

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 22 OF 2016

STATE THR.PANAJI POLICE STATION ... Petitioner

Versus

CHRISTON TAVARES ... Respondent

Mr. S.R. Rivankar, Public Prosecutor for the
Petitioner.

Mr. Clovis Da Costa, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 2nd SEPTEMBER, 2016

ORAL ORDER:

Heard the learned Public Prosecutor for
the applicant and the learned Counsel for the
respondent.

2. The challenge in this revision application
under Section 397 of Cr.P.C., at the instance of
the State, is to the order dated 29.02.2016 passed
by the learned Children's Court in Special Case
No. 119/2014.

3. By the impugned order, the respondent has been discharged from the offences punishable under Sections 363 and 376 of IPC and Section 8(2) of the Goa Children's Act, 2003 (Act of 2003, for short) read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (Act of 2012, for short).

4. It appears that on 28.04.2014, the complainant, Mr. Henrique Rebeiro, who is the father of the victim girl, lodged a complaint with P.S. Panaji stating that his daughter, has not returned home. An attempt was made to contact her on her mobile, but in vain. The complainant has stated that the victim was friendly with the respondent and inspite of attempts to persuade her not to keep any relation with the respondent, she did not listen.

5. On the basis of this complaint, the investigating officer carried out the investigation, in which, the statement of the

victim was recorded on 28.04.2014. She was also got medically examined. It appears that the statement of the victim was recorded before the learned Magistrate under Section 164 of Cr.P.C. Ultimately, the respondent came to be charge sheeted, for the aforesaid offences.

6. The learned Children's Court has found that the victim girl was 15 years 5 months of age, on the relevant date, her date of birth being 03.11.1998. Thus, the victim was a child within the meaning of Section 2(d) of the Act of 2003 as also within the meaning of Section 2(d) of the Act of 2012.

7. The Children's Court has then referred to the decision of the Supreme Court in the case of **S. Varadarajan Vs. State of Madras, AIR 1965 SC 942**, in order to hold that there is a distinction between 'taking' and 'allowing a minor to accompany a person'. It is held that the two expressions are not synonymous. The Children's

Court has also referred to the decision of this Court in the case of **Gaurish Haldankar Vs. State of Goa, 1997 ALL MR(Cri) 629**, and has found that there was no material to hold that there was any specific act by the respondent, to entice or force the victim girl to leave the house and to the accompany the respondent. Thus, the Children's Court found that no *prima facie* case is made out against the respondent insofar as offence under Section 363 of IPC is concerned.

8. Insofar as the offence punishable under Section 376 of IPC and Section 8(2) of the Act of 2003 and Section 4 of the Act of 2012, is concerned, it was found that the victim in her statement under Section 164 of Cr.P.C. has not stated about the respondent having enticed her or having forcible sexual intercourse with her. The Children's Court has further found from the statement of the victim under Section 164 of Cr.P.C. that the victim has made reference to the incident relating to December, 2013 and not to

April, 2014, forming the subject matter of this case.

9. Lastly, the Children's Court has noticed the judgment of the Supreme Court in the case of **P. Vijayan Vs. State of Kerala, (2010) 2 SCC 398**, in order to find that if, two views are possible and one of them gives rise to 'suspicion' only as distinguished from 'grave suspicion', as to the guilt of the accused, the trial Court is justified in discharging the accused. In that view of the matter, the respondent has been discharged.

10. I have heard the learned Public Prosecutor for the applicant and the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have perused the copy of the charge sheet and the statements annexed thereto, including the statement under Section 164 of Cr.P.C. of the victim. I have also gone through the report of the Medical Officer on examination of the victim.

11. It is apparent from the record that unless and until there is material to show that the accused had enticed or taken the victim from the lawful custody, no offence under Section 363 of IPC can be said to have been made out. In my considered view, the Children's Court is right in finding that there was no attempt made by the respondent of taking the victim girl from the lawful custody.

Insofar as the offence under Section 376 of IPC is concerned, apart from the fact that the victim has not stated about any such incident, which had occurred in April, 2014, the medical report also does not say that there was any sexual intercourse with the victim. The learned Children's Court has rightly found that the material on record cannot give rise to 'grave suspicion' and that there is no *prima facie* material to frame charge against the respondent.

The impugned order does not suffer from any infirmity. The Criminal Revision Application is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

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