THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4330 OF 2019

Rishi Prabha Ranjitkumar Prasad
Adult Indian Inhabitant, residing at
Harikunj Society, Building No. 2,
C-Wingh, Flat No. 705, 7th Floor,
Chembur, Mumbai. ...PETITIONER

Versus

1. The State of Maharashtra
[Through of E.O.W. Unit 7].

2. Krishna Mishra,
residing at Vaibhav Cooperative
Housing Society, Anand Nagar,
Lal Dongar, Chembur, Mumbai.

3. Mr. Samphul Das
Age- 33 years, Occ- Worker,
Resident of: Village Sainchak,
Ranjodha, Dhuraiya, Banka, Bihar.

4. Mrs. Sunitadevi Samphul Das
Age- 28 years, Occ- Worker,
Resident of: Village Sainchak,
Ranjodha, Dhuraiya, Banka, Bihar. ...RESPONDENTS

ALONG WITH
CRIMINAL WRIT PETITION NO. 1476 OF 2021

Mr. Ranjit Kumar Prasad
Age- 43 years, Occ- Service
R/ at- Flat No. 707, 7th Floor
Building No. 2, Hari Kunj Society
Chembur, Mumbai. ...PETITIONER

Versus

1. The Senior Inspector of Police
Chembur Police Station,

(C.R. No. 274 of 2018)

2. Mr. Krishna Mishra,
Age- 43 years, Occ- Cleaner
residing at Vaibhav Cooperative
Housing Society, Anand Nagar,
Lal Dongar, Chembur, Mumbai.

3. Mr. Samphul Das
Age- 33 years, Occ- Worker,
Resident of: Village Sainchak,
Ranjodha, Dhuraiya, Banka, Bihar.

4. Mrs. Sunitadevi Samphul Das
Age- 28 years, Occ- Worker,
Resident of: Village Sainchak,
Ranjodha, Dhuraiya, Banka, Bihar.

5. The State of Maharashtra ...RESPONDENTS

...

Mr. Vishal Kanade i/by Mr. Rajendra J. Rathod for Petitioner in WP No. 4330/2019.
Mr. Vishal Kanade i/by. Rizwan Merchant and Associates for Petitioner in W.P. 1476/2021.
Mr. Sohel Ahmed a/w. Mr. Ali Bubere i/by. Kookada & Associates for Respondent No. 3 and 4.
Mr. Aamir Koradia for Respondent No. 2-Original Complainant.
Mr. Deepak Thakre, PP a/w. Mrs. S.D. Shinde, APP for Respondent-State.

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CORAM : S. S. SHINDE &
N. R. BORKAR, JJ.

RESERVED ON-27th MAY, 2021.
PRONOUNCED ON- 10th JUNE, 2021.

JUDGMENT [PER S.S. SHINDE, J.]:

1. The Writ Petition No. 4330 of 2019 is filed with following substantive prayers:-

> *(b) That this Hon'ble Court be pleased to call for the records and proceedings of Sessions Case No. 860 of 2019 pending before the Hon'ble Sessions Court for Greater Bombay, Mumbai arising out of F.I.R. bearing CR No. 274 of 2018 lodged with Chembur Police Station at the instance of the Respondent No. 2- Mr. Krishna Mishra;*
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> *(c) That this Hon'ble Court be pleased to quash and set aside the charge sheet filed in Sessions Case No. 860 of 2019 pending before the Hon'ble Sessions Court for Greater Bombay, Mumbai arising out of F.I.R. bearing CR No. 274 of 2018 lodged with Chembur Police Station at the instance of the Respondent No. 2- Mr. Krishna Mishra;*

2. The Writ Petition No. 1476 of 2021 is filed with following substantive prayer:-

> *(b) The FIR bearing No. 274 of 2018 registered by the officers of Chembur Police Station and the charge sheet filed and pending before the Hon'ble Sessions Court, Mumbai bearing No. 860 of 2019 for offences punishable under section 370 and 34 of Indian Penal Code 1890 & r/w section 75, 79 and 23 of the Juvenile Justice (Care and Protection of Children) Act, 2015 be quashed and set aside.*

3. Respondent No. 2 (First Informant) works as a cleaner in the housing society in which the petitioners are residing. The first informant lodged the FIR bearing C.R. No. 274 of 2018 on 6th September, 2019 with Chembur Police Station for the offences

punishable under Sections 370 read with 34 of the Indian Penal Code and sections 75, 79 and 23 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'said Act'). Thereafter charge sheet came to be filed on 16th February, 2019 and Sessions Case No. 860 of 2019, arising out of it, is pending before Sessions Court for Greater Bombay, Mumbai.

4. The case of the first informant is as follows:-

It is alleged by the first informant that he and his wife have been working as cleaners in Harikunj Society for the past ten years. The first informant while working at the said society had noticed over a period of approximately 1 month prior to filing of the impugned FIR, the presence of a young girl of approximately 10 years of age in the residence of the Petitioners. It is alleged that the alleged victim girl would drop the petitioners younger daughter to school, and thereafter wait for her to bring her back to home, during which she would meet the first informant and his wife and chat with them. The first informant often buying her a vadapav, if she felt hungry. During these conversations, the victim girl would tell the first informant and his wife that she is from Delhi, and was working in the Petitioner's home doing menial chores such as helping in cleaning the bed, wash dishes, and take care of the

petitioner's younger daughter.

On 6th September, 2019, the first informant while went for the cleaning in the society met the victim girl and fed her a vadapav as she was hungry. It is alleged that the victim girl told the first informant that she forgotten the house keys inside the house and house door was locked, leaving keys inside the house, for said mistake the petitioners had allegedly beat her. The first informant thus felt pity for the victim girl and filed a complaint with the Chembur Police Station.

5. Being aggrieved with the filing of FIR bearing C.R. No. 274 of 2018 with the Chembur Police Station, the Petitioner's husband Mr. Ranjitkumar Indeshwari Prasad had filed Criminal Writ Petition No. 4972 of 2018 (Ranjitkumar Indeshwari Prasad Vs. The State of Maharashtra). The said criminal writ petition was disposed of on merits by order dated 28th February, 2019. Thereafter, charge sheet in Sessions Case No. 860 of 2019 has been filed in the impugned FIR and case is pending before the Sessions Court. Hence, this petition for quashing FIR and chargesheet.

6. Learned counsel appearing for the petitioners submit that the petitioners are innocent and has not committed any offence. The statement of first informant is based on hearsay, and

that no case was made out for filing of the charge sheet. The first informant has admitted in his affidavit that the said complaint was filed on the basis of misunderstanding, and that he does not wish to prosecute the petitioners any further after having met the parents of the victim girl. It is submitted that the parents of the victim girl have longstanding relationship between their family and that of the Petitioners, and that the victim girl was sent voluntarily to the Petitioners residence for her well being and welfare, which can be seen from perusal of their affidavit.

7. The first informant Mr. Krishna Mishra has filed affidavit wherein it is stated that the matter is amicably settled without any monitory consideration. It is stated that the first informant met parents of alleged victim girl and after discussing with them at length, he has realised that his complaint was based on a misunderstanding and he does not wish to prosecute the petitioners and he is withdrawing the compliant. He has no grievance against the petitioners and he is giving consent for quashing the impugned FIR.

8. An affidavit is also filed by Mr. Samphul Das and Mrs. Sunitadevi Samphul Das wherein it is stated that they are husband and wife and residing at the address stated in the said affidavit

along with five children which are born out of the wedlock. Out of 5 children victim girl was born on 1st January, 2005 and she is 14 years old. It is stated that deponent no. 1 is working as agricultural laborer on the farm belonging to brother of Mr. Ranjitkumar Prasad, who is petitioner in Writ Petition No. 1476 of 2021. It is stated that relation between Ranjitkumar Prasad and their family are cordial and healthy. It is further stated that deponent no. 1 was not earning reasonable amount to maintain living expenses of entire family, therefore, they requested Mr. Ranjitkumar Prasad who is working in Mumbai, to take victim girl to Mumbai for her well being and accordingly Mr. Ranjitkumar Prasad agreed to take victim girl to Mumbai for her well being and welfare. On 27th July, 2018 at their request and consent Mrs. Rishi Prabha Ranjitkumar Prasad took victim girl from Delhi to Mumbai via train for her well being and welfare.

9. It is further stated that, pursuant to the arrival of their daughter victim girl to Mumbai, they were in constantly touch with her and petitioners and they were satisfied that victim girl is happy with petitioners and she never expressed any grief to them. It is also stated that the petitioners were trying to admit victim girl in school situated at Chembur, Mumbai.

They learnt that FIR came to be registered against the petitioners and therefore, they rushed to Mumbai, to resolve the misunderstanding and wrongful action against the petitioners and to meet their daughter. However, the daughter was in custody of Child Welfare Committee and they were not allowed to meet her, inspite of their various attempts to meet her. It is stated that the FIR registered by the Chembur Police Station, Mumbai, against the petitioners is wholly misconceived and same arises out of misunderstanding. It is further stated that they have voluntarily requested Mr. Ranjitkumar Prasad to keep their daughter with them for her well being and welfare. Their daughter victim girl was in touch during her stay in Mumbai and informed them that she was happy and petitioners took good care of her by providing her clothes, food etc. Therefore, it is prayed that the FIR bearing C.R. No. 274 of 2018 registered with Chembur Police Station may be quashed.

10. We have perused the compilation of the writ petition and annexures thereto, and find that the petitioner herein namely Ranjitkumar Prasad had filed Criminal Writ Petition No. 4792 of 2018 and said writ petition was heard by this Court (Coram: B.P. Dharmadhikari & Revati Mohite Dere, JJ.) on 28th February, 2019 and following order was passed:-

> *1 In terms of orders dated 12th February, 2019, learned A.P.P. has made the statement of child available for our perusal. The statement shows that child was not going to school and was performing household duties.*
> *2 The offence alleged are under Sections 370 and 34 of the Indian Penal Code as also Sections 75, 79 and 23 of Juvenile Justice (Care and Protection of Children) Act, 2015.*
>
> *3 In the light of material available in statements, we are not inclined to intervene in extra-ordinary jurisdiction, at this juncture.*
>
> *4 We, however, keep all contentions of petitioner open and with liberty to petitioner to raise the same at appropriate juncture before trial Court, we dispose of present petition.*

Upon perusal of the aforesaid order it clearly appears that this Court declined to quash the FIR on merits.

11. Mr. Deepak Thakre, Public Prosecutor, appearing along with Mrs. S.D. Shinde, for Respondent-State vehemently opposed the prayer in the petition for quashing the impugned FIR on the basis of alleged amicable settlement. It is submitted that the offence committed by the petitioners is serious in nature and has great impact on society inasmuch as the petitioners have acted contrary to the provisions of the said Act and has given cruel treatment to victim girl during her stay in the house of petitioners. The Petitioners under the false pretext that victim girl (aged 10 years)

will be admitted in the school brought her to Mumbai, and she was forced to do household duties and also carry school bag of their daughter till bus stop and again to bring their daughter and carry school bag on return from the school to their house. Therefore, learned APP appearing for Respondent-State submits that the alleged offences are under Special Act, and therefore, the petitions may be rejected.

12. We have given due consideration to the submissions of learned counsel appearing for the petitioners and learned APP appearing for Respondent-State. With their able assistance perused the pleading and grounds taken in the petition, annexures thereto, affidavit filed by Respondent Nos. 2 to 4, as also observations in the order passed by this Court in Writ Petition No. 4792 of 2018 filed by Mr. Ranjitkumar Prasad which came to be dismissed on 28th February, 2019 on merits, thereby rejecting the prayer of petitioner to quash the FIR. Learned counsel appearing for the petitioners argued the petitions praying therein to quash the FIR and charge sheet only on the basis of amicable settlement, and did not press the petition on merits.

13. We have carefully perused the contents of FIR, charge sheet and its accompaniments. At the outset it needs to be noted that the statements of victim girl, has been recorded on 06.09.2018 and 12.09.2018 respectively. The said statements are recorded in question answer format. In brief victim girl stated that, in the house of petitioners she used to do cleaning, wash and clean utensils and look after the small daughter of petitioners. She stated that petitioner namely Rishi Prabha Ranjitkumar Prsad, occasionally used to beat her when she committed mistakes. She also stated that she told this fact to one uncle and aunty who used to collect garbage from the house of petitioners. She further stated in her statement that, once she forgotten the house keys inside the house and door was automatically locked, for which the petitioner- Rishi Prabha had beaten her. She stated that she wants to go to her parents and she is not willing to continue her stay with the petitioners.

14. There is another statement of victim girl recorded on 12.09.2018. In the said statement she stated that petitioners brought her to Mumbai for doing household work. She stated that petitioner used to give her only two chapatis (staple food) which was not sufficient to meet her hunger, and if she asked for more

chapatis (staple food) petitioner would tell her that eat less otherwise she will become fat. She further stated that petitioner used to woke up her early in the morning. She further stated that she used to do household work like cleaning the floor, drying the clothes, cleaning entire house, to drop the daughter of petitioners to bus stop and pick up her and carry her school bag. She also stated in said statement that if she committed any mistake, the petitioner-Rishi Prabha Prasad used to beat her. She also stated these facts to one uncle who used to come to collect garbage of petitioner's house, who fed her a vadapav whenever she was hungry.

15. It is true that the parents of victim and original complainant have filed their respective affidavits stating that they do not have objection for quashing the impugned FIR and charge sheet. It is also true that the parents of the victim girl appeared before us in chamber and stated that they do not have any objection for quashing the impugned FIR and chargesheet. However, statements of victim cannot be ignored. At the relevant time her age was 10 years. In addition to this there are statements of more than 10 witnesses in tune with prosecution case. The concerned investigating officer has also collected CCTV footage and incriminating material and the statements of CCTV operator has

been recorded. In the copy of letter annexed to the charge sheet it is stated that some of the witnesses whose statements have been recorded by the investigating officer are residing in the same society. Therefore, merely because parents of victim and complainant have filed the affidavits thereby joining the prayer of petitioners for quashing the impugned FIR on the basis of amicable settlement, the FIR and charge sheet cannot be quashed. The statements of victim, so also statements of witnesses and other incriminating material would be sufficient to proceed with the trial. The Public Prosecutor has vehemently opposed the prayer of petitioner for quashing the FIR on the basis of alleged amicable settlement between parents of victim, original complainant and petitioners. *Prima facie* it appears that financial condition of parents of victim is not good to pull on the needs of family and therefore, under said circumstances said girl was given in the custody of the petitioners at Delhi. It appears that victim accompanied with the Rishi Prabha Ranjitkumar Prasad travelled from Delhi to Mumbai.

16. The charge sheet is filed invoking Sections 75, 79 and 23 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 370 read with 34 of Indian Penal Code. So far as the Juvenile Justice (Care and Protection of Children) Act, 2015 is concerned the same has been brought into force to take care of

children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach keeping in view the best interest of children in mind. The provisions of said Act are having overriding effect and would prevail over provisions of any other Act in case of conflict. Sub Section 4 of Section 1 of the said Act reads as under:-

> *1. Short title, extent, commencement and application-*
>
> *(2) ----------*
> *(3) ----------*
> *(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including-*
> *(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;*
> *(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.*

17. In Section 2(14) of the said Act, it is stated thus:-

> *2. Definitions.-*
> *(1) ------*
>
> *(2) ------*
>
> *(14) "child in need of care and protection" means a child-*
> *(i) who is found without any home or settled place*

of abode and without any ostensible means of subsistence; of

(ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force means for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

18. It follows from the statement of objects and reasons of the said Act that this special legislation has brought into force to ensure proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach keeping in view the best interest of children in mind. The provisions of this Act shall apply to all matters concerning child in need and the child in conflict with law. The provisions of this Act have overriding effect *vis a vis* the provisions in other Acts in relation to matters concerning of child in need and care and protection and a child in conflict with law.

19. In the facts of the present case the Respondent-State has invoked Sections 23, 75 and 79 of the said Act. Section 75 and 79 of the said Act which reads thus:-

> ***75. Punishment for cruelty to child**.- Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abuses, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment from a term which may extent to three years or with find of one lakh rupees or with both:*
>
> *Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:*
>
> *Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees.*
>
> *Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular task or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.*
>
> ***79. Exploitation of a child employee**.- Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages*

a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

20. The Respondent-State has also invoked Section 370 of IPC, which reads thus:

*[1][370. **Trafficking of person**.- (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfer or (e) receives, a person or persons, by-*

First- using threats or
Secondly- using force, or any other form of coercion, or

Thirdly- by abduction, or
Fourthly- by practising fraud, or deception, or
Fifthly- by abuse of power, or
Sixthly- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

21. In the context of subject matter of present petitions it would be gainful to refer herein below some of the important articles of the 'The United Nations Convention on the Rights of the Child.'

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each

child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

> *(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

22. In the light of discussion in foregoing paragraphs, an irresistible conclusion is that the impugned FIR and charge sheet cannot be quashed as prayed by the petitioners on the basis of alleged amicable settlement between the parents of victim and complainant, when such amicable settlement has been vehemently opposed by the Respondent-State. Even if the affidavits of complainant and parents of victim are excluded from the consideration, there is sufficient material including statements of victim and other witnesses coupled with incriminating material including CCTV footage, so as to proceed with the trial.

It *prima facie* appears that due to financial crunch faced by parents of victim and as they are having 5 children, they decided to give custody of victim to Rishi Prabha Ranjitkumar Prasad, who brought the victim from Delhi to Mumbai.

23. The Hon'ble Supreme Court in the case of ***Gian Singh Versus State of Punjab and Another***[1], in paragraph 61 observed that in compromise between victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc, cannot provide for any basis for quashing criminal proceedings involving such offences. In the present case the petitioners are being prosecuted under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, which is a Special Act.

24. The case in hand stands on different footings *vis a vis* routine criminal cases predominatingly having civil flavour and which are personal in nature. Importantly an outcome of the present case will have impact upon the society. The offences committed by the petitioners cannot be said to be personal in nature.

25. The Hon'ble Supreme Court in the case of ***State of M.P. Versus Laxmi Narayan***[2], has observed that in the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to

1 (2012) 10 SCC 303
2 (2019) 5 SCC 688

the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

26. Upon careful perusal of the aforesaid guidelines it is abundantly clear that the outcome of cases which have impact upon the society cannot be disposed of or allowed on the basis of amicable settlement. The Public Prosecutor has vehemently opposed the prayer of the petitioners to allow the petition on the basis of alleged compromise between petitioners, parents of victim and the complainant.

27. In that view of the matter, we are not persuaded to quash the impugned FIR and charge sheet on the basis of alleged amicable settlement between the petitioners, parents of victim and complainant. Hence, writ petitions stand rejected.

Bhagyawant Punde

28. The observations made herein above are *prima facie* in nature and confined to the adjudication of the present writ petitions only. The trial court shall not get influenced by the said observations during the course of trial.

(N.R. BORKAR, J.) (S. S. SHINDE, J.)

Bhagyawant Punde