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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 406 OF 2024

Jalindar Balkrishna Gole

Age : 40 years. Occ. Farmer,

R/o – Golevadi, Tal. Haveli,

Dist. Pune

.. Applicant

Vs.

The State of Maharashtra

(Through Haveli Police Station,

Pune.)

.. Respondent

....

Mr. Ashwin Thool a/w Mr. Prashant Pandharikar, Mr. Ragib
Shaikh and Avinash Veer for the applicant

Mr. P.P. Jadhav, APP for the respondent – State

Mr. Amol Bamane, API, Haveli Police Station present

....

CORAM : PRITHVIRAJ K. CHAVAN, J.

CLOSED ON : 21st JANUARY, 2025.

PRONOUNCED ON : 30th JANUARY, 2025.

ORDER :-

1. Legality, propriety and correctness of an order dated 24th
May, 2024 passed below Exh.26 by the Additional Sessions
Judge, Pune has been impugned by way of this Revision. The
learned Additional Sessions Judge rejected an application under

Section 227 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') against the applicant, who is the original accused no.2. Few facts germane for disposal of the Revision Application are summarized as follows.

2. The applicant had sought discharge from Crime No.180 of 2017 registered with Haveli Police Station, Pune for the offences punishable under Sections 376(J), 384, 385, 506 of the Indian Penal Code (for short 'IPC'), Sections 3, 4, 5 and 6 of the Protection of Children from Sexual Offence Act (for short 'POCSO Act') and Section 67 of the Information and Technology Act (for short 'IT Act'). One Amar Balkrishna Gole is the original accused no.1 and real elder brother of the applicant. Admittedly, a chargesheet has been filed on 21st August 2017. The allegations *qua* the accused no.1 by the victim was that ever since she was in 8th Standard, the accused no.1 always tried to entice her. On one occasion, he had clandestinely recorded a video when the victim was changing her clothes at her house. Thereafter, he threatened her to make the video public and would show it to her brother. He also

threatened that he would kill her elder brother's daughter if the victim did not listen to him. Ultimately, on one day, he committed forcible sexual intercourse with her and video recorded the said act. He repeated the offence time and again by threatening that he would kill her also.

3. It appears that a charge has been framed by the Additional Sessions Judge on 30th September 2019 at Exh.6 against the accused no.1 and the matter was posted for evidence. During trial, the applicant came across certain material kept in the cupboard of accused no.1, which according to him, was the crucial and direct evidence in the case before the learned Additional Sessions Judge. The applicant, therefore, approached the Advocate of his brother namely Mr. Hulyalkar. Advocate Hulyalkar moved an application requesting the Court seeking directions for further investigation in view of the material which was produced by him on behalf of the applicant. The material comprises one love letter, 15 photographs and a video CD.

4. The accused no.1 thereafter engaged another advocate, who moved an Application on 15th March, 2021 for return of the material tendered before the Court by not pressing the application. However, the learned Additional Sessions Judge, after hearing the parties, rejected the application (Exh.13) moved on behalf of the accused no.1.

5. Further investigation was carried out pursuant to the directions issued by the Additional Sessions Judge and a supplementary chargesheet came to be filed on 27th May, 2022 under Section 173(8) of the Cr.P.C. adding the present applicant as accused no.2. The present applicant moved an application below Exh.36 praying for discharge under Section 227 of the Cr.P.C. Learned Additional Sessions Judge by the impugned order rejected the application and, therefore, the present Revision Application.

6. The impugned order does not warrant interference in revisional jurisdiction by this Court since having heard learned Counsel for the applicant and the learned APP as well as learned Counsel for the victim, I found the order to be legal, proper and

correct. The reasons are assigned hereinbelow.

7. Admittedly, the applicant was not named in the FIR since there was no allegation against him for having committed any of the offences, for which his brother is being prosecuted. Admittedly, the victim also did not attribute any role as that of the role attributed to his brother. As already stated, the applicant had found the aforesaid articles namely; one love letter, 15 photographs and a video CD in the cupboard of his brother, which he had handed over to his advocate Mr. Hulyalkar.

8. The applicant has raised a defence that handing over of the articles to his Advocate is a privileged communication in view of Section 129 of the Indian Evidence Act. There is no question of commission of any offence, much less, offence under Sections 15 and 19 of the POCSO Act.

9. It appears that initially the applicant had preferred an application under Section 239 of the Cr.P.C. which was not maintainable. The aforesaid material was produced before the

Court when the application for bail *qua* accused no.1 was being heard. Essentially, the material produced before the Court at the time of hearing the bail application of the main accused is in the form of obscene photographs of the victim, which had, in fact, disclosed her identity. It is apparent that Advocate Hulyalkar had tendered those articles before the Court on behalf of the applicant comprising obscene photographs and video CD *qua* the victim. As a matter of fact, Advocate Hulyalkar appears to be equally guilty, for, he could not have joined hands with the applicant in doing so in the teeth of Sections 15 and 19 of the POCSO Act and Section 67 of the I.T. Act. It would be expedient to extract Section 67 of the Information Technology Act, which reads as under:-

“67. Punishment for publishing or transmitting obscene material in electronic form. -- Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the material contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may

extend to five years and also with fine which may extend to ten lakh rupees.”

10. The only short question is as to whether the conduct of the applicant in handing over obscene photographs and a video CD depicting the victim to Advocate Hulyalkar would be a privileged communication attracting Section 129 of the Indian Evidence Act and, consequently, whether the act of the applicant tantamount to or would *prima facie* attracts ingredients of the offence punishable under Section 228A of the IPC, Section 67 of the IT Act and Sections 15 and 19 of the POCSO Act.

11. Section 129 of the Indian Evidence Act is extracted below:-

“129. Confidential communications with legal advisers. - No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offer himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.”

12. The first and foremost thing is that the applicant was not engaged by Advocate Hulyalkar to represent him in the Court

and, therefore, there is no question of taking shelter of Section 129 of the Indian Evidence Act by the applicant. Moreso, there was no professional communication as contemplated in Section 126 of the Indian Evidence Act. It is the contention of the applicant that he had handed over the aforesaid material to the Advocate of his brother - accused no.1 and the said Advocate had produced the said record before the Court. The applicant, now, cannot be heard to say that he was unaware of the consequences. Rather, it is quite apparent from his conduct that in order to wriggle out his brother of the offence. Indeed, such conduct of the applicant precisely attracts Section 228A of the IPC as by his act in producing the material exactly at the time when his brother's bail application was heard, amounts to not only disclosure of the identity of the victim of sexual offence but also Section 15 and 19 of the POCSO Act. Sections 15 and 19 of the POCSO Act are extracted below :-

“[15. Punishment for storage of pornographic material involving child.—(1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees, and in

the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.

(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in Court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

(3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both, and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.]”

“19. Reporting of offences. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

- (a) the Special Juvenile Police Unit; or*
- (b) the local police.*

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;*
- (b) be read over to the informant;*
- (c) shall be entered in a book to be kept by the Police Unit.*

(3) Where the report under sub-section (1) is given by a

child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).”

13. From the very words employed in Section 15 by the legislature, it is apparent that the applicant herein, instead of reporting, destroying or deleting the pornographic material of the victim, had gone to the extent in giving it to his Advocate for

production in the Court. As a matter of fact and has already been said hereinabove, the Advocate also appears to be equally responsible for tendering the aforesaid material before the Court, for, being an Advocate he cannot take an excuse of ignorance of Sections 15 and 19 of the POCSO Act as well as the provisions of the IT Act.

14. It is also apparent from the record that the aforesaid material was in possession of the applicant, which was stored at his house from the year 2017 till 2022. This is *prima facie* a very strong material attracting the aforesaid sections and, therefore, the learned Additional Sessions Judge in the impugned order has rightly refused to discharge the applicant. Rather, he needs to be tried along with his elder brother for the offences stated hereinbefore.

15. The law on the aspect of discharge and framing of charge as provided in Sections 227 and 228 of the Cr.P.C. is no more *res-integra*. At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at

their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

16. Consequently, there is absolutely no merit in the present Revision Application and hence, it stand rejected.

(PRITHVIRAJ K. CHAVAN, J.)