



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1389 OF 2024

Shivdas Abhimanya Khandare,
Aged about 43 years, Occ. Labour,
R/o. Deshmukh Colony, Guddhi,
Akola, Tq. & Distt. Akola.

APPLICANT

Versus

1. State of Maharashtra,
Thr. Police Station Officer, Police
Station, Khadan, Akola, District
Akola.
2. XYZ (Victim) in Crime No.483/2024
registered by the Police Station,
Khadan, Akola.

NON-APPLICANTS

Mr. S.S. Deshpande, Advocate for the Applicant.
Ms. M.A. Barabde, APP for the Non-applicant No.1/State.
Ms. K.N. Majithia, Advocate for the Non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 25th MARCH, 2026.

ORAL JUDGMENT :-

1. Heard.

2. **ADMIT.** Heard finally by the consent of learned Counsel for the respective parties.

3. The present Application is preferred by the Applicant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for quashing the First Information Report in connection with Crime No.483/2024 registered with Police Station Khadan, District Akola for the offences punishable under Sections 354 of Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”).

4. The crime is registered on the basis of a report lodged by the Victim/Non-applicant No.2 on an allegation that on 07.06.2024 in the evening in between 07.30 to 08.00 p.m. when she was going to grocery shop, at that time the present Applicant has caught hold the hand of the victim by saying that he will keep her happy, and therefore, she got frightened and rescued herself from the present Applicant and shouted and called her mother. On the basis of the said report Police have registered the crime against the present Applicant.

5. After registration of the crime, the investigation started rotating. During investigation, the Investigating Officer has recorded the relevant statements of witnesses and after completion of the investigation submitted charge-sheet against the present Applicant.

6. Heard learned Counsel for the Applicant, who submitted that, due to the previous dispute between the present Applicant and the family members of the Non-applicant No.2, this false FIR came to be lodged against him. He invited my attention towards the complaint filed by the uncle of the present Non-applicant No.2 and submitted that as cognizance was not taken on the complaint of the uncle of the Non-applicant No.2, therefore this FIR came to be lodged. He submitted that, the victim was already 17 years and 10 months but only taking disadvantage of the fact that she is below 18 years of age, this FIR came to be lodged. He submitted that, the intention to avail the modesty is also absent in the present case. In view of that, the Application deserves to be allowed.

7. *Per contra*, learned APP and learned Counsel for the Non-applicant No.2 strongly opposed the said contentions and

submitted that, the intention of the present Applicant can be gathered from the circumstances i.e. the words uttered by him and thereafter he hold her hand. As far as the intention is concerned, which can be established during the trial. At this stage, the statement made that the present Applicant by holding her hand itself is sufficient to infer that there was sexual intent at the hands of the present Applicant, and therefore, *prima facie* case is made out. Learned APP invited my attention towards the various statements of witnesses and submitted that at this stage *prima facie* case is made out. Hence prays for rejection of the Application.

8. On hearing both the sides and on perusal of the entire investigation papers it reveals that the allegation is that on 07.06.2024 in the evening in between 07.30 to 08.00 p.m. when she was going to grocery shop at that time the present Applicant restrained her and said “ दोन लेकराची माय मी कूश ठेवतो तर मी तूला कसा ठेवील असे म्हणत होता मी रस्त्याने जात असतांना त्याने माझा हात पकडला मी एकदम चाबरली” and thereafter she thrown his hand and thereafter shouted by calling her mother and thereafter lodged the report against the present Applicant.

9. To attract the offence punishable under Section 354 of IPC, the requirement of assault or criminal force to woman with intent to outrage her modesty is necessary:

“354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”

Thus, use of criminal force to any woman with sexual intent is the ingredient of the offence.

10. The act of pulling a woman, removing her dress coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman, and knowledge that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object.

11. Admittedly, Section 8 of POCSO Act, is not applicable in the present case as there is no physical touch on the private part of the victim.

12. However, Section 11 of the POCSO Act reads as under:

“11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.”

This clause defines the offence of sexual harassment. It provides that a person is said to commit sexual harassment upon a child when such person with sexual intent utters any word or makes any sound, or makes any gesture. Thus, the act of the present Applicant covers under the clause (i) of Section 11 of the POCSO Act.

13. The object with which the POCSO Act was introduced is required to be looked into. The primary object of POCSO Act are to protect all children under 18 from sexual assault, sexual harassment and child pornography and to provide a supportive environment for child victims. The act ends to achieve this part strengthening legal provisions against child sexual abuse, mandating the reporting of offences to prevent under reporting, establishing special Courts for speedy trials and creating the child friendly legal process that protects the victim's identity and mental health. The Act was introduced to protect children.

14. In the light of the object of the POCSO Act and considering the act of the present Applicant, at this *prima facie* material is there to infer that there was a sexual intent of the present Applicant to outrage the modesty of the victim and with that he uttered the words and thereafter hold her hand.

15. While considering the Application under Section 482 of Cr.P.C. or 528 of BNSS whether *prima facie* case is made out or not is to be looked into. From the entire charge-sheet there is sufficient material to frame the charge at this stage, and

therefore, the *prima facie* case is made out against the present Applicant.

16. After applying the parameters laid down by the Hon'ble Apex Court in the case of ***State of Harayana & Ors. Vs. Ch. Bhajan Lal & Ors., 1992 AIR 604***, while considering the Application under Section 482 of Cr.P.C., which reads as under:

“(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under

which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. Admittedly, the *prima facie* case is made out against the present Applicant, and therefore, the Application deserves to be rejected. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Application is **rejected**.
- ii. The learned Trial Court shall not be influenced by the observation of this Court which are only for the purpose of deciding the Application under Section 482 of Cr.PC/528 of BNSS.

18. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)