

MHBU040001212016



Order below Exh.24
(Passed on 21.9.2022)

This is an application under Sec. 227 of Cr.P.C. for discharge of accused No.5 Sau. Seema Harshwardhan Agashe and accused No.6 Harshwardhan Diwakar Agashe, who is now deceased and abated from this proceeding as per Pursis below Exh.48, dated 13.4.2022 reported to be dead on 6.4.2022, hence this case was abated against him as per order below Exh.1, dated 13.4.2022. 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.5 and learned APP Ms. R.D.Bawaskar, for the State. Perused charge-sheet.

3] It is the contention of applicant/accused that accused No.4 referred the victim to accused No.6 and on the basis of documents of accused No.4 and her husband and on making inquiry with victim, they represented victim to be major, hence accused No.5 and 6 have admitted victim in orphan house/hospital. It is further submitted that the documents i.e. [1] Supuratnama dated

29.5.2015/3.6.2015 executed by victim before Chairman of Child Welfare Committee, Buldana, [2] Admission register, [3] Indoor case register of hospital of accused No.5, dated 26.5.2015, and [4] documents executed by victim giving consent to perform cesarean upon victim dated 26.5.2015 with bed head ticket, with entries from 26.5.2015. All these documents show that victim represented accused No.5 and 6 to be major. The victim and her parents did not divulge accused No.5 and 6 about alleged offence or her minority due to fear of defamation. It is further submitted that the accused No.5 and 6 had no knowledge in respect of offence or the minority of victim, hence section 19(1) read with section 21(1) of the POCSO Act are not attracted against accused. Therefore, prayed for discharge the accused No.5 from the present case and the present complaint deserves to be dismissed against her.

The learned advocate for applicant/accused No.5 relied upon the case law- Criminal Appeal No.961 of 2018, Dr. SR. Tessy Jose and others V/s. State of Kerala, Supreme Court of India.

Perused the case law.

4] As against this, Ms. R.D.Bawaskar, learned APP filed her say below Exh.34 and strongly opposed the application. She submitted in the report and statements of the witnesses it revealed that victim had approached to the accused No.5 and 6 on 15.3.2015 and 16.3.2015 and accused No.5 and 6 had knowledge that victim was unmarried girl and she was carrying pregnancy of 5 to 6 months. The accused should have make inquiry about the sexual harassment

upon the victim girl or regarding the date of birth of victim who is under age of 18 years and such information should provide to Special Juvenile, Police unit or to the local police, but accused did not do this. Hence the application is not tenable and 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.5 and 6 referred the victim to orphanage and all the documents such as [1] Supuratnama dated 29.5.2015/3.6.2015 executed by victim before Chairman of Child Welfare Committee, Buldana, [2] Admission register, [3] Indoor case register of hospital of accused No.5, dated 26.5.2015, and [4] documents executed by victim giving consent to perform cesarean upon victim dated 26.5.2015 with bed head ticket, with entries from 26.5.2015 shows that the victim and her parents did not divulge the age of victim. On the contrary, they stated the victim to be major. So also there is no ossification test report which shows the age of the victim, nor the birth certificate filed on record to ascertain the exact date of birth of victim. Therefore, there was no reason for the applicant/accused No.5 to doubt about the age of the victim.

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.5 and therefore, I proceed to pass the following order.

Order

1. Application Exh.24 is hereby allowed.
2. Accused No.5 namely Sau.Seema Harshwardhan Agashe, 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.