

(2025) 04 BOM CK 0241

In the Bombay High Court, Aurangabad Bench

Case No : Criminal Writ Petition No.1686 Of 2024

Sushama @ Sushma Manish Shah And Another

APPELLANT

Vs

State Of Maharashtra And Another

RESPONDENT

Date of Decision : 04-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Criminal Procedure, 1973 — Section 161, 164, 482
Bharatiya Nyaya Sanhita, 2023 — Section 75(1)(iii)
Protection of Children from Sexual Offences Act, 2012 — Section 11(3), 12, 16, 17, 19(1), 21, 21(2)
Information Technology Act, 2000 — Section 67A

Citation : (2025) 04 BOM CK 0241

Hon'ble Judges : Vibha Kankanwadi, J;Sanjay A. D, J

Bench : Division Bench

Advocate : Mukul S. Kulkarni, P.R. Bharaswadkar, Suniket A. Kulkarni

Final Decision : Allowed

Judgement

Vibha Kankanwadi, J

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. Present Petition has been filed under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 542 of 2024, dated 28th August 2024 registered with Nandurbar City Police Station, Nandurbar, and by way of amendment for quashing the proceedings in Special Case No.33 of 2024 pending before the learned Special Judge, under the Protection of Children from Sexual Offences Act, Nandurbar, for the offence punishable under Sections 11(3), 12, 16, 17 and 21(2) of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act") and Section 75(1)(iii) of Bharatiya Nyaya Sanhita, 2023, and Section 67-A of the

Information Technology Act.

3. Taking into consideration the involvement of POCSO Act, we would like to mask the name of respondent No.2.

4. Heard learned Advocate Mr. Mukul Kulkarni for petitioners, learned APP Ms. P.R. Bharaswadkar, for respondent No.1 – State and learned Advocate Mr. Suniket Kulkarni for respondent No.2.

5. Learned Advocate for the petitioners submits that petitioner No.1 is the Principal of the school where the daughter of respondent No.2 is taking education and petitioner No.2 is a reputed medical practitioner and secretary of the trust which runs the said school. Daughter of respondent No.2 is studying in 5th standard and the FIR relates to the incident that had allegedly taken place on 27th August 2024 in the school. The main accused was working as a sweeper with the school. On the day of incident, the school was over by 5.15 p.m. and the girl returned to house around 5.30 p.m. After her return, she disclosed the fact to her mother – respondent No.2 that in the morning when she had gone to the school, it was noticed that the class had already started and therefore, she was standing on the ground. One uncle was sweeping the ground and he told her that she should go to library and see whether there is any teacher available. The girl went there. There was a teacher available and after witnessing teacher sitting there, she came back to the sweeper. Then sweeper asked her, as to whether she can start the net connection from the mobile. She said yes and then the sweeper asked her to accompany him on the upper floor of the school. After they went to the upper floor, the teacher from the library left the library. The girl was standing outside the library and the said uncle / sweeper gave his mobile for starting the net connection, in the hands of the girl. The girl noticed that the net connection was already running / operating and she told the said fact to the said sweeper. Thereafter the sweeper pushed on the button of WhatsApp but then he cut it and he started showing dirty videos from his mobile to the girl. The girl immediately gave mobile to the sweeper and started going down stairs. At that time the sweeper asked her, where she would be available in the afternoon for starting the net connection. At that time she told that she would be near the office. He then asked the girl that after the school timings are over, where she stands / goes. She did not answer the said question. The mother asked her as to whether that sweeper had done anything to her, the girl said no. As the school timings were over, it was not possible to go to school, therefore, respondent No.2 went to one Kalal madam, who is residing near the house of respondent No.2 and told her about the incident. Said Kalal madam had then informed the said fact to petitioner No.1 and class-teacher Mali. Petitioner No.1 had then checked the CCTV footage and told Kalal madam to make the CCTV footage available to the parents of the girl. Kalal madam then went to the house of the informant around 9.30 to 10.00 p.m., when even husband of the informant was available in the house. The informant then says that around 9.00 a.m. of the next day, she along with her husband, daughter and some relatives, went to the house of petitioner

No.1. Petitioner No.1 then made an inquiry, as to what had happened with the girl. Petitioner No.2 had also come to the house of petitioner No.1 and he had also made an inquiry. The CCTV footage was shown by petitioner No.2 to the parents and then told the name of the sweeper who was serving with the school since last 25 years. Petitioner No.1 told the parents that they can lodge report regarding the incident and the school will take action of removing the said sweeper from his job. Petitioner No.2 told the parents that if they want to go ahead with the FIR, then their names would come in the newspaper and they may get defamed. But the parents told that they would go ahead with the FIR and not worried about any news item that may be published. Then the informant, her husband and other relatives went to the police station and lodged the report.

6. After narrating this entire FIR and also taking us through the contents of the charge-sheet, the learned Advocate for the petitioners submitted that the prosecution has invoked Section 21(2) of the POCSO Act against the present petitioners contending that they had failed to report or record a case in spite of having information about occurrence of such incident. The other sections are against the main accused. The story after the daughter narrated the incident to mother and then mother going to Kalal madam and informing the entire incident, is then supported by the statement under Section 161 of the Code of Criminal Procedure of said Kalal madam. She also states that after she had informed about the incident to petitioner No.1, petitioner No.1 had told her that she should send the parents to the house of petitioner No.1. Accordingly, she had passed on the information to the informant. What happened in the house of informant, has been stated by the informant herself in the FIR as well as by her husband in his statement under Section 161 of the Code of Criminal Procedure and by those relatives who were with the informant. Now the statements of witnesses have been recorded belatedly and even it is then stated that petitioner No.2 had told the husband that the main accused would be handed over to him to whom they can assault, and who would be removed from the school and the next option available to them is to go to the police, in which the school as well as the girl would be defamed. Petitioner No.1 told that there would be news items in the newspaper and they have not deleted the CCTV footage like the case in Badlapur. Then they say that the present petitioners had tried to restrain them from lodging the FIR. Even if we take these statements as it is, yet it is very much clear that there was no suppression of facts and there was no intention that the informant should not lodge the FIR. Immediately after the said meeting, the informant and others had gone to the police station to lodge the FIR. Therefore, it would be an abuse of process of law if the petitioners are asked to face the trial.

7. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the Petition and submitted that the fact was informed to petitioner No.1 in the evening itself through the said Kalal madam and in spite of it, no action was taken till 14.15 Hours of the next day. Rather, in a way, threat

was tried to be given that the girl and her family members would be defamed, so also the school would be blamed. The statements of witnesses under Section 161 and 164 of the Code of Criminal Procedure supports the prosecution story. The explanation if at all the petitioners are having for not taking the action or reporting the fact to the police over night, can be given by them only during the trial and therefore, when now the investigation is also over, the petitioners should face the trial.

8. The entire incident and the prosecution story as stated in the FIR has been narrated earlier and therefore, we do not want to repeat the same. Taking into consideration the FIR as well as the charge-sheet, the prosecution intends to bring the case for the offence punishable under Section 21 of the POCSO Act against the present petitioners. Section 21 of the POCSO Act provides for punishment for failure to report or record the case. Sub-section (2) provides that any person being in-charge of any company or an institution, who fails to report the commission of an offence under sub-section (1) of Section 19 in respect of a subordinate under his control, shall be punished. Now, it is the prosecution story that the sweeper from the school has done the acts which are punishable under the POCSO Act and it was made known to both the petitioners.

9. Certainly, from the FIR as well as the statement of girl, it can be seen that around 5.30 p.m., on 27th August 2024, the girl had informed the incident to her mother and then immediately the informant had gone to the house of Kalal madam. Kalal madam in her statement under Section 161 of the Code of Criminal Procedure, supports this fact that around 6.00 p.m., when she was returning home from the school, informant stopped her in front of her house and when they were standing on the road, the information was passed on by the informant to her. Kalal madam had asked the girl as to who is her class teacher and she gave the name of Mali sir and therefore, Kalal madam had given call to Mali sir and informed him about the incident. There was some mistake in communicating the first name of the girl and therefore, Kalal madam had sent her son for confirmation of the name of the girl. Then Mali sir was contacted once again but he told that he is in hospital and he would inform petitioner No.1 about the incident. Thereupon again there were telephonic calls and petitioner No.1 had asked the parents to meet her in her house. Now, in the FIR the informant is silent in saying that she was tried to be restrained by the petitioners from lodging the FIR. But she was certain that on the say of the petitioners the message was given that the CCTV footage would be made available to the parents. It was accordingly checked. We are of the opinion that unless the school authority would have ensured the element of truth in the allegations, there cannot be duty on the school authorities to lodge the report. The girl has not stated that when she was in the school throughout the day, she had tried to inform the fact to her class teacher or any other teacher. Everything started only after the girl informed the said fact to the mother in the evening. We are also aware of the fact that the girls would be more comfortable in sharing their feelings firstly to the mother. Then there might be possibility, in certain cases,

that they would share it with their friends and certain girls are bold enough in immediately disclosing it to the teachers. However, it may then require the maturity and understanding. Merely because the fact was not immediately informed, we cannot jump to the conclusion that there is intentional failure on the part of the school authorities which can be termed as an offence. The subsequent conduct, after receipt of the information, is also required to be considered. The CCTV footage is made available to the parents. The clip of the same has also been seized in the matter and as per the panchnama, what could be seen is that the sweeper was talking with the girl. Now, what was shown to the girl appears to have not been captured by the CCTV. Of course, the dialogues are also not captured.

10. Now, it is tried to be contended on behalf of the prosecution, especially, that in the house of petitioner No.1 the informant, her husband and others were told that if they go for lodging of the FIR, then it may defame them and also the school. But it cannot be taken as a threat because the further statement is also important, when petitioner No.1 is stated to have said that they have not deleted the CCTV footage and they have no intention to delete the same. The words those have been used in their statements by the husband and other relatives who were present in the house of petitioner No.1, are :-

“.....बाबत प्रिन्सिपॉल मॅडम व डॉ.योगेश देसाई बोलले आम्ही त्याचे काही एक न ऐकून घेता प्रिन्सिपॉल मॅडम यांचे घरून नंदुरबार शहर पोलीस ठाणे येथे येऊन -----”

. The translation of the same is as under:-

“Principal Madam and Dr. Yogesh Desai stated about the same. We have not at all listened to them and from the house of Principal Madam, came to Nandurbar Police Station.....”

11. It was one of the opinion or point that was put before the informant and the relatives by the petitioners, but they themselves say that they had not listened to what was told by the petitioners to them. It is the further statement of the husband and the relatives of the informant that in spite of having knowledge about the incident around 8.00 p.m., on 27th August 2024, the seriousness of the offence was not considered by the petitioners and they had not reported the incident to the police. Thus, now the informant's husband and other relatives want to blame the petitioners. As earlier stated, this statement is not made by the informant in her FIR. This statement would then be applicable to the informant, her husband also. In spite of having knowledge of the incident, why they had not immediately gone to lodge the report to the police, would be a question and therefore, every failure to report the incident will not attract the criminal liability. The intention is important. When as per the FIR while leaving the house of petitioner No.1, informant and others had told that they would lodge the FIR, it appears that the petitioners have then not taken any action.

12. We know the limitations in the provisions under Section 482 of the Code of

Criminal Procedure. However, we would like to rely on the recent decision of the Hon'ble Supreme Court in B.V. Ram Kumar vs. State of Telangana and another, 2025 INSC 194, wherein it has been held that when the charge-sheet is filed, High Court should consider the entire material in the charge-sheet.

13. Therefore, taking into consideration the entire material in the charge-sheet including the FIR, we are of the opinion that it would be an abuse of process of law if the petitioners are asked to face the trial. The case is made out to exercise the powers of this Court under Section 482 of the Code of Criminal Procedure in view of the guidelines given in the decision in State of Haryana vs. Bhajan Lal and others, AIR 1992 SC 604. Hence the following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The proceedings in Special Case No.33 of 2024 pending before the learned Special Judge under the POCSO Act, Nandurbar, for the offence punishable under Sections 11(3), 12, 16, 17 and 21(2) of the Protection of Children from Sexual Offences Act, 2012, Section 75(1)(iii) of Bharatiya Nyaya Sanhita, 2023 and Section 67-A of the Information Technology Act, arising out of the First Information Report vide Crime No. 542 of 2024, dated 28th August 2024, registered with Nandurbar City Police Station, Nandurbar, stands quashed and set aside as against petitioner No.1 - Mrs. Sushama @ Sushma Manish Shah and petitioner No.2 - Dr. Yogesh Pramodshankar Desai.

(III) Rule is made absolute in above terms.