

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Revision No. 3462 of 2017 (O&M)
Date of decision: December 6, 2017

Punam Thakur

...Petitioner

Versus

The State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.S. Rai, Senior Advocate with
Mr. R.D. Gupta, Advocate, for
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. Sunieta Ojha, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

1. This is a revision petition that has been filed seeking to challenge the order dated 14.9.2017 passed by the learned trial court, Gurugram, framing of charges against the petitioner.

2. The facts of the case need to be noted to appreciate the controversy arising herein.

3. The petitioner's son, namely, Abhishek Anand, got married to the complainant/respondent No.2 on 16.4.2006 and out of this wedlock three children were born, the eldest being born 22.8.2010 and twins were born on 1.11.2012. Respondent No.2 filed a complaint on 28.6.2017 alleging that the petitioner's husband, namely, Shailzanand Thakur had sexually assaulted her

minor daughter during the children's stay in Jamshedpur, when the three children had gone there for winter vacations from 28.12.2016 to 5.1.2017. In the complaint dated 28.6.2017, it was alleged that the petitioner herein (paternal grandmother of the minor victim) abetted in the commission of crime. Immediately thereafter, an FIR No. 204 of 2017 under Sections 6 and 10 of the Prevention of Children from Sexual Offences Act (hereinafter referred to as '**the POCSO Act**') and Section 506 of the Indian Penal Code (for short '**the IPC**') came to be registered against the petitioner and her husband. Statement of the victim under Section 164 of the Code of Criminal Procedure (for short '**the Code**') was recorded on 28.6.2017 by the Magistrate. On the same date, statement of the victim was also recorded by the Child Welfare Committee as well as statement of the victim's father. The Investigating Agency recorded the statements of the victim, as well as of her mother the complainant, under Section 161 of the Code on 6.7.2017 and on conclusion of the investigation, a charge sheet was filed against the petitioner and her husband—Shailzanand Thakur. Thereafter, the trial court framed charges by the impugned order dated 14.9.2017, which is under challenge in this revision by Punam Thakur the grandmother of the minor victim.

4. Mr. R.S. Rai, learned Senior Advocate, assisted by Mr. R.D. Gupta, Advocate, appearing on behalf of the petitioner impugns the said charge sheet, by arguing that the trial court has failed to consider material contradictions and the improvements made. It is argued that the statement of the prosecutrix recorded before the Chief Judicial Magistrate as well as the Child Welfare Committee on 28.6.2017, does not reflect any allegations

directly or indirectly against the petitioner and any allegations made in the statement so recorded is entirely against her grandfather—Shailzanand Thakur. It is only on 6.7.2017, the young prosecutrix in her statement under Section 161 of the Code made a reference of the petitioner herein, in which statement she stated “...*I had told my dadi about these actions and my dadi ma did not scold my dadu and she did not tell it to my mother father. When my dadi ma did not tell dadu about the actions that were done with me then I told my mother father about what was done with me by dadu...*” Learned Senior Advocate also argues that the impugned order framing charges would not be sustainable as the trial Court has proceeded on the premise that the petitioner Punam Thakur was present in the room or in the house where the grandfather repeatedly committed acts of sexual assault upon the victim. It is also contended that in view of the allegations in the charge-sheet, no ingredient of abetment is made out qua the petitioner, as the petitioner neither instigated nor intentionally aided the accused—Shailzanand Thakur to commit the alleged offence. It is also argued that a reading of the statement of the prosecutrix would reflect that the offence, if any, has taken place in Jamshedpur when the three children had visited their grandparents during winter break and, therefore, territorial jurisdiction, if any, to try the offence was with the Courts at Jamshedpur and the Gurugram courts would not have such territorial jurisdiction. Moreover, it is argued that the application, being Crl. Misc. No. 37191 of 2017, filed in the revision, during the pendency of the petition, seeking to place on record the true transcript of the video recorded by the complainant on 8.6.2017 cannot be relied on, as there is no compliance of the provisions of Section 65-B of the Indian

Evidence Act. It is also contended that all allegations in the FIR are false and fabricated since the complainant (mother of the prosecutrix) failed to get the victim's MLR conducted, despite the advice given by the doctor.

5. Per contra, learned advocates Mr. P.P. Chahar DAG Haryana appearing on behalf of the State, and Ms. Suneita Ojha appearing for the complainant submits that a reading of the FIR would disclose that offences punishable under Sections 6, 10 and 16 of the POCSO Act and Section 506 of the IPC are made. It is contended that the petitioner—Punam Thakur is specifically named in the FIR and the role attributed to her for abetment of offence is clearly made out. The FIR clearly mentions that the petitioner herein allowed the child of about 4 years old to sleep in the room alone with the accused grandfather, was also (present in the room) when the child was being sexually abused and traumatized the minor in so far as not allowing the child to speak to her mother when the minor asked to speak to her. It is argued that a video has been made on the phone which shows the child telling her mother, that the petitioner—Punam Thakur was present in the room when the grandfather—Shailzanand Thakur was abusing her. It is argued that the FIR is based on the sexual abuse described by the child to her mother recorded on the phone by the complainant herein. The original video on the mobile phone was copied to a pen drive by the police itself during the course of the investigation and the said pen drive forms a part of the charge sheet and, therefore, it became relevant material to be looked at, at the time of framing of the charge sheet. It is further argued that in the FIR, it has categorically been stated that the accused grandfather had touched the prosecutrix inappropriately while visiting their Gurugram residence, and the

incidence in the FIR complained of pertained to the incidence at Jamshedpur is a continuing offence and, therefore, the courts at Gurugram would have territorial jurisdiction to try the instant case. It is further submitted that the trial court, after hearing the learned advocate for the parties and going through the evidence available on record, charge sheeted the petitioner and her husband for the aforesaid offences and no illegality or irregularity has been committed by the trial court, while framing the charges and revisional jurisdiction cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice requires interference for correction of manifest illegality or prevention of gross miscarriage of justice, which is not the case here.

6. I have heard learned advocates for the parties and with their assistance have gone through the pleadings in the revision and have also perused the police file with the help of the advocate appearing on behalf of respondent State. The allegations in the FIR are too sordid to detail, but pertain to sexual abuse upon a minor victim. Charges have been framed against the grandmother of the minor under Section 506 IPC and Sections 6, 10, 16 of POCSO Act 2012 which has led to the filing of the instant revision petition.

7. In view of the submissions and pleadings of the parties, the questions those arise for determination in this case are:-

- (i) Whether the courts at Gurugram would have the territorial jurisdiction to try the instant case?
- (ii) Whether the pen drive and the transcript attached with the charge sheet can be looked into without

certification in terms of Section 65-B of the Evidence Act at the time of framing of charge?

- (iii) Whether there has been abetment attributable to the petitioner, as alleged in the FIR ?
- (iv) Whether the charges framed under Section 506 IPC and Sections 6, 10 and 16 of the POCSO Act would be sustainable qua the petitioner?

I Whether the courts at Gurugram would have the territorial jurisdiction to try the instant case?

8. Sections 177 and 178 of the Code of Criminal Procedure provides that every offence that is committed in India shall ordinarily be inquired and tried by the court within whose local limits, the offence is committed. The law contained under the Code further provides that in case where an offence consists of several acts that are done in different local areas, then it may be inquired and tried by the court that is having jurisdiction over ***any of these*** local areas.

Sections 177 and 178 of Cr.P.C are reproduced herein:

“177. Ordinary place of inquiry and trial. Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial. (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed, partly in one local area and partly in another, or

(c) where an offence, is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having

jurisdiction over any of such local areas.”

9. A detailed charge sheet dated 18.7.2017 came to be registered against the petitioner and her husband, namely, Shailzanand Thakur. In the said charge sheet it has been specifically mentioned that in March, 2016, it was noticed that the accused—Shailzanand Thakur was holding the minor child and was giving her a kiss on her lips, holding the minor between his legs and was making the minor child uncomfortable. This issue was raised by the complainant to her husband, who asked her to ignore it, saying that the grandfather was very fond of the grand children. The second incident occurred in Jamshedpur when the accused persons had exclusive custody of the minor children from 28.12.2016 to 5.1.2017 and third incident mentioned in the FIR is of the month of May, 2017 during wedding celebration in Siliguri. The first offence is stated to have taken place at Gurugram. Even though no complaint was made of at that time and the said offence was not as horrific as the one complained of at Jamshedpur, it would be sufficient for the alleged offence at Gurugram to be part of the continuing offence of sexual abuse upon the minor victim to confer jurisdiction on the courts at Gurugram. This Court draws strength for its conclusion from the judgment rendered in **Asit Bhattacharjee Versus M/s Hanuman Prasad Ojha and others 2007 (3) R.C.R. (Criminal) 177**, wherein it has been held that even if a part of the offence was committed by an accused in a particular area, that court would have jurisdiction to entertain the complaint. In other words, when an offence is a continuing offence and is committed in more than one local area, it may be tried by any of those courts having territorial jurisdiction. In view of the above, since the first offence is stated to have

been committed at Gurugram and thereafter at Jamshedpur, the courts at Gurugram shall have the territorial jurisdiction to try the case.

II Whether the pen drive and the transcript attached with the charge sheet can be looked into without certification in terms of Section 65-B of the Evidence Act at the time of framing of charge?

10. Learned Senior Advocate appearing on behalf of the petitioner has raised an argument that the pen drive that forms part of the charge sheet cannot be relied upon by the trial court, while framing charges of abetment against the petitioner under Section 16 of the POCSO Act. It is vehemently argued that there has been non-compliance of Section 65-B of the Evidence Act in so far as there has been no certification as mandated by law. It is argued that notwithstanding anything contained in the Evidence Act, any information contained in an electronic record, which is printed on a paper, stored, recorded or copied in optical or magnetic media shall be deemed to be a document, only if the conditions mentioned in sub-section Section (2) of Section 65 are satisfied.

11. In the present case, the mobile phone on which a video is recorded by the mother of the minor victim, in which the minor prosecutrix had stated and given details of the offence committed upon her, was handed over to the police. The same was downloaded on a pen drive which became a part of the challan presented under Section 173 (2) of the Code. It is argued that such video/pen drive which forms the basis of the FIR is inadmissible in evidence on account of the fact that provisions of Section 65-B have not been complied with. In this regard, reliance has been placed upon the judgment rendered in **Anvar P.V. Versus P.K. Basheer and**

others 2014 (4) R.C.R. (Civil) 504, in which it was held:-

“13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

can lead to travesty of justice.

16. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A – opinion of examiner of electronic evidence.

17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.”

12. This judgment specifically over ruled the judgment rendered in **State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru (2005) 11 SCC 600**, wherein a two Judge Bench of the Supreme Court had an occasion to consider the issue regarding production of an electronic record as evidence in which it was held:

“150. According to Section 63, secondary evidence means and includes, among other things, “copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies”. Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para

276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.”

In Anvar P.V.'s case (supra), it was further held as under:-

“21. It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed under Section 65B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, under Sections 63 and 65,

of an electronic record.

*22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in **Navjot Sandhu case** (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.”*

13. Per contra, Ms. Ojha relies upon a judgment rendered in **Paras Jain: Rajesh Tinker: Man Singh Versus State of Rajasthan 2015 Law Suit (Raj) 1457**, wherein it is been held that the judgment rendered in

Anvar P.V 's case (supra) does not lay down the stage as to when there has to be compliance of Section 65-B of the Indian Evidence Act. While taking note of the judgment rendered in **Anvar P.V 's case (supra)**, wherein it had been held by the Supreme Court that requisite certificate must accompany the electronic record pertaining to which the statement is sought to be given in evidence, the High Court at Rajasthan held that it did not mean that such certificate must be produced along with the charge sheet and if not produced along with the charge sheet, the doors are closed. It has been held as:

“23. When legal position is that additional evidence, oral or documentary, can be produced during the course of trial if in the opinion of the Court production of it is essential for the proper disposal of the case, how it can be held that the certificate as required under Section 65-B of the Evidence Act cannot be produced subsequently in any circumstances if the same was not procured alongwith the electronic record and not produced in the Court with the charge-sheet. In my opinion it is only an irregularity not going to the root of the matter and is curable. It is also pertinent to note that certificate was produced alongwith the charge-sheet but it was not in a proper form but during the course of hearing of these petitioners, it has been produced on the prescribed form.”

14. In a recent judgment reported as **(2017) 8 Supreme Court Cases 570 Sonu alias Amar Versus State of Haryana**, a question that arose before the Supreme Court was, if there was non-compliance of Section 65-B of the Indian Evidence Act and no objection was taken therein, at both the trial and the appellate stage, could that objection be raised for the first time before the Supreme Court. In **Sonu's case (Supra)**, the court, while convicting the accused for murder, relied on certain Call Details Records on

a mobile phone recovered from the accused. Admittedly, the said details were not compliant with the provisions of Section 65-B of the Indian Evidence and at the time when the same were admitted in evidence, no objection was raised regarding their admissibility, neither was any objection raised before the appellate court. The objection was raised for the first time by the senior advocate appearing on behalf of the accused before the Supreme Court, wherein it was argued that the said CDR's could not have been relied upon by the trial/appellate court since Section 65-B of the Indian Evidence Act had not been complied with. While dealing with the issue, the Supreme Court held as under:-

“It is nobody’s case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65B (4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are

permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior advocate for the State referred to statements under Section 161 of the Cr. P.C. 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65 B (4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.” (emphasis supplied)

15. As per the ratio of the aforesaid judgments, it is abundantly clear that any electronic media, which is relied upon, has to be proved in terms of the provisions of Section 65-B of the Indian Evidence Act. A careful reading of the said judgment rendered in **Anvar's case** supra, as relied upon by the learned Senior advocate for the petitioner, in the opinion of this Court, does not specify the stage at which the said certificate has to be adduced. Even in the judgment rendered in **Sonus's case Supra** the Supreme Court recognized that the mode or method of proof is at the time of marking of the document as an exhibit and not necessarily earlier.

16. This issue came up for consideration before the High Court at Delhi in **Kundan Singh vs. State reported as CRL.A. 711/2014 decided on 24.11.2014** when the Division Bench was seized of a question “*whether a certificate under sub-section (4) to Section 65B must be issued simultaneously with the production of the computer output or a certificate under Section 65B can be issued and tendered when the computer output itself is tendered to be admitted as evidence in the court or as in the present*

case by the official when he was recalled to give evidence.” The Division Bench held as under:

“43. Anwar P.V. (supra) partly overruled the earlier decision of the Supreme Court on the procedure to prove electronic record(s) in Navjot Sandhu (supra), holding that Section 65B is a specific provision relating to the admissibility of electronic record(s) and, therefore, production of a certificate under Section 65B(4) is mandatory. Anwar P.V. (supra) does not state or hold that the said certificate cannot be produced in exercise of powers of the trial court under Section 311 Cr.P.C or, at the appellate stage under Section 391 Cr.P.C. Evidence Act is a procedural law and in view of the pronouncement in Anwar P.V. (supra) partly overruling Navjot Sandhu (supra), the prosecution may be entitled to invoke the aforementioned provisions, when justified and required. Of course, it is open to the court/presiding officer at that time to ascertain and verify whether the responsible officer could issue the said certificate and meet the requirements of Section 65B.”

17. The argument raised that **only** such electronic media, which is duly proved in terms of Section 65-B of the Evidence Act, can be looked at by the Investigating Officer is not sustainable. The power of the court is so wide, that it can be exercised at any stage of the proceedings before judgment is delivered and the Court must exercise the power if the production of such document is necessary or desirable for the proper decision in the case.

18. Criminal jurisprudence is such where every liberty is given to both the parties, be it prosecution or the defence, to lead its evidence virtually at any stage of the trial. Sub-section (1) of Section 91 Cr.P.C.

provides that whenever any Court considers that the production of any document is necessary or desirable for the purposes of any trial under the Code by or before such Court, such Court may issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons. Section 311 of the Code that has been enacted, which allows the Court to summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined, if the Court is of the opinion that his evidence appears to be essential for the just decision of the case. Under these provisions, it is permissible for the court even to order production of document before it, if it is essential for the just decision of the case. If wide scope is given to the courts and the parties to summon witness, produce additional evidence for just and proper disposal of the case, it is not feasible that the courts would close out evidence only because the certificate under Section 65-B is not accompanying the pen drive/mobile phone/computer/CD etc (list is not exhaustive) and does not form a part of the challan as put up under section 173 (2) of the Code. It has also to be borne in mind that Section 173 (8) Cr.P.C. permits further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, after further evidence, if oral or documentary evidence is obtained, the investigating officer shall forward to the Magistrate a further report and the provisions of Sub-sections (2) to (6) shall apply in relation to a report forwarded under Sub-section (8).

19. Therefore, in view of the ratio of the judgment, referred to

above, it is held that even though there **has to be** strict compliance of Section 65-B of the Evidence Act pertaining to any electronic data, non-compliance of the same would not render the said document inadmissible *at the time of framing of the charge*. Needless to say that it is for the trial court to refer to the validity of the document at the time of final judgment.

III Whether there has been abetment attributable to the petitioner, as alleged in the FIR ?

IV Whether the charges framed under Section 6 and 10 of the POCSO Act would be sustainable qua the petitioner?

20. This court proposes to deal with questions III and IV, as framed, together.

21. An argument has been raised that a simpliciter reading of the initial statement of the prosecutrix recorded on 28.6.2017 does not make out any case of abetment against the petitioner since all the allegations were against the grandfather. It is only subsequently that the investigating agency in order to fill in the lacunae again recorded the statement under Section 161 of the Code of both the victim and her mother. The second statement recorded is nothing but an improvement on the earlier statement and suffered in order to rope in the petitioner as an accused.

22. The Protection of Children From Sexual Offences Act, 2012 enacted to protect children from offences of sexual assault, sexual harassment and pornography and has very stringent provisions. Data has been collected by the National Crime Records Bureau, which shows that there has been increase in cases of sexual offences against children, and interest of a child both as a victim as well as a witness needs to be protected.

Sexual abuse within the four corners of a home is also not uncommon.

Section 16 of the POCSO Act, reads as under:-

16. Abetment of an offence.—A person abets an offence, who-

Firstly.—Instigate any person to do that offence; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.—intentionally aids, by any act or illegal omission, the doing of that offence.”

Thus, according to Section 16 of the POCSO Act, any act or omission, constitutes the offence of abetment, firstly if a person instigates any person to do that offence; secondly, engages with one or more other person or persons in any conspiracy for doing that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or thirdly intentionally aids, by any act or illegal omission, the doing of that offence. Further three explanations have been added to the said Section, which reads as under:-

Explanation I.- A person who, by willful misrepresentation, or by willful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.- Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.-Whoever employs, harbours, receives or transports a child, by means of threat or use force or other forms

of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.”

23. Learned Senior Advocate appearing on behalf of the petitioner argues that there is no abetment as far as reading of the section goes. Nowhere in the FIR has it been stated that the petitioner had instigated her husband to commit the offence; nor has there been any conspiracy with her husband for sexual harassment/molestation of the minor victim nor has she intentionally aided her husband in the commission of the alleged offence. It is further argued that the charge-sheet does not specifically mention as to under which of the provisions of Section 16 of the POCSO Act, namely, first, second or third, the petitioner is being charge-with.

24. In this regard, this Court has gone through the summoned police file and perused the statements recorded. As per the disclosure statement of the petitioner recorded on 5.7.2017, it is specifically mentioned that Punam Thakur has confessed of her own volition in the presence of the witnesses that her granddaughter had informed her, that her husband-- Shailzanand Thakur used to do wrong acts with her, and upon being informed, she said that she would give beatings to the grandfather. However, she did not take any serious note of her granddaughter's statement in order to avoid any harm to the reputation of the family.

25. This memo of confession, as available on the police file, would *prima facie* be indicative that there has been illegal omission on the part of the petitioner, in so far as not disclosing the act of her husband—

Shailzanand Thakur—to the parents of the minor victim. In the explanation (I) that has been given to Section 16 of the POCSO Act, it is enumerative that a person who by willful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate that offence. This explanation would be read down to the effect that the petitioner was bound to disclose the commission of the offence being committed upon the minor granddaughter, as soon as the same was disclosed to her.

26. In the complaint, there is a specific allegation that the petitioner was present in the house and was made aware by the grand-daughter that she was being caused hurt by the grandfather which statement was neither looked at nor heeded to. Thus, an element of '*abetment*' as spelt out under Section 16 of the POCSO Act is prima facie made out.

27. Another argument has been raised by the senior Advocate for the petitioner that the petitioner has not been specifically charged for any part of Section 16 of the POCSO ACT of 2012 and the said charge being omnibus is not sustainable. However, this argument is devoid of any merit. Section 211 of Cr.P.C enumerates that every charge shall state the offence with which the accused is charged with. Section 215 of Cr.P.C. takes into account a situation where there is an error in the framing of charges: section provides that '*No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice*'. A co-joint reading of both the aforesaid

sections would lead this Court to a conclusion that a person must be made aware of the offence that he/she is being accused of. Merely because the general offence does not enumerate as to how the abetment has been done or which subsection is invoked, omission of such error, would not make the charge invalid.

28. While dealing with the issue of framing of charge, the Supreme Court in **Chandra Prakash Versus State of Rajasthan (2014) 8 Supreme Court Cases 340** held as under:-

*“68. The next aspect which needs to be adverted to is non-framing of specific charge. On a perusal of the record, we find that the learned trial Judge has framed the charges specifically by putting the charges to the accused. The purpose of framing of charges is that the accused should be informed with certainty and accuracy of the charge brought against him. There should not be vagueness. The accused must know the scope and particulars in detail. In this context, we may refer to decision in **Santosh Kumari v. State of Jammu and Kashmir and others** 39, wherein it has been held as follows: -*

“17. Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973.

18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch

jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in Willie (William) Slaney v. State of M.P.⁴⁰ SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.”

29. In view of the above discussion, it prima facie appears that the charge of 'abetment' is attributable to the petitioner since she failed by illegal omission to disclose the offence complained of to the parents and hence the charges under Section 506 IPC and Sections 6, 10 and 16 of the POCSO Act were rightly framed by the trial court.

30. Before parting with this judgment, this Court would like to deal with the revisional power of this court to interfere with framing of charges. There are a catena of judgments, which have gone into the question as to what factors should be considered by the Court at the time of framing of charges. **Sajjan Kumar VS. CBI (2010) 9 SCC 368, Soma Chakravorty vs. State through CBI (2007) 5 SCC 403, Amit Kapoor Versus Ramesh Chander and another (2012) 9 SCC 460** are some judgments where it

has been categorically held that a court is required to evaluate the material

and documents on record to see if the facts emerging therefrom, taken at their face value, would constitute the offence alleged. It is not possible to sift the evidence at the initial stage. The Court is to only apply its judicial mind on the material placed before it and be satisfied that there is a commission of offence. At the stage of framing of charge, the Court is not to enter into a roving inquiry to appreciate or weigh the material on record and only then frame charges. Strong suspicion is enough for a Court to form a presumptive opinion as to the existence of an event having taken place, justifying framing of charge. The Supreme Court, in a latest judgment rendered in **State of Rajasthan Versus Fatehkaran Mehdu AIR 2017 SC 796**, while relying upon the judgment in **Amit Kapoor Versus Ramesh Chander and another (2012) 9 SCC 460**, has categorically held as under:-

“26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which vests the court with the power to

call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. *It is useful to refer to judgment of this Court in **Amit Kapoor and Ramesh Chander and Another, (2012) 9 SCC 460**, where scope of Section 397 Cr. P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:*

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

"13. Another well accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory

order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.”

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in

terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge, this revision petition is dismissed, being bereft of merit. However, it is made clear that the trial court shall not be influenced by any observations made herein above.

December 6, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes