

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL REFERENCE NO. 1/2016**

State, Cuncolim Police Station

Applicant

Versus

Rajesh Thakur
s/o Mahendra Thakur
aged 20 years
Occupation Labour,
r/o c/o Evangelist Fernandes
H.no.163-A, Sameera Bar,
Sarzora, Salcete Goa
N/o Bihar

Respondent.

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Shri S.R. Rivonkar, Public Prosecutor for the for the
applicant.

Shri V. Amonkar, Advocate for the respondent.

CORAM : F.M.REIS & NUTAN.D.SARDESSAI, JJ
Reserved on :1st August, 2016.
Pronounced on:25/10/2016

JUDGMENT: (Per Nutan D. Sardesai, J)

1] Heard Shri S.R. Rivonkar, learned Counsel for the
appellant and Shri V. Amonkar, learned Advocate for the
respondent.

2] This is a reference at the instance of the learned
Additional Sessions Judge, South Goa, Margao under Section 395
Cr.P.C.

3] It was her case in the Reference that the charge-

sheet was filed before the Children's Court against the respondent-accused for the offence punishable under Sections 365 and 375 of the IPC, under Section 8(2) of the Goa Children's Act, 2003 ("the Act" for short) and under Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short).

4] The President of the Children Court held by her order dated 18.03.2016 that there was prima facie material against the respondent-accused for the offence punishable under Section 376 of IPC and Section 3 read with Section 4 of the POCSO Act and held that the offences had to be exclusively tried by the Court of Sessions and referred the matter to the Court of Sessions for further proceedings. The President of the Children Court took into consideration the Notification bearing No.1/3/2013/W&CD/ Sectt.Cell/929 dated 5.2.2016 issued by the Director & Ex-Officio, Jt.Secretary, Women & Child Development, which was issued under the POCSO Act pursuant to which the Court of Sessions, the Courts of Additional Sessions and the Courts of the Ad-hoc Additional Sessions in the State of Goa were designated to be the Special Courts for the purpose of the POCSO Act.

5] The reference in her assessment and opinion was necessary since such a Notification could not have been issued in

view of the proviso to Section 28(1) of the POCSO Act which clearly specified that if the Court of Sessions is notified as a Children's Court under the Commission for Protection of Child Rights Act, 2005 or a Special Court designated for similar purpose then such Court shall be deemed to be a Special Court under this Section. The Children's Court in her opinion had not been constituted under the Commission for Protection of Child Rights Act, 2005 but would be a Special Court designated for the similar purposes under any other law for the time being in force that is constituted under the said Act and therefore, in her opinion the Children's Court would be a Special Court under Section 28(1) and the Notification could not have been issued. Besides, such a Notification if it had to be issued, had to be in consultation with the Hon'ble High Court but the same does not indicate that it had been issued in consultation with the Hon'ble, the Chief Justice.

6] Shri S. R. Rivonkar, learned Public Prosecutor came to be heard on behalf of the State, who invited attention to the records pursuant to which the Bombay High Court had conveyed its concurrence to convey such powers under order to have expeditious trial of such cases not only under the POCSO Act but also under special statutes having criminal implication. Shri V. Amonkar, learned counsel for the respondent-accused left the matter to the Court.

7] It is a matter of record that the President of the Children's Court had initially taken cognizance of the offence against the respondent punishable under Section 365 and 376 of IPC, under Section 8(2) of the Act and under Section 3 read with Section 4 of the POCSO Act. She had come to a prima facie finding that the victim at the time of the alleged offence was above 16 and below 17 years of age. Be that as it may, the fact however remains that the Notification was issued by the Government in consultation with the High Court and therefore, the reference at the instance of the learned Additional Sessions Judge, Margao is misplaced. In the circumstances, therefore, the learned Additional Sessions shall proceed with the trial of the case against the respondent-accused under Section 376 of IPC and Section 3 read with Section 4 of the POCSO Act.

NUTAN D.SARDESSAI, J

F.M. REIS, J

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