

IN THE HIGH COURT OF BOMBAY AT GOA.**Criminal Revision Application No.9/2016**

Maria Benedicta Mendonca,
d/o Valerian Mendonca,
Aged 57 years,
Occupation Service,
r/o H.No.43,
Gaundalim,
Cumbharjua, Tiswadi-Goa.

.... **Petitioner**

Versus

State
Old-Goa Police Station

.... **Respondent**

....

Shri S.D. Lotlikar, Senior Advocate with Ms. Marushka Furtado,
Advocate for the petitioner.
Shri S.R.Rivonkar, Public Prosecutor for the State.
Shri Ryan Menezes with Ms.C.Rebeiro Advocates for the
Intervenor.

CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON :03/07/2017.
PRONOUNCED ON :10/07/2017.

JUDGMENT:

1. Legality, propriety and correctness of an impugned order of framing charge against the petitioner by the President, Children's Court for the State of Goa at Panaji, has been challenged invoking revisional jurisdiction of this Court.

2. The petitioner, who appears to be a Stenographer in the Court, has been charge-sheeted by the Old Goa Police Station for the offences punishable under Sections 323, 324 and 504 of the Indian

Penal Code read with Sections 7, 8 (2), 9 of the Goa Children's Act, 2003 ("Act" for short) and Section 14 of Child Labour (Prohibition and Regulation) Act, 1986.

3. The learned President, after having gone through the material on record, by the impugned order dated 5th August, 2015 directed to frame a charge against the petitioner under Sections 323, 324 and 504 of the Indian Penal Code read with Section 2 (m) (i) punishable under Section 8 (2), punishable under Section 8 (4) and punishable under Section 8 (9) of the Act.

4. Heard Shri Lotlikar, learned Senior Counsel appearing for the petitioner. It is argued by the learned Senior Counsel that the learned President has failed to appreciate that the birth of the victim has been duly registered and a birth certificate in that regard was produced which forms the part of the record showing the age of the victim girl 17 years and 04 months in the month of August 2011 when she was allegedly brought to the residence of the petitioner to work as a housemaid. The victim girl, however, falsely stated that her age as 14 years in her statement when, in fact, she was more than 18 years on 6th April, 2013. It is further submitted that there was no sufficient material on record even for prima facie contending that the ingredients of Sections 324 and 504 of the Indian Penal Code and also under the provisions of the Act are attracted. According to the learned Senior

Counsel, the alleged weapons of offence includes broom and chappal which cannot be said to be weapons of offence used to inflict hurt as contemplated in Section 324 of the Indian Penal Code. It is also submitted that there is no material to substantiate whether the alleged ill-treatment was meted out to the victim before the age of 18 years or after attaining the said age.

5. Shri Rivonkar, learned Public Prosecutor spoke in tune with the learned Senior Counsel for the petitioner insofar as Section 324 of the Indian Penal Code is concerned, however, he submits that there is material to frame charge against the petitioner under Section 323 of the Indian Penal Code.

6. Shri Ryan Menezes, learned counsel appearing for the victim/Intervenor took me through the record vis-a-vis the provisions of the Act and vehemently urged that by keeping the victim child in custody for two years without authorisation itself is a serious offence which attracts sub-section (4) of Section 8 of the said Act. The learned counsel also drew my attention to the panchanama which indicates that the Investigating Agency had also seized a stick which can be used to inflict harm as contemplated in Section 324 of the Indian Penal Code.

7. I have meticulously gone through the record. At the outset, it appears that the victim girl was employed by the petitioner in her

house since August 2011 who resides at old Goa. Un-disputedly, the victim girl is a native of the State of Orissa and was brought to the house of the petitioner by some unknown person. It is also not in dispute that the date of birth of the victim girl is 15th April, 1994 and, therefore, in the month of August 2011 when she was brought to the house of the petitioner, her age was 17 years and four months and, therefore, indeed she was a child, in view of Section 2(d) of the Act. That being so, it is needless to go into other material on record such as medical evidence to ascertain the correct age of the victim girl.

8. The report lodged with the police by one Larissa Pieardo, on behalf of a NGO by name Central Coordinator indicates that the said minor girl was trafficked for domestic labour and was subjected to physical and mental cruelty by the petitioner. It clearly reveals that the victim girl was asked to do the work of cleaning, sweeping, washing clothes, dusting, gardening and looking after the mentally challenged brother of the petitioner since August 2011. It further reveals that the petitioner used to hit the victim girl every day with broom, stick, chappal or anything which she found around her. It further indicates that the victim was abused in filthy words and even she could not hear properly with her right ear as the petitioner hit her frequently over there. She was not paid her salary but it was given to one Pradeep, who initially brought the victim girl for the purpose of doing domestic work.

9. It is difficult to accept the arguments advanced by the learned Senior Counsel for the petitioner that there is no sufficient material to frame charge against the petitioner for the simple reason that while framing charge what is required to be seen is that there is sufficient material on record in the form of evidence which is such that if un-rebutted would warrant conviction of the accused. At the stage of framing charge, evidence cannot be gone into meticulously. All that is required at the stage of framing charge is to see whether a prima facie case is made out and it is not necessary to go into the merits of the case. The statement of the victim girl coupled with the First Information Report registered on the basis of the complaint by NGO is quite sufficient in the given set of circumstances to frame the charge under the provisions of Act and under Sections 323 of the Indian Penal Code. It is also equally important to note that it is immaterial, whether a case is based on direct or circumstantial evidence. The charge can be framed if there are material showing the possibility about the commission of the crime as against certainty. It is also not necessary to give reasons while framing the charge.

10. In view of the settled legal position, it would be essential to see as to whether prima facie the ingredients of Section 2 (m) (i) punishable with Section 8 (2), punishable under Section 8(4) and punishable under Section 8 (9) of the said Act are attracted.

11. Section 2 (m) (i) of the Act, contemplates psychological and physical abuse, neglect, cruelty etc. Prima facie, there is material in order to frame charge under this section which is punishable under Section 8 (2) of the said Act. Sub section (4) of Section 8 of the Act contemplates that no person shall reside with or keep with him, either wholly or partly, one or more children who are not related to him by blood, unless prior permission has been obtained by him from the Director after furnishing due information to the Director in the prescribed form. It shall be the responsibility of such person, desirous to reside with or keep child or children not related to him by blood, to inform the Director and to obtain prior written permission from the Director for doing so.

12. There is nothing on record to show that the petitioner had obtained due permission from the Director after furnishing due information in the prescribed form about the victim girl. It is not the case of the petitioner that the victim girl is related with her by blood.

13. I am in agreement with the learned Senior Counsel on the point that there is no material on record to attract the ingredients of Section 324 of the Indian Penal Code as what is alleged to have been used by the petitioner is a broom, stick or chappal, which would not attract Section 324 of the Indian Penal Code. The impugned order, framing charge under Section 324 of the Indian Penal Code, needs to

be set aside. Similarly, there is no material on the record to frame charge under Section 504 of Indian Penal Code, to which the learned Public Prosecutor Shri Rivonkar is also in agreement. There was no provocation given to the victim with an intention or knowledge that it would provoke her to break the public peace or commit any other offence. Thus, the impugned order needs to be modified to the extent of deleting Sections 324 and 504 of the Indian Penal Code .

14. In view of the aforesaid observations, the petition stands partly allowed. The learned President of Children's Court is directed to frame charge against the petitioner in the light of the observations made hereinabove.

15. The petition stands disposed of accordingly.

PRITHVIRAJ K. CHAVAN, J.

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