

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 35 OF 2016

STATE, THR. CURCHOREM POLICE
STATION.

... Petitioner

Versus

MANOJ KUMAR SINGH SOLANKI AND ANR. ... Respondent

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

Mr. Arun De Sa, Advocate for respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 18th January, 2017

P.C.

Heard Shri Rivankar, the learned Public Prosecutor for the applicant and Shri De Sa, the learned Counsel for respondent no.1.

2. The challenge in this Revision Application is to the order dated 13/04/2016, passed by the Children's Court in Special Case No.72/2012, by which the respondents/ accused are discharged of the offences punishable under Sections 66E, 67 and 67-B of the Information Technology Act (as amended) by the Information Technology (Amendment) Act, 2008, read with Section 8(2) of the Goa Children's Act, 2003 and Sections 342, 509, 201 read with Section 34 of Indian Penal Code (IPC, for short).

3. According to the prosecution, some time prior to 07/12/2011, the respondents, in furtherance of their common intention, transmitted or published obscene electronic data by means of a Video clip on their mobile phones of the private part of the minor victim girl, who was then aged 16 years, by wrongfully confining her at the residence of respondent no.1, with an intent to insult her modesty. It is also claimed that the respondents destroyed the evidence by deleting the contents of the clip from their mobile phones.

4. It appears that the complaint, in this case, was filed by late P.I.Bhanudas Dessai, then attached to Curchorem Police Station. The complainant claimed that one Vishal Prabhakar Naik, who happens to be the reporter of newspaper 'Pudhari', approached the police station on 07/12/2011 and informed the complainant that there is a MMS clip in circulation in the Curchorem area and other parts of the State, showing a young couple being engaged in sexual activity. On the basis of such complaint, an offence came to be registered and after investigation, the respondents came to be chargesheeted. The learned Children's Court on perusal of the chargesheet and material produced, came to the conclusion that there are no sufficient grounds for proceeding against the accused, within the meaning of Section 227 of Cr.P.C. and in that view of the matter, has discharged the

respondents.

5. Shri Rivankar, the learned Public Prosecutor for the applicant, in all fairness, does not dispute that there is no material in so far as respondent no.2 is concerned. Even so far as respondent no.1 is concerned, it is not disputed that the report of Central Forensic Science Laboratory (CFSL) is in the negative, stating that the suspected digital evidence storage media could not be analysed as the software and hardware tools available in the Laboratory, do not support the media. It appears that Vishal Naik, who had reported the matter to P.I. Bhanudas Dessai, had transferred the video clip to the mobile phone of the complainant Bhanudas Dessai, which was not attached in this case and the learned Children's Court has noticed and to my mind rightly so, that the Video clip forming the subject matter of the case, was downloaded from the mobile phone of the complainant and not from any of the mobile phones attached from the respondents.

6. It is now well settled that at the stage of framing of charge, the Court is entitled to sift the evidence albeit in prima facie manner, in order to find out whether sufficient ground for proceeding is made out. It is further well settled that if after such examination, two views are equally possible and the Court is satisfied that the evidence produced, gives rise to suspicion only as distinguished from grave suspicion, the Court would be

justified to discharge the accused (See YOGESH @ SACHIN JAGDISH JOSHI VS. STATE OF MAHARASHTRA; [2008 ALL MR (Cri.) 3222 (SC)]).

7. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to warrant interference. In the result, the Criminal Revision Application is hereby dismissed.

C. V. BHADANG, J.

SMA