



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3772 OF 2023

Ramrao S/o Khubaji Rathod
Age : 51 years, Occ. Service
R/o. Vaishnavi Nivas, Jalna Road,
Shindkhed, Tq. Sindhkhed Raja,
Dist. Buldhana

.... **Applicant**

VERSUS

1. The State of Maharashtra
Through Investigation Officer,
MIDC Waluj Police Station,
Aurangabad, Tq. and Dist. Aurangabad

2. XYZ

... **Respondents**

...
Advocate for Applicant : Mr. P. P. More h/f Mr. S. P. Rathod
APP for Respondent No. 1-State : Mr. A. D. Wange
Advocate for Respondent No. 2 : Mr. G. J. Pahilwan

...

WITH

CRIMINAL APPLICATION NO. 3773 OF 2023

1. Himmat S/o Vachhu Rathod,
Age : 49 years, Occ. Agril,
R/o. Pimparkheda Bk, Tq. Sindkhed Raja,
Dist. Buldhana

2. Kavita W/o Himmat Rathod,
Age : 46 years, Occ. Agril,
R/o. As above

3. Ashivini D/o Himmat Rathod
Age : 32 years, Occ. Private Service,

R/o. Chorpangra, Bibim Tq. Lonar
Dist. Buldhana

4. Swati D/o Himmat Rathod,
Age : 26 years, Occ. Private Service,
At Present R/o. House No. 2593/3, Alandi,
Devachi, Near Kidz Paradise School,
Kale Colony, Alandi Rural Pune

.... **Applicants**

VERSUS

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Advocate for Applicants : Mr. P. P. More h/f Mr. S. P. Rathod
APP for Respondent No. 1-State : Mr. A. D. Wange
Advocate for Respondent No. 2 : Mr. G. J. Pahilwan

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**CORAM : SMT. VIBHA KANKANWADI AND
MANJUSHA DESHPANDE, JJ.**

DATE : 15th APRIL, 2025

PER COURT :

1. Both the applications arise out of the same matter. All the applicants are the original accused persons in FIR vide CR No. 490 of 2023 registered with MIDC Waluj Police Station, Aurangabad. Later on, amendment has been carried out and now, applicants are praying for quashment of the proceedings in Special

Case No. 413 of 2023 pending before Special (POCSO) Judge / District Judge-8 and Additional Sessions Judge, Aurangabad for the offences punishable under Sections 363, 366A, 376(2)(n) and 506 read with 34 of Indian Penal Code (hereinafter "IPC" for short) alongwith Sections 4, 6, 8 and 12 of Protection of Children From Sexual Offences Act, 2012 (hereinafter "POCSO Act" for short).

2. Heard learned Advocate appearing for the applicants, learned APP for respondent No. 1-State and learned Advocate for respondent No. 2.

3. Learned Advocate appearing for the applicants has taken us through the FIR and the entire charge-sheet. He submits that the FIR was initially lodged only under Section 363 of IPC by the brother of the victim. The incident is alleged to have taken place regarding offence under Section 363 of IPC on 13.06.2023 and later on, as per the charge-sheet, the victim and the original accused No. 1 returned on 05.08.2023. Thereafter, the statement of victim as well as the statement of the informant – brother was recorded on 06.08.2023 and thereafter, later sections came to be added. Perusal of these two main statements would show that the girl was minor but it appears that, it was the love-affair between her and original accused No. 1. However, as regards the present

applicants are concerned, the applicants in Criminal Application No. 3773 of 2023 are the parents of the boy and his married sisters whereas the applicant in Criminal Application No. 3772 of 2023 appears to be the distant relative. The role attributed to him is that he had left the victim and the original accused No. 1 to Mira Bhayandar, Dist. Thane from Buldhana.

4. Taking into consideration especially the statement of victim, it can be said that no specific role has been attracted to the present applicants. Even as regards applicant Ramrao is concerned, there is no evidence on record that he had knowledge that victim is minor and she was kidnapped by original accused No. 1. In the supplementary statement, the informant has tried to assign certain roles to each of the applicant but no such statement is appearing in the statement of victim. Though there are other statements from the witnesses of Mira Bhayandar, Dist. Thane and other witnesses stating that the victim and the boy were residing as husband and wife, certainly at that place, there was no role for the applicants and therefore, it can be an abuse of process of law to ask the applicants to face the trial.

5. Per contra, learned APP as well as learned Advocate

appearing for the respondent No. 2 strongly opposes the application and submitted that the evidence that has been collected in the charge-sheet is sufficient for framing charge and proceed with the matter. Let the trial be held for that purpose. The applicants had the knowledge that the victim has been kidnapped and then she was forced to marry with the original accused No. 1. Later on, original accused No. 1 has sexually abused the victim. Therefore, taking into consideration the seriousness of the matter, this will not be the fit case where this Court should exercise the powers under Section 482 of CrPC.

6. Here, in the present case, as aforesaid, the informant is the brother of the victim who had initially given the FIR for the offence under Section 363 of IPC. Therefore, whatever incidents had happened after 13.06.2023 till the boy and the girl returned i.e. on 05.08.2023, it was only within the knowledge of the girl and therefore, her statement is important. When the entire investigation is over and the evidence has been placed on record, then it would be the job of this Court to consider the material that has been produced in the charge-sheet.

7. Perusal of the statement of victim recorded under Section 161 of CrPC would show that she got acquaintance with the

original accused No. 1 who was residing adjacent to her house. Then, the accused No. 1 had expressed his feelings about the victim to her. According to her, she was forcibly taken by accused No. 1 on 13.06.2023. Though she says that the original accused No. 1 had taken her to his house at Pimparkhed, Tq. Sindhkheda, Dist. Buldhana, and they had stayed for a night in the house and then he took her to Thane. Now, in her statement, she has not given details about how she was introduced to the parents and whether the married sisters of the boy were present at that time. She has then stated that she was taken by bus to Thane and kept in the house of a lady who was known to the accused No. 1. They stayed there for about one and half month and then she was brought to Alandi Devachi, Dist. Pune on 02.08.2023. She then says that she was forced to perform registered marriage against her wish with original accused No. 1 and thereafter, they went to applicant No. 4 – sister. She says that on that night, there was forcible sexual intercourse by the accused No. 1 with her. She was kept for two days there and then she was taken to Kingaon Raja, Dist. Buldhana on 04.08.2023. where they reached on 05.08.2023 in the morning. Thus, it is to be noted that in her entire statement under Section 161 of CrPC, she does not say that she had talked the applicants and expressed anything that has done against her wish or she had disclosed her

age to them.

8. The supplementary statement of the informant appears to be on the basis what the victim had told to him but that information is not given by the victim in her statement under Section 161 of CrPC. There are statements of other witnesses including the mother which can be seen to be dependent on what the victim had disclosed to them. The statements of landlord and land-lady where the boy and the girl had resided at Kashmira, Dist. Thane would show that the victim and the boy had introduced themselves as husband and wife. Thus, there is a fact of 'knowledge' that is required to be considered. Though the copy of statement of the victim under Section 164 of CrPC is not made available yet. We expect that it should be in consonance with her statement under Section 161 of CrPC but if there are improvements and contradictions then it would be another point available to accused persons.

9. Therefore, taking into consideration the statement of victim recorded under Section 161 of CrPC, no role has been attributed to the present applicants and therefore, it would be harassment or futile exercise to ask the applicants to face the trial. Therefore, this is a fit case where we should exercise our powers

under Section 482 of CrPC. Hence, we proceed to pass following order :

ORDER

1. Both the applications i.e. Criminal Application No. 3772 of 2023 and Criminal Application No. 3773 of 2023 stand allowed.
2. The proceedings in Special Case No. 413 of 2023 pending before Special (POCSO) Judge / District Judge – 8 and Additional Sessions Judge, Aurangabad arising out of FIR vide CR No. 490 of 2023 registered with MIDC Waluj Police Station, Aurangabad for the offences punishable under Sections 363, 366A, 376(2)(n) and 506 read with 34 of IPC alongwith Sections 4, 6, 8 and 12 of POCSO Act stands quashed and set aside as against applicants i.e. Ramrao Khubaji Rathod (applicant in Criminal Application No. 3772 of 2023) and applicant No. 1 Himmat S/o Vachhu Rathod, No. 2 Kavita W/o Himmat Rathod, No. 3 Ashvini D/o Himmat Rathod and No. 4 Swati D/o Himmat Rathod (applicants in Cri. Appln. No. 3773 of 2023).

**[MANJUSHA DESHPANDE]
JUDGE**

**[SMT. VIBHA KANKANWADI]
JUDGE**