

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 21 OF 2017

Shri Avelino Pinto
68 years, Engineer
Resident of 6, Zoglem Bhat
Paliem, Ucassaim
Bardez Goa .. Petitioner

V/s

1. The State of Goa
Through Police Inspector
Crime Branch
Dona Paula, Panaji Goa
2. Mrs. Sneha Thaly alias
Mrs. Sneha Anish Ansari
w/o Mr. Anish Ansari
major, r/o H.No.1185, 1st Floor
Bamonwado, Siolim
Bardez Goa .. Respondents

Mr. S. M. Walwaikar, Advocate for the petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the respondent no.1.

CORAM :- C. V. BHADANG, J.

Date : 27th February, 2017.

ORAL JUDGMENT :

Rule, made returnable forthwith. The learned Public Prosecutor waives service for the first respondent. Heard finally by consent of the parties.

2. The petitioner is an accused in Special Case No.2/2004 before the learned Children's Court at Panaji, Goa, facing prosecution for the offences punishable under Sections 376 and 354 of Indian Penal Code (IPC, for short) and Section 8(2) of Goa Children's Act, 2003. The offences were registered on the basis of a complaint dated 10/10/2003, filed by the complainant (respondent no.2), who was then aged 14 years. It appears that on investigation, the petitioner came to be chargesheeted before the learned Children's Court.

3. The petitioner filed an application for transfer of the case before the learned Sessions Court on the ground that the chargesheet reveals offences, which have taken place prior to two months of coming into force of Goa Children's Act, 2003. The learned Children's Court, by an order dated 17/02/2006, directed bifurcation of the chargesheet specifying the offences, which have taken place from January, 2003 to 07/07/2003 and the instances from 08/07/2003 till September, 2003.

It can, thus, be seen that the offences, which had taken place prior to 08/07/2003 (which is the date on which the Goa Children's Act came into force), were segregated, in respect of which a separate chargesheet was filed leading to registration of Sessions

Case No.9/2008, which is pending before the learned Sessions Judge at Mapusa.

4. The petitioner filed three applications being application Exh.D-237, D-252 and D-266 before the Children's Court, for various reliefs.

5. Application Exh.D-237 was for summoning the Judicial Magistrate, First Class, who had recorded the statement of the victim under Section 164 of Cr.P.C.. By an application Exh.D-252, the petitioner is seeking recall of PW1 and for production of the previous statements of PW1, recorded in Special Case No.5/2004 and 7/2004 and Sessions Case No.9/2008. By the application at Exh.D-266, the petitioner is praying for production of some documents in Criminal Writ Petition Nos.37/2011 and 125/2009, which were filed before this Court and which petitions have been disposed of.

6. The learned Children's Court, by the impugned order dated 25/10/2016, has dismissed all the three applications, which brings the petitioner to this Court.

7. I have heard Shri Walwaikar, the learned Counsel for

the petitioner and Shri Rivankar, the learned Public Prosecutor for the first respondent. With the assistance of the learned Counsel for the parties, I have gone through the impugned order and the record.

8. In the petition, apart from the challenge to the order dated 25/10/2016, the petitioner is also praying that both the cases, namely Special Case No.2/2004 and Sessions Case No.9/2008 be directed to be heard and disposed of by the same Court (as presently they are pending before two different Courts). This is vide prayer clause 10(d).

9. The learned Counsel for the petitioner, on instructions, has restricted his prayer to the aforesaid prayer clause 10(d) and is not pressing for the rest of the prayers, including the challenge to the order dated 25/10/2016.

10. The learned Public Prosecutor, in all fairness, states that both the cases arise out of the same complaint and in respect of the same victim and only because some of the incidents alleged by the prosecution, are prior to the coming into force of the Goa Children's Act, that a separate chargesheet was required to be filed before the learned Sessions Judge. The learned Public

Prosecutor has no objection for transferring the Sessions Case to the file of the learned Children's Court. In the submission of the learned Counsel for the parties, the Children's Court can decide the Sessions Case along with Special Case No.2/2004.

11. I have carefully considered the circumstances and the submissions made.

12. As noticed earlier, it is the case of the prosecution that the various acts comprising of the offences under Sections 376 and 354 of IPC, read with Section 8(2) of the Goa Children's Act, had taken place from January, 2003 to September, 2003. The Goa Children's Act came into force on 08/07/2003. It was in these circumstances that the prosecution had filed a separate chargesheet before the learned Sessions Judge, pertaining to the offences, which had taken place from January, 2003 to 07/07/2003 and the prosecution case in respect of the incidents from 08/07/2003 till September, 2003 is before the learned Children's Court.

13. Section 28 of the Goa Children's Act would show that the Government may appoint any Sessions or Additional Sessions Judge as the President of the Children's Court, in consultation with

the High Court. Section 31(1)(a) would show that the Children's Court has all the powers of the Court of Sessions under the Code of Criminal Procedure, 1973. The Presiding Officer of the Children's Court is a Judicial Officer of the rank of an Additional Sessions Judge. Thus, in my considered view, the Sessions Case can be transferred to the Children's Court for disposal according to law in as much as both these cases arise out of the same complaint and in respect of the same victim. This would be just and proper in order to avoid any conflicting decisions in the matter. Even otherwise the prosecution has no objection for such transfer.

14. In the result, the petition is partly allowed. The Sessions Case No.9/2008 is hereby withdrawn from the file of the learned Additional Sessions Judge at Mapusa and is transferred to the Children's Court for disposal along with Special Case No.2/2004 in accordance with law.

C. V. BHADANG, J.

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