS-

The State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri N.R. Raut, Advocate for the Applicant.
Shri M.K. Pathan, A.P.P. for Non-applicant No.1.
Shri A.A. Zade, Advocate for Non-applicant No.2.

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

DATE : FEBRUARY 15, 2024.

Heard.

2. By this application, the applicant is seeking to quash the charge sheet bearing Special Case No.114/2023 arising out of first information report bearing Crime No.411/2023 registered with Sakoli Police Station, District Bhandara for the offence punishable under Sections 376[2][j], 376[2][f], 376[AB], 354-A of the Indian Penal Code read with Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act (POCSO).

3. It is prosecution case that the applicant, a

teacher, has sexually exploited a girl student aged 9 years in the school. At the instance of a report lodged by the cousin grand-mother of the victim, the aforesaid crime came to be registered. It is the case of informant that on 03.08.2023 in the evening, the victim a school going girl aged 9 years, returned to the house weeping. On enquiry, the victim disclosed that in the afternoon, around 4 p.m., while she was in the school play ground, the applicant has abruptly touched her chest. Moreover, the victim disclosed that in earlier month once the applicant had called her at his office under the pretext of taking measurement for stitching clothes. At that time, the applicant kissed her at various places, as well as touched her private part. The applicant also asked the victim not to disclose the things to anyone. After receipt of the information from the victim, the informant has lodged the report. Police have carried out investigation and filed charge sheet.

4. The learned Counsel for the applicant took us through the medical report which discloses that the victim had denied for her medical examination. According to the applicant, there is no material in support of the allegations made by the prosecution. The investigation papers disclose

that statement of victim was recorded by the Magistrate in terms of Section 164 of the Criminal Procedure Code. In the said statement, the victim has specifically stated that the applicant i.e. Patle Sir has kissed her, as well as touched her urinal place. She has also disclosed that the applicant has pressed her chest. Investigation paper contains statement of some other fellow students, who have stated to the extent that the applicant has called the minor victim at his office for taking measurement.

5. The learned Counsel for the applicant would submit that during hearing of the bail application mother of victim has filed an application stating that no such incident had occurred. Moreover, our attention has been invited to the observations in the bail order, wherein the Sessions Judge after interviewing the victim has exercised his discretion in granting bail. As regards to the application filed by mother of the victim, giving clean chit to the applicant for the purpose of bail, it can be interpreted in either way. So far as the observations of the Sessions Judge are concerned, we do not wish to comment upon the said aspect, since the said exercise is unknown to law.

6. The learned Counsel for the applicant has relied

on the decision of this Court in case of **Ku.Khushbu Tulshiram Damahe and others .vrs. State of Maharashtra – Criminal Application (APL) No.173/2018 decided on 07.03.2018**, wherein this Court has quashed the proceedings for the offence punishable under Section 354-A[1] of the Indian Penal Code and Sections 6 and 8 of the POCSO Act. Moreover, our attention has also been invited to one other order of this Court in case of **Sonu @ Dilip Vitthalrao Gawande and another .vrs. State of Maharashtra and another – Criminal Application (APL) No.1041/2023 decided on 01.11.2023**, wherein equally this Court has quashed the proceedings relating to 354B, 323, 504 read with Section 34 of the Indian Penal Code, Sections 7 and 8 of the POCSO Act and Section 3[1][10] of the Scheduled Castes and Scheduled tribes [Prevention of Atrocities] Act. Similarly, reliance is placed on the decision of this Court in case of **Shiva Chanappa Odala .vrs. State of Maharashtra – Writ Petition No.1366/2022 decided on 22.02.2023**, wherein this Court has quashed the proceedings for the offence punishable under Section 354 of the Indian Penal Code and Sections 8 and 12 of the POCSO Act.

7. The learned counsel for the applicant has also

relied on the decision of Supreme Court in case of **Kapil Gupta .vrs. State of NCT of Delhi and another – 2022 SCC Online SC 1030**, wherein the proceedings under Section 376 of the Indian Penal Code has been quashed. In the said decision the victim lady was aged 23 years and there were two cases out of which in one she is complainant, whilst in other is accused. Having regard to those peculiar facts, the offence under Section 376 has been quashed. Applicant has not brought to our notice any precedent wherein the Court has quashed serious offence of rape on minor on account of settlement.

8. On the other hand the learned A.P.P. has relied on Three Judge Bench decision of the Supreme Court in case of **Parbatbhai Aahir and others .vrs. State of Gujarat and another – (2017) 9 SCC 641**, wherein the Supreme Court has summarized the principles while considering the case of quashing. It has been expressed that in serious and heinous offences the Court should be slow in exercising its discretion. Particularly, our attention has been invited to paragraph no.16.6 of the said decision, which reads as under :

“16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court

must have due regard to the nature and gravity of the offences. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.”

9. The applicant is facing prosecution for the offence of rape, as well as aggravated form of sexual assault punishable under a Special Statute meant to protect the children from sexual offences. The informant has stated about the occurrence, whilst minor victim aged 9 years has also reiterated in her statement to the Magistrate. Always the medical report is not a *sine qua non* for establishing the guilt of sexual offence. It is a subject matter of trial whether in absence of medical report the prosecution case should be believed. The applicant is a school teacher having dominance, whilst on the other side the victim is a minor vulnerable school going girl aged 9 years. The duty and responsibility cast upon of the teacher is of a ‘protector’ of

7

the pupils coming to school. Parents send their wards to the school with a trust that the protector would guard the interest of their ward while they are in his or her custody.

10. Having regard to the seriousness of the offence and material available on record, we are not inclined to exercise our discretion. The applicant has not made out a prima facie case to satisfy that the prosecution is unjust or an abuse of the process of the Court. In the circumstances Criminal Application fails and is therefore, rejected.

JUDGE

JUDGE