



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

5 CRIMINAL APPLICATION NO. 2178 OF 2025

Ashok S/o. Haribhau Pawar,
Age : 32 Years, Occu. : Teacher,
R/o. Telasmukh, Tq. Parali,
Dist. Beed.

.... Applicant

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Sonpeth Police Station,
Tq. Sonpeth, Dist. Parbhani.

2. XYZ

.... Respondents

....
Advocate for Applicant : Mr. Vijay V. Deshmukh
APP for Respondent No.1-State : Mr. S.A. Gaikwad
....

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

Dated : 01st July 2025

PER COURT :-

1. The present application has been filed for quashment of the proceedings in Special Case No.51 of 2024, pending before the learned Special Judge, under the POCSO Act, Gangakhed, Dist. Parbhani, arising out of C.R. No.0297 of 2024, dated

07.10.2024, registered with Sonpeth Police Station, Dist. Parbhani, for the offences punishable under Section 65(2) of the Bharatiya Nyaya Sanhita, 2023 and Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned Advocate for the applicant and learned APP for respondent No.1-State. It is not even necessary to issue notice to respondent No.2.

3. Learned Advocate for the applicant submits that the entire record before the learned Special Judge would show that no case is made out to attract the offences under which the charge-sheet has been filed. The girl involved in this matter is aged 04 years 09 months and the informant is her mother. The First Information Report (for short "the F.I.R.") is based on the information allegedly given by the girl to the mother around 04.10 p.m. on 05.10.2024. She could notice certain marks on the private part of the girl, and then, she had called the class teacher, who told her to come to school on Monday. But, on the next day i.e. on 06.10.2024, the informant had taken the girl to a Doctor. The girl had told that the act has been done by the applicant, referring him as the father of classmate (son of the present applicant).

4. Learned Advocate for the applicant has taken us through the statement of the Doctor, who had examined the girl and also the fact that the applicant is not serving as a teacher in the school where the girl is taking education. He is serving as a teacher in another school, which is away from the school of the girl and even the CCTV footage, which is stated to have been collected by the Investigating Officer, would show that the applicant was present in his school and not in the school of the girl. The Doctor, who had examined the girl, has stated that she had examined the girl around 02.30 p.m. and at that time, the girl was taking the name of the classmate only and not saying anything else. She, then, states that around 04.30 to 05.00 p.m., again the informant along with the girl and the girl's brother, who is aged two year, had gone to her, as the son of the informant was suffering from cold and fever. At that time, the girl's grandmother was present there and the girl told that she is making fun and speaking lie. Therefore, there is nothing on record which would connect the applicant to the crime. Even if the statement of the girl under Section 161 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), which was recorded initially on 10.10.2024, would show that she had not answered the questions in respect of the incident. Later on, it appears that the supplementary statement was recorded on 13.10.2024 and 19.10.2024, wherein she has tried to say

something against the applicant, which may amount to improvement. It would be unjust to ask the applicant to face the trial.

5. At the outset, taking into consideration the scope of Section 482 of Cr.P.C., we are required to consider the material that is in the charge-sheet. The girl is too young and therefore, even at this stage, we may say that she would be more comfortable with her mother in disclosing the facts. According to the informant, the name of the present applicant was revealed by the girl as the person responsible for the act. Of course, the girl was referring the applicant as the father of her classmate. Now, there is evidence on record to show that the girl was sexually abused and it can be seen from her medical reports. It would then be a question to connect the present applicant with the said crime. The statement of the girl has been taken under Section 161 of Cr.P.C. and the supplementary statement gives the name of the present applicant i.e. his relation with the classmate.

6. We would like to rely upon the judgment of the Hon'ble Supreme Court in the case of ***Naresh Aneja @ Naresh Kumar Aneja Vs. The State of Uttar Pradesh, [2025 (2) SCC 604]***, wherein it has been observed that, in quashment proceedings under Section 482 of

Cr.P.C., the court is not empowered to conduct a mini trial, however, if the court are satisfied itself as to the existence of the prima facie case, the court has to see, without undertaking a minute examination of the record, that there is some substance in the allegations made, which could meet the threshold of the statutory language. It was also observed that a complaint can be quashed wherein allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. It can also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improper. Further, in respect of the statements under Section 161 of Cr.P.C., it has been held that statements of witnesses recorded under Section 161 of Cr.P.C., being wholly inadmissible in evidence, could not be taken into consideration by the court while adjudicating a quashment proceeding under Section 482 of Cr.P.C. taking into consideration the limited use of the statements so recorded for the purposes as provided under Sections 145 and 157 of the Indian Evidence Act, 1872.

7. Therefore, in the present case, if the applicant wants to rely on the statement of the Doctor, recorded under Section 161 of Cr.P.C., as well as that of the girl, then unless there is evidence and the purpose of those statements under Sections 145 and 157 of the Indian Evidence Act, such reliance for the purpose of quashment of the proceedings cannot be allowed when the prima facie case has been made out. This will not be the case wherein the powers of this Court under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 can be utilized.

8. We had expressed disinclination to grant any relief, but then, learned Advocate for the applicant had prayed for keeping the matter back for taking instructions from the applicant for withdrawal. But, later on, upon instructions from the applicant, he states that, now, he wants order. We deprecate such kind of practice. It was for him to take the instructions in the beginning itself. For taking the time of the Court, we might have imposed costs on him, yet we refrained ourselves from doing it. The application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE