

MHBU040001212016



Order below Exh.11
(Passed on 21.9.2022)

This is an application under Sec. 227 of Cr.P.C. for discharge of accused No.4 Sau. Varsha Pramod Ghate, from the offences punishable under sections 376(2)(n) 313, 452, 506, 511 r/w sec.34 of the Indian Penal Code and under sections 3 /4, 5(J) (2), 6, 19-21 of the POSCO Act.

2] Read the application. Heard Mr. Nirmal Sawle, learned advocate for the applicant/accused No.4 and learned APP Ms. R.D.Bawaskar, for the State. Perused charge-sheet.

3] It is the contention of applicant/accused that the statement of witnesses recorded by the police machinery and the FIR it is impossible to hold that accused No.4 has committed such offences, not a single ingredient for registration the offence has been made out against her without any substance false and illegally offence has been registered against accused No.4. It is further submitted that when the victim/informant was approached to accused No.4 to the hospital at Akola, she accompanied with her parents, maternal uncle and doctor Mahadeo Adhau. At the time of medical treatment, the informant clearly discloses that she was 19 years old. It is further

submitted that on personal appearance and health of the informant/victim was not at all apprehended to accused No.4 that victim was minor. Therefore, the offence under the POCSO Act is totally illegal and against the provisions of law. Therefore, prayed for discharge the accused No.4 from the present case and the present complaint deserves to be dismissed against her.

The learned advocate for accused No.4 relied upon the case laws-

- [1] Union of India V/s. Praful Kumar Samal & Anrs., Supreme Court of India, on 6.11.1978.
- [2] Criminal Appeal No.961 of 2018, Dr. SR. Tessy Jose and others V/s. State of Kerala, Supreme Court of India.

Perused the case laws.

4] As against this, Ms. R.D.Bawaskar, learned APP filed her say below Exh.43 and strongly opposed the application. She submitted that the victim was a minor of 17 years. When the incident came to know the parents of victim they take her to the accused No.4 and accused No.4 advice for sonography and accordingly sonography was performed and report was shown to accused No.4 and she advice them that the victim was 06 months pregnant and hence her abortion cannot be done. Accused No.4 also advice in writing to take her to the orphanage at Buldana. It is further submitted that the accused No.4 is well aware that the victim was unmarried of 17 years minor girth having 06 months pregnancy. Under this section any person who apprehends that an offence under this section is likely to be

committed or had knowledge that such offence has been committed, he shall provided such information to – the Special Juvenile Police Unit, or the local police. Hence section 19 of POCSO Act is attracted against her. It is further submitted that section 21 of POCSO Act, is regarding punishment for failure to report or record a case, hence this section also attracted against accused No.4. Hence prayed for rejection of application.

5] Perused the application, charge sheet, say of prosecution and papers on record. It is seen that the accused is charged u/s 19-21 of the POSCO Act, for not informing about the commission of offence against the minor. The record reveals that accused No.4 Dr. Varsha Pramod Ghate, examined the victim once and during that time the mother of the victim who accompanied the victim stated the age of the victim as 19 years and therefore, there was no reason for the applicant/accused No.4 to doubt about the mother of victim. So also the Sonography report also showed the age of victim as 19 years. As per 19 of the POSCO Act, which reads as under -

“Any person who apprehends that an offence under this section is likely to be committed or had knowledge that such offence has been committed, he shall provided such information to – the Special Juvenile Police Unit, or the local police.”

As seen from the provisions, the knowledge of the offence is necessary to attract the same. In the present matter in hand, the mother of the victim herself stated that the age of victim is 19 years. So also the Sonography papers also revealed the age of victim as 19

years. So there was no reason to applicant/accused No.4 to doubt the age of the victim. Therefore, from perusal of the record, there are no sufficient grounds for proceeding against the applicant/accused No.4 and therefore, I proceed to pass the following order.

O r d e r

1. Application Exh.11 is hereby allowed.
2. Accused No.4 namely Sau. Varsha Pramod Ghate, is hereby discharged from this proceeding.
3. Her bail bonds if any stand cancelled.

Dt.21/9/2022

(A.S.Wairagade)
Special Judge Khamgaon,
Dist. Buldana.

Certificate

I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Steno : Mrs.Nishat Anjum Mohd.Rafique.
Name of Court : Special Judge, Khamgaon, Dist.Buldana.