

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.129 OF 2018

Dawood Mohammed Vaid, Age 39 years,
R/o.102, Shrishti Homes, Plot No.96,
Sector-27, Nerul, Navi Mumbai-400 706.

Applicant

versus

The State of Maharashtra, through Nerul
Police Station.

Respondent

Mr.Akhilesh Dubey with Vagish Mishra and Uttam Dubey i/by Law
Counsellors for applicant.

Mr.A.R.Patil, Additional Public Prosecutor, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th August 2018

PC :

1. The applicant is aggrieved by order dated 14th December 2017 passed by Additional Sessions Judge-2 and Special Judge for Pocso cases, Thane below Exhibit-7 in Special (Pocso) Case No.99 of 2015. rejecting the application for discharge preferred by the applicant.

2. The prosecution case is as follows :

(a) The first information report was lodged on 28th February 2015 by Mrs.Aafia Peerzada Masiha with Nerul Police Station for offences under Sections 4, 5(f), 5(m), 6, 8, 10, 16 of Protection of Children from Sexual Offences Act, 2012 ('POCSO') read with Sections 376(2)(i), 506, 34 of Indian Penal Code. The complainant's daughter was studying in Junior KG class at Red Camel International Pre-School, Nerul. On 23rd February 2015, accused no.1 Irfan Rehman Aalam who was employed as a teacher in

the said school unzipped the complainant's daughter's pant and inserted his finger in her private part and thereby committed offence. On the same day the act of the teacher was brought to the notice of complainant upon which she called her husband and narrated the said fact to him on telephone as he was out of station. After speaking to her husband, the complainant called the admin office of the school and inquired whether CCTV has been installed in the class room upon which the admin informed in the negative. The complainant narrated the incident to admin. She was requested to speak to the Principal of school Ms.Yasmin Owaisee. The Principal called the complainant to the school. The complainant along with victim went to the school and met the class teacher of the victim, who inquired about the incident to the victim. "The incident was narrated by the victim and also mentioned the name of teacher who committed the said act. The Principal called accused no.1 but he was not available. The applicant was informed about the incident. The husband of the complainant informed her to lodge a complaint with police. Pursuant to that, the complainant and the victim visited the police station. The victim was sent for medical examination. The Director of school (applicant herein) informed the complainant that the incident is minor and the victim will have to visit the Court in future and if she lodges the complaint, it will cause mental stress to the victim. Since the husband of the complainant was out of town, she informed the police that she would consult with her husband and thereafter take appropriate action. On 27th February 2015 there was a meeting in the school, which was attended by the complainant and her husband. After the meeting was over, the applicant-accused threatened the complainant and her husband that in the event they lodge a complaint, he would file a case against them. Pursuant to

that, the complainant visited the police station and the FIR was registered on 28th February 2015.

(b) The police conducted the investigation and filed charge sheet for offences u/ss.4, 5(f), 5(m), 6,8,10,16 of POCSO Act and under Sections 376(2)(i),506,34 of Indian Penal Code.

3. The applicant preferred an application for discharge before the Special Court which was rejected on 14th December 2017. While rejecting the said application it was observed that the applicant is one of the Director of the school. The incident was narrated to the applicant by mother of victim. The complainant and victim had narrated the incident and also named accused no.1 as the person who has committed the sexual assault. The applicant came to know about the incident and being the guardian of the pupil in school, he was duty bound to inform the incident to police. He had not done so. On the contrary, he had asked the informant to go to house stating that the incident is trifling and in future the victim will be required to attend Court, which may cause mental harassment to her. It is further observed that in stead of disclosing the incident to police as it being a serious crime and sexual offence against minor girl who was in the custody of her class-teacher i.e. accused no.1, the applicant concealed the incident and threatened the informant and abused his power and position. Thus, there is prima facie case against the applicant to frame charge for the offence u/s 16 of POCSO Act and Section 506 of Indian Penal Code. On the basis of said observations, the application was rejected.

4. Learned counsel for applicant submitted that no case is made out against the applicant to frame charge. He has been falsely

implicated in the crime. Accepting the case of prosecution as it is, no offence is made out against the applicant. It is submitted that the school Principal and the teachers gauzing the gravity of the incident, called upon the applicant and informed him about the entire incident. As soon as they got the information he was shocked as he always had righteous virtues at the highest pedestal in life. The applicant called the accused no.1 and accompanied the complainant to police station and handed over the accused to the police. The victim was sent for medical examination. It is submitted that the police asked the complainant to lodge the FIR, but she refused to do so by stating that she was not sure whether she wants to lodge complaint and since she did not lodge any complaint, the accused no.1 was let off by police, who absconded from the scene. The applicant was not even aware as to why the complainant did not give statement to police. It is further submitted that the complainant and her husband had started quarreling and threatening the applicant that they would implicate him if he does not produce the absconding accused. The allegation made against the applicant that he has concealed the incident and threatened the complainant, are false. The applicant and his institution has helped the investigating machinery in finding accused no.1 and getting him arrested. The applicant had no reason to conceal the crime as he himself has visited the police station along with complainant and handed over the custody of accused no.1. It is submitted that the applicant is facing humiliation in the society and even while travelling abroad, he has to face difficulties at the airport being branded as a molester. The Special Court has committed error by rejecting the application for discharge. Section 16 of the POCSO Act cannot be invoked against applicant. It is submitted that it cannot be said that the

applicant has abetted the accused no.1 in commission of crime. Even taking the allegations as true, the overt act which has been attributed to the applicant is that he has concealed the crime and/or he has threatened the complainant and her husband, which would not justify invocation of Section 16 of POCSO Act,. He cannot be charged with other offences which were allegedly committed by accused no.1. In support of his submission, learned counsel for applicant relied upon decision of Patna High Court in case of **Hazari Lal Vs. Emperor** reported in **AIR-1921-Pat-286**.

5. Learned APP submitted that the statement of complainant, the statement of victim and the father of victim supports the case of prosecution. In the FIR it is categorically stated that the applicant had informed the complainant that the incident is trifling and if she lodges the complaint, it would cause mental harm to the victim as she will have to visit the Court in future. It is further submitted that the complainant has categorically stated that the applicant has threatened the complainant and her husband that if they lodge the complaint, he would lodge a case against them. This is sufficient to show that the applicant had intimidated the complainant and her husband from lodging the complaint and he had tried to conceal the crime from police. The interpretation of Section 16 of POCSO Act as canvassed by the advocate for applicant will be a matter of trial, and it cannot be appreciated at this stage. The prosecution has made out prima facie case against the applicant. Therefore, the application should be dismissed.

6. On perusal of the FIR it can be seen that a specific overt act has been attributed to the applicant. He is the Director of school in

which the victim minor girl is studying. He was informed about the incident by the staff of school and the applicant. The complaint further mentions that the applicant had informed the complainant that she should not proceed with the complaint as it would cause mental harassment to the daughter and the incident is of trifling nature. It is pertinent to note that accused no.1 was a school teacher and the students were in his custody. He has indulged into serious crime and that too in the school premises, which hampers the safety of minor students. Considering the gravity of the offence immediate action is required to be initiated. The contention of the applicant that he had accompanied the child along with complainant and handed over the custody of accused no.1 to police, and the complainant had backed out from lodging the complaint, are debatable issues which are to be appreciated at the time of trial. The complainant is supported by statement of her husband. The incident is supported by version of the victim. The complaint categorically mentions that the applicant has threatened the complainant and her husband that if they lodge the complaint, he would also lodge a case against them. The incident of threat has to be read in consonance with the allegation that applicant has concealed the crime and had represented the complainant that the incident is minor in nature. On completing the investigation the prosecution has filed charge sheet and has also invoked Section 16 of POCSO Act. The act of intimidation invites invocation of Section 506 of IPC. Section 16 of POCSO Act relates to abetment of an offence. Explanation-1 to Section 16 of POCSO Act states that a person, by willful misrepresentation or by willful concealment of a material fact which is bound to disclose voluntarily causes or procures or attempt to cause or procure any public done, is said to instigate the doing of

that offence. The applicability of said provision can be appreciated at the time of trial. In the decision relied upon by the advocate for applicant it was held that abetment by aiding or instigation would necessarily mean some active suggestion or support or stimulation to the commission of the offence itself. If the offence is already complete before anything was done by the accused, any subsequent action which might in any way help the accused, will not be abetment within the meaning of Section 107 of IPC. Learned APP, however, submitted that the decision is not applicable in the present case as Section 16 of POCSO Act which relates to abetment of an offence also includes concealment of material fact which a person is bound to disclose, which is not within the purview of Section 107 of IPC and the said decision is not applicable in the present case. In the circumstances, the issues which are raised in this application will have to be decided at the time of trial and at this stage by accepting the grounds raised by the applicant, the proceedings cannot be quashed or the applicant-accused cannot be discharged.

7. Hence, I pass following order :

ORDER

- (i) Criminal Revision Application No.129 of 2018 is dismissed;
- (ii) The Additional Sessions Judge-2 and Special Judge for Pocso cases, Thane shall not be influenced by any observation made in this order during trial and trial be completed in accordance with law.

(PRAKASH D. NAIK, J.)

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