



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2290 OF 2024

WITH

CRIMINAL APPLICATION NO.4629 OF 2024

**[IN
CRIMINAL APPLICATION NO.2290 OF 2024]**

- 1) Nasrin Yunus Khan Pathan,
Age-36 years, Occu:Service as Principal,
R/o-Varma Nagar, Parbhani,
Taluka and District-Parbhani,
- 2) Shaikh Mohammad @ Baba Shaikh Ismail,
Age-40 years, Occu:Service,
R/o-As Above.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Kotwali Police Station, Parbhani,
Taluka and District-Parbhani,
- 2) X. Y. Z.

...RESPONDENTS

...
Mr. Swapnil S. Rathi Advocate for Applicants.
Mr. G.A. Kulkarni, A.P.P. for Respondent No.1 -State.
Mr. R.G. Narwade Advocate h/f. Mr. S.E. Shekade
Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE OF RESERVING ORDER : 4th FEBRUARY 2025

DATE OF PRONOUNCING ORDER : 23rd APRIL 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Criminal Application No.4629 of 2024 has been filed seeking permission to amend the main Application and to place on record copy of the charge-sheet. Since amendment has already been carried out, Criminal Application No.4629 of 2024 stands disposed of.

2. So far as Criminal Application No.2290 of 2024 is concerned, it has been filed under Section 428 of the Code of Criminal Procedure, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 111 of 2024 registered with Kotwali Police Station, Parbhani, District-Parbhani for the offence punishable under Sections 377, 504, 506 read with Section 34 of the Indian Penal Code, Sections 4, 6, 12, 17 of the the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act"), Section 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "the Atrocities Act"), and later on by way of amendment for quashing the proceedings in Special Case

No.102 of 2024, pending before the learned Special Judge under the POCSO Act / Additional Sessions Judge, Parbhani.

3. Taking into consideration the involvement of POCSO Act, we would like to mask the name of respondent No.2.

4. Heard learned Advocate Mr. Rathi for the applicants, learned APP Mr. Kulkarni for the State and learned Advocate Mr. Narwade holding for learned Advocate Mr. Shekade for respondent No.2.

5. Learned Advocate for the applicants has taken us through the FIR and the charge-sheet and submits that the informant is the mother of the minor son, who was studying in the school where applicant No.1 is the principal and applicant No.2 is the husband of applicant No.1. The informant is Advocate by profession and her husband is employed in Border Security Force. The informant's son is taking education in playgroup in the said school. When he informed the mother on 26th February 2024 that two days prior to that date, in the recess (around 11.00 a.m.) a student who is taking education in the same school (since that boy also appears to be a minor, we are

avoiding to give his name) had asked the victim to take his penis in his mouth twice and thereby sexually abused. On 27th February 2024, the informant says that she met applicant No.1 and told her about the incident. The boy, who had done the act, transpired to be taking education in 6th standard. He was called and applicant No.1 made inquiry with him, but thereafter the informant was asked to go out of the school. Then the informant along with friend of her husband, started to go to lodge the FIR with Kotwali Police Station. When they were near the water tank in Nawa Mondha Market area, at that time both the applicants went there and abused the informant in the name of the caste by saying that:-

“तुम्ही महारडे आहात, आमच्या शाळेत तुम्ही महारडेच भांडण करतात”

(You are Mahar by caste and in our school only the persons of your Mahar community make quarrel).

. Applicant No.1 also given threat by stating that the persons like the informant make applications against her and she has political background and therefore, nobody can cause any damage to her. Applicant No.1 further stated that even if the informant gives FIR against them, then the informant would

suffer dire consequences and told that thereafter informant should not come to the school and the Transfer Certificate (for short "the T.C."), Karate material and the certificates of her son would be sent. The informant then asked one of her known person to collect the T.C. and other material from the school. When the said person to whom the informant had requested those material to be collected, gave a phone call to applicant No.1, then applicant No.1 got annoyed. Informant's brother is also an Advocate. By giving call to the Advocate, brother of the informant, applicant No.1 spoke bad words against the person whom the informant had asked to collect the material. The brother of the informant then made arrangements to get the said material from the school but it was told that the T.C. has been sent by post. Till the date of lodging the FIR, the informant had not received the said material and the T.C. of the son.

6. Learned Advocate for the applicants, thereafter submits that taking into consideration the allegations in the said FIR, it would demonstrate that there is a delay in lodging the FIR and the role that informant wants to attribute to the applicants is only under Section 3(1)(r), 3(1)(s), 3(2)(v) of the Atrocities Act and Section 504, 506 read with Section 34 of the Indian Penal

Code. However, Section 377 of the Indian Penal Code and Sections 4, 6, 12, 17 of the POCSO Act were against the said juvenile in conflict with law. At no stretch of imagination, Section 17 of the POCSO Act can be attributed against the present applicants. Learned Advocate for the applicants submits that even if we consider that the Special Court can frame charge under Section 21 of the POCSO Act, but the punishment that has been provided for Section 21 of the POCSO Act is to the extent of six months or with fine or both. Thus, it is a non-cognizable offence for which the FIR cannot be filed.

7. Learned Advocate for the applicants relies on the decision in *Hitesh Verma vs. State of Uttarakhand and another, 2021 CRI. L.J. 1*, to support the case that when the informant and the friend of her husband were proceeding and were near the water tank, no independent witness had heard the alleged abuses, but then statement of one Satish Nagorao Bhande came to be recorded on 17th April 2024, stating to be the person who had witnessed the incident. Even if his statement is taken as it is, he states that when he was near Nawa Mondha area on 27th February 2024, he had found that a lady in *Burkha* and another fair looking person were quarreling with a lady. He states that

many persons had gathered there. The lady in *Burkha* and the man with her appeared to be Muslims and they were abusing. Presence of Satish Bhande is not at all stated by the informant and the friend of her husband who was along with her. Therefore, how police got the knowledge about the presence of this witness after such a delay, is a question. Therefore, when in *Hitesh Verma vs. State of Uttarakhand and another*, (supra) the Hon'ble Supreme Court held that such abuses or insulting words should be heard by the independent witness, then in the present case even prima facie, this aspect has not been shown. Therefore, he submits that it would be unjust to ask the applicants to face the trial.

8. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the application and submitted that even if the police have not invoked Section 21 of the POCSO Act, yet the appropriate Court can frame charge under that Section. On 27th February 2024, applicant No.1 had came to know about the incident which had in fact taken place in the school premises, yet she had not filed any report with the police. Further, how the police had traced witness Satish Bhande, would be explained by the investigating officer before

the trial Court and the applicants would be then having an opportunity to cross-examine him and therefore, this case cannot be taken as the case where the inherent powers are required to be exercised. Learned APP relies on the decision in ***State of Maharashtra and another vs. Dr. Maroti s/o Kashinath Pimpalkar, (2023) 4 SCC 298***, wherein the purpose for which Section 21 of the POCSO Act came into existence has been explained. It has been observed in Paragraph Nos. 11, 12 and 13 as under:-

"11. Having made such a short survey on authorities on the exercise of power under Section 482 Cr.P.C. as above, we will now refer to the object and purposes of the POCSO Act. Article 15 of the Constitution, inter alia confers powers upon the State to make special provisions for children and Article 39(f) provides not only that the State shall direct its policy towards securing that the children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity but also to ensure that their childhood and youth are protected against exploitation and against moral and material abandonment. Recognising the constitutional obligation and keeping in view the fundamental concept under Article 15 of the Constitution and also realizing that sexual offences against children are not adequately addressed by the existing laws, the POCSO Act was enacted. The provisions thereunder would reveal that it also aims to ensure that such offenders are not spared and should be properly booked.

12. To achieve the avowed purpose, a legal obligation for reporting of offence under the POCSO Act is cast upon on a person to inform the relevant authorities specified thereunder when he/she has knowledge that an offence under the Act had been committed. Such obligation is also bestowed on person who has apprehension that an offence under this Act is likely to be committed. Besides casting such a legal obligation under Section 19, the Legislature thought it expedient to make failure to discharge the obligation thereunder as punishable, under Section 21 thereof. True that under Section 21(1), failure to report the commission of an offence under Sub-Section 1 of Section 19 or Section 20 or failure to report such offence under Sub-Section 2 of Section 19 has been made punishable with imprisonment of either description which may extend to six months or with fine or with both. Sub-Section 2 of Section 21 provides that any person who being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under Sub-Section 1 of Section 19 in respect of a subordinate under his control, shall be punishable with imprisonment with a term which may extend to one year or with fine. Certainly, such provisions are included in with a view to ensure strict compliance of the provisions under the POCSO Act and thereby to ensure that the tender age of children is not being abused and their childhood and youth is protected against exploitation.

13. Looking at the penal provisions referred above, making failure to discharge the obligation under Section 19(1) punishable only with imprisonment for a short duration viz., six months, one may think that it is not an offence to be taken seriously. However, according to us that by itself is not the test of seriousness or otherwise of an offence of failure to discharge the legal obligation under Section 19, punishable under Section 21 of POCSO Act. We are fortified in our view,

by the decisions of a three Judge Bench of this Court in Vijay Madanlal Choudhary & Ors v. Union of India & Ors., (2023) 12 SCC 1, and a two Judge-Bench in Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546.”

9. Learned APP placed reliance on the further observations in ***State of Maharashtra and another vs. Dr. Maroti s/o Kashinath Pimpalkar***, (supra), wherein it has been observed that prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act.

10. Learned APP also points out the decision in ***Gangadhar Narayan Nayak Alias Gangadhar Hiregutti vs. State of Karnataka and others***, (2022) 12 SCC 72, wherein it has been held that:-

“It is made clear here that as per Section 155(2) CrPC, for non-cognizable offence, an order is required to be taken from the Magistrate but in the light of Sections 2(1) and 28 of the POCSO Act, the Special Courts are required to be designated to deal with offences under the POCSO Act and they have been authorized under Section 33, conferring a power to such Special Courts to take cognizance. Therefore, the word used in Section 155(2) be read as “Special Courts” in place

of "Magistrate", which may take cognizance of any offence under the POCSO Act".

11. The learned APP submits that yet in the present case the entire FIR is required to be considered which shows that some cognizable offence has been committed along with some non-cognizable offence has been committed and therefore as per Section 155(2) of the Code of Criminal Procedure, it should be treated as a cognizable offence. There is no technical defect in the present matter and therefore, no case is made out for quashment of the FIR and the proceedings.

12. The most important facts which are required to be considered are, firstly, regarding the information about the commission of offence under the POCSO Act given to applicant No.1 on 27th February 2024 and then secondly, when the informant and the friend were proceeding to lodge the report, both the applicants intercepted their way / met them near the water tank and then abused the informant in the name of the caste. The material in the charge-sheet discloses prima facie that informant is a member of scheduled caste. The fact which is not in dispute is that her son is taking education the school where applicant No.1 is principal. When the informant came to know

about the incident from her son on 26th February 2024, she met applicant No.1, on 27th February 2024 and informed her about the incident. The informant then states that though applicant No.1 called the child in conflict with law, but the informant states that she was then asked to go by applicant No.1. Now, on behalf of respondent No.2, it is tried to be submitted that when applicant No.1 came to know that the child in conflict with law is also a Muslim boy, applicant No.1 was disinterested in taking any action. We need not go to that extent at this stage, but the fact is that as per the FIR, the information about the incident in the school was given to applicant No.1 and applicant No.1 appears to have not taken any action on that day itself i.e. on 27th February 2024.

13. This Court recently, in *Mrs. Sushama @ Sushma Manish Shah and another vs. the State of Maharashtra and another (Criminal Writ Petition No.1686 of 2024, decided on 4th April 2025)*, almost on the similar facts, had quashed and set aside the proceedings in Special Case i.e. charge-sheet against the applicants therein, who were the Principal of the school and secretary of the trust which runs the said school. However, it was on the facts therein that there was an attempt by the applicants

therein to protect the evidence and the CCTV Footage was then shown to the informant – mother. In that case, we had observed that the knowledge is important and the intention would be more important if the actions are not taken with *mala fide* intention. Now, here in the present case, the informant after she had informed about the incident to applicant No.1, she was asked to go out and then applicant Nos. 1 and 2 are stated to have met the informant and the friend of her husband, who were proceeding to lodge the FIR, and at that place, which is of course the public place, abuses in the name of the caste were given.

14. The applicants are challenging the FIR and the charge-sheet in respect of the Sections of the Atrocities Act on two counts, firstly, that the incident had not taken place within public view and in public place and secondly, no independent witness was present when the alleged incident took place. For this purpose, we will have to consider the statement of witness, namely, Arjun Bapusingh Thakur, then the informant, then witness Satish Bhande and the spot panchnama. It is stated that the incident had taken place near the water tank in the area of Nawa Mondha Market. Market is certainly a public place. If we consider the spot panchnama, then the boundaries of the spot of

incident are shown, towards East there is a road from market yard and beyond that there was godown, towards West there was water tank, towards North there was a road in the market yard and beyond that there was Hanuman Temple, towards South there was open space from market yard and beyond that there was Kotwali Polife Station. Therefore, the prima facie facts disclose that the spot was within public view and was accessible to the public at large. Now, how police found out witness Satish Bhande after so many days, can be explained by the investigating officer in his evidence. We are here to take note of his statement under Section 161 of the Code of Criminal Procedure only, which states that he had heard bot the accused abusing informant in the name of the caste.

15. In *State of Maharashtra and another vs. Dr. Maroti s/o Kashinath Pimpalkar*, (supra), the Hon'ble Supreme Court has observed that the High Court should sparingly exercise the powers under Section 482 of the Code of Criminal Procedure. It has been further observed that the exercise of power under Section 482 of the Code of Criminal Procedure is an exception and not the rule and it is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone

courts exist. Therefore, taking into consideration the decision in *State of Maharashtra and another vs. Dr. Maroti s/o Kashinath Pimpalkar*, (supra) and *Gangadhar Narayan Nayak Alias Gangadhar Hiregutti vs. State of Karnataka and others*, (supra), we do not take this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

16. Criminal Application No.2290 of 2024 stands dismissed.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25