

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1084 OF 2015
(Babasaheb Mahadu @ Kondiram Kunde Vs. The State of Maharashtra)

Mr. V.S. Janephalkar, Advocate for the petitioner
Mr. N.T. Bhagat, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 29/01/2016

ORAL ORDER :

1. Heard.
2. The FIR filed by the victim, who is claimed to be eleven years old and the supplementary statement recorded would show that the offences punishable under section 354, 323, 504 and 506 of the I.P. Code are registered. It is no doubt true that in the complaint filed on 28th April, 2013, there are allegations only of breach of modesty while in the supplementary statement recorded thereafter on 4th December, 2014, it was allegedly averred that the present petitioner has committed rape on the victim. It is explained in the said statement that due to fear of the parents, the incident was not disclosed. As such, there being

material against the petitioner, the order of the learned Sessions Judge refusing to discharge the petitioner cannot be faulted with.

3. Learned counsel for the petitioner relies on the ratio laid down in the case of "**Prashant Bharti v. State of NCT of Delhi**", reported in **AIR 2013 Supreme Court 2753**. In that case, however, the allegations made by the complainant were that the accused had promised to marry with her and under the said promise, committed sexual intercourse with her. It was, however, proved by the documentary evidence that she was already married. In the present case, however, in the totality of the facts, the ratio relied upon by the learned counsel would not be applicable.

4. In the result, the writ petition is dismissed.

[M.T. JOSHI]
JUDGE