

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decided on: 16th January, 2017**

+ **CRL.REV.P. 9/2017**

STATE

..... Petitioner

Represented by: Ms. Kamna Vohra, Additional
Standing Counsel for State with
SI Rekha, PS Mayur Vihar.

versus

DR.GAJRAJ SINGH

..... Respondent

Represented by: None.

+ **CRL.REV.P. 10/2017**

STATE

..... Petitioner

Represented by: Ms. Kamna Vohra, Additional
Standing Counsel for State with
SI Rekha, PS Mayur Vihar.

versus

DR.GAJRAJ SINGH

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. FIR No.387/2015 under Section 354 IPC and Section 10 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') was lodged on the complaint of the prosecutrix who stated that she was 12 years old and on 22nd June, 2015 at about 10.00 am she had gone to Homeopathy Dispensary at Block-26, Trilok Puri for her check up along

with her mother. When her mother told the doctor that she was having stomach, the doctor started checking her stomach by pulling up her top and thereafter pulled down her pyjama and started touching her private part with his hand on which her mother caught hold off his hand and asked him what he was doing on which the doctor said that he was examining her. On her mother asking to complaint against him, the doctor said that whatever she wants to do she can do. She made a call to the police.

2. FIR No.388/2015 under Section 354 IPC and Section 10 of the POCSO Act was lodged on the written complaint of the prosecutrix who stated that she was 17 years old and on 22nd June, 2015 around 10.00 AM she had gone to Homeopathy Dispensary at Block-26, Trilok Puri. When she told the doctor that she was having pain in the stomach, the doctor told her to pull over her shirt so that he could check her. When she pulled her shirt, the doctor checked her stomach and asked her to loosen her string of salwar so that he could check. The prosecutrix protested stating that it was her stomach which was paining and did not open the salwar however, the doctor kept his hand over her lower portion from over the salwar due to which she got terrified. When she came home she told her mother and gave a written complaint.

3. Both the prosecutrix were produced before the learned Metropolitan Magistrate for recording her statement under Section 164 Cr.P.C. wherein they completely exonerated the respondent. They stated in her statement under Section 164 Cr.P.C. that on 22nd they had gone with her mother to the dispensary and went to the doctor without following the line due to which the doctor scolded her. They started crying and their mother called the police on phone. They did not know what happened thereafter.

4. Based on the statements recorded under Section 164 Cr.P.C., the learned Additional Sessions Judge discharged the respondent. Challenging the orders dated 23rd July, 2016, the State prefers the present petitions.

5. Learned Additional Standing counsel for the State submits that in view of the complaints of both the prosecutrix and statement under Section 161 Cr.P.C. wherein they supported the prosecution case, the respondent could not have been discharged merely on the basis of the statements recorded under Section 164 Cr.P.C. and the respondent is required to face trial for the offence alleged.

6. Supreme Court in the decision reported as 2010 (9) SCC 368 Sajjan Kumar vs. Central Bureau of Investigation after considering various decisions of the Supreme Court, summarized the principles with respect to scope of Sections 227 and 228 of Cr.P.C. as under:

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) *The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

(iv) *If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

(vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to*

discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

7. The present is not a case where there are some material changes or improvements or differences from the statements on the basis of which FIR was registered and recorded under Sections 161 Cr.P.C. Statements under Section 164 Cr.P.C. were recorded by the Magistrate after verifying the voluntariness of both the prosecutrix to make the statements and that they were under no threat or coercion. As per the statements recorded under Section 164 Cr.P.C. the police was called after the doctor scolded both the prosecutrix and their mother for not following the line. Even during trial the two statements, that is, one recorded under Section 161 Cr.P.C. and other under Section 164 Cr.P.C. are not reconcilable. The distinction between the two being so severe that even without a roving and fishing inquiry it can safely be held that at this stage itself there is no strong suspicion to proceed against the respondent. As held by the Supreme Court, even at the stage of framing of charge, the Court has not to act as the mouthpiece of the prosecution but should examine the broad probabilities of case.

8. In view of the discussion aforesaid, I find no error in the orders passed by the learned Additional Sessions Judge discharging the respondent.

9. Petitions are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 16, 2017
‘vn’