

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
REVISION APPLICATION NO.45 OF 2015

Suhas Sampatrao Garud Applicant
Vs.
“SAKHEE”, an NGO & Anr. Respondents

Ms N.R. Rane i/b Mr. Nitin P. Deshpande for the Applicant.
Mr. Pradeep M. Havnur for Respondent No.1.
Ms Anamika Malhotra, APP, for the Respondent-State.
Ms Anjali Pawar, Director of Respondent No.1, present
in-person.

CORAM: A.V. NIRGUDE, J.

DATED: NOVEMBER 30, 2015

P.C:

1. The earlier order dated 21-11-2015, appointing Advocate Mr. Uday Warunjikar as *amicus curiae*, stands recalled. Ms Anjali Pawar, Director of respondent No.1, present along with Advocate Mr. P.M. Havnur.

2. This revision application challenges order of issuance of process, which was confirmed by the learned Sessions Judge.

In this criminal case, there are two accused. Both of them are Police Officers. At the relevant time, they were attached to Loni Kalbhor Police Station. Accused No.1 is the applicant herein who was then in charge of said police station. Accused No.2 was his Junior Officer, mainly attached to Uruli Kanchan Police Chowky. Offences punishable under Section 21 r/w Section 33 of the Protection of Children From Sexual Offences Act, 2012 and under Section 166A of the IPC are alleged against the applicant and the other accused. The other accused had come to this Court for getting the order of issuance of process passed against him set aside, but failed. It is now the applicant/accused No.1 who has come before this Court.

3. On a careful perusal of the material on record, I found that there is no direct material against the applicant. There is no statement of any witness who stated that he or she personally informed about the sexual assault having been committed against a minor girl to the applicant prior to 3-3-2013 and yet no action was taken by him. It has come on

record, through the complainant's statement, that on 3-3-2013 she personally went to the applicant at the police station and informed him about the sexual assault which had taken place a few days back within the local limits of said police station. In order to persuade him to take cognizance of said incident, the complainant even submitted a written application to the applicant. At about 9:00 p.m. on that day the applicant, admittedly, registered the offence after recording a detailed statement of the victim of the sexual assault. It cannot, therefore, be said that the applicant avoided to take action, even after receiving information from the complainant on 3-3-2013.

4. The crux of the allegation against the applicant is, that prior to 3-3-2013, though he knew about the incident, he did not take any action. As said above, there is no direct material on record to suggest that the applicant learnt about the incident and yet did not take action.

5. The alleged incident of gang rape occurred,

according to the victim, on 22-2-2013, near Shindawane. This place was close to Uruli Kanchan Police Chowky. The victim somehow gathered courage and went to this police chowky on 26-2-2013 and again on 27-2-2013. She informed about the incident to accused No.2, but he refused to take action on her complaint, stating that the victim should be accompanied by her parents. Some Police Constables attached to Loni Kalbhor Police Station started some inquiry about the incident. They contacted the victim's uncle, etc.. They did not take any concrete step. There is nothing on record to suggest that before 3-3-2013 the applicant learnt about the incident personally and yet he did not take action.

6. In view of the above, the action initiated against the applicant appears to be illegal. The revision application is, therefore, allowed. The order of issuance of process against the applicant is set aside. The petition is allowed to that extent and accordingly stands disposed of.

(A.V. NIRGUDE, J.)