

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

Criminal Revision No. 4607 of 2017(O&M)

Date of Decision: December 11 , 2017.

Rajbala

..... PETITIONER (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sandeep Lather, Advocate
for the petitioner.

LISA GILL, J.

This revision petition has been filed by the petitioner, who is the complainant in FIR No.22 dated 29.03.2016 under Sections 354/365/511/34 IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act'), Police Station Women, Kaithal, for setting aside order dated 06.11.2017 passed by the learned Additional Sessions Judge, Kaithal as well as charge-sheet dated 06.11.2017. Application under Section 216 Cr.P.C. filed by the petitioner for alteration of charge, framed on 13.02.2017, was partly allowed by the learned trial court vide impugned order.

Brief facts necessary for adjudication of this matter are that, the abovesaid FIR was registered on the statement of the petitioner to the effect that her maternal grand-daughter, aged 13 years, was coming back home on

26.02.2017 at about 7.00 p.m. It is stated that as the complainant and her granddaughter were coming back, three boys i.e., respondents No.2, 3 and 4 came and forcibly kidnapped her maternal granddaughter on a motorcycle with an intention to outrage her modesty. FIR No.22 under Sections 354/365/511/34 IPC and Section 12 of the POCSO Act was registered on 29.03.2016. Statement of the victim under Section 164 Cr.P.C. was recorded on 30.03.2016. The victim stated that she alongwith her maternal grandmother (Nani) were coming back home after completing their work. The victim's grandmother was walking a little ahead of her. Respondent No.3 came on a motorcycle whereas, respondent No.2 was riding pillion on the said motorcycle. Respondent No.2 gagged her mouth and forcibly made her sit on the motorcycle. Respondent No.4 was accompanying them on another motorcycle. Respondent No.4 asked respondents No.2 and 3 to take the victim in the fields. In the meantime, another motorcycle came from behind. Riders of the said motorcycle coming from behind raised an alarm regarding the victim being kidnapped, on which respondent No.2 jumped off the motorcycle. The victim, on getting an opportunity, also jumped off the motorcycle and ran away into a nearby house. She was dropped at her residence by two persons. Final report under Section 173 Cr.P.C. was presented against respondents No.2 & 3 and respondent No.4 was found innocent. Thereafter on an application under Section 319 Cr.P.C., respondent No.4 was also summoned to face trial as an additional accused.

It is to be noted that the learned trial court framed charges against all the accused persons under Section 365 read with Section 34 IPC, Section 354 read with Section 34 IPC, Section 511 read with Section 34 IPC and Section 12

of the POCSO Act read with Section 34 IPC. Copy of charge-sheet dated 13.02.2017 is attached as Annexure P3 with this petition. Statement of the petitioner as well as the victim were recorded before the learned trial court on 21.10.2017. An application under Section 216 Cr.P.C. (Annexure P6) was moved on 28.10.2017 with the averments that due to a clerical mistake, charges under Sections 365 and 511 IPC were framed separately and charge under Section 8 of the POCSO Act was required to be framed, instead of charge under Section 12 of the POCSO Act. Reply to the said application (Annexure P7) was filed by the accused.

The learned trial court on considering the facts and circumstances, partly allowed the application while noting that charge under Sections 365 and 511 IPC should not have been framed separately. Therefore, charge against respondents No.2 to 4 was amended to that of Section 365 read with Section 511 IPC and Section 354 read with Section 34 IPC. It is however held that charge under Section 12 of the POCSO Act was rightly framed and there is no occasion to frame the charge under Section 8 of the POCSO Act. Aggrieved therefrom, the present revision petition has been filed by the complainant-petitioner.

Learned counsel for the petitioner submits that the allegations in the FIR, statement of the victim under Section 164 Cr.P.C. as well as her evidence before the learned trial court clearly reveal the offence punishable under Section 8 of the POCSO Act. Therefore, the learned trial court has erred in not altering the charge against respondents No.2 to 4 to that of Section 8 instead of Section 12 of the POCSO Act. It is submitted that the victim clearly stated that respondent No.4 – Rahul asked the other two co-accused to take her to the

fields. It is thus evident that the act of picking up the victim with sexual intent was clear therefore, respondents No.2 to 4 are liable to be proceeded against for the offence punishable under Section 8 of the POCSO Act. It is thus prayed that this petition be allowed and respondents No.2 to 4 be proceeded against for the offence punishable under Section 8 and not Section 12 of the POCSO Act.

I have heard learned counsel for the petitioner at length and have gone through the file.

Relevant part of the statement of the victim attached as Annexure P5, reads as under:-

“Stated that I used to study in 5th class. I used to reside with my nana and nani at Pundri. I and my nani used to cleaning work at the residence of the peoples. I along with my nani (Raj Bala) were coming back after doing the work. On 26.02.2016 at about 7.00 p.m. My nani was ahead and I was following her. From the back side two motor-cycles came, one motor-cycle was being driven by Sethi son of Nafe Singh and one Laddu were sitting on the pillion rider. Second bike was being driven by Rahul. Accused Laddu pulled me catching by my arm and made me sit on the motor-cycle and gagged my mouth and they carried me. Then Rahul accused asked the other co-accused to take me to the fields. In the meantime, one another bike came from behind and they raised alarm regarding the kidnapping of girl. On which accused Laddu jumped from the motor-cycle. On which I got an opportunity and I also jumped from the motor-cycle and ran away and entered the house of some person situated nearby. In the meantime, many persons came from the front side and on seeing them the accused ran away. Thereafter, two persons dropped me at my residence. My statement in this regard was recorded. I identify the accused present in the court as Laddu and Sethi.”

Learned counsel for the petitioner has laid great emphasis and stress

on the statement of the victim to the extent that respondent No.4 asked the other co-accused to take her to the fields. It is on this basis that the petitioner seeks alteration of the charge and prays for respondents No.2 to 4 to be proceeded against under Section 8 of the POCSO Act.

Section 8 of the POCSO Act deals with the punishment for sexual assault. 'Sexual Assault' is defined in Section 7 of the POCSO Act, which reads as under:-

“7. Sexual assault : Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

A bare perusal of the file including the contents of the FIR as well as the statements of the complainant and the victim, do not indicate a prima facie case punishable under Section 8 of the POCSO Act, at this stage. Judgment of the Calcutta High Court in **Bijoy @ Guddu Das v. The State of West Bengal, 2017(2) RCR (Criminal) 858** relied upon by learned counsel for the petitioner is not applicable in the facts and circumstances of the present case.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 06.11.2017 passed by the learned Additional Sessions Judge, Kaithal and consequent charge-sheet dated 06.11.2017 which calls for interference by this Court in exercise of its revisional jurisdiction.

Accordingly, this petition is dismissed.

It is clarified that none of the observations made hereinabove shall

be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

December 11 , 2017.
'om'

(**LISA GILL**)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No