

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

CRM-M No.48067 of 2017

Date of decision: 20th November, 2018

Sanjeev Kumar

... Petitioner

Versus

State (UT Administration) & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Puneet Jindal, Senior Advocate with
Ms. Neha Anand Mahajan and Mr. Nitin Kumar, Advocates
for the petitioner.

Mr. Rajiv Sharma, Addl. PP UT Chandigarh
for the respondents/State.

FATEH DEEP SINGH, J.

“There is no trust sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and they can grow up in peace.” are the well known words of **Mr.Kofi Annan**, the then Secretary General of the United Nations Organization which forms the aim and object for which the Convention on the rights of the child was held and is otherwise the motive of UNICEF which is to the effect ‘**for every child, health, education, equality, protection and advance humanity**’. Precisely is the subject matter of this petition by petitioner Sanjeev Kumar with the aid of Section 482 Cr.P.C. seeking quashment of the complaint dated 16.05.2015 (Annexure P10), summoning order dated 05.08.2017

(Annexure P12), order framing charges dated 30.11.2017 (Annexure P14) and chargesheet dated 30.11.2017 (Annexure P15), whereby the petitioner has been charged for commission of offences under Sections 19 and 21(2) of the Protection of Children from Sexual Offences Act, 2012 (in short, 'the POCSO Act').

Heard Mr. Puneet Jindal, Senior Advocate assisted by Ms.Neha Anand Mahajan and Mr. Nitin Kumar, Advocates representing the petitioner; Mr. Rajiv Sharma, Additional Public Prosecutor, UT Chandigarh for the respondents/State and on perusal of the records.

Before getting on to the merits of the case of each of the parties to this petition, a rough sketch of the background, how and by what means the present petition has come about, needs to be sketched. Initially, one Harvinder Singh, complainant in case bearing FIR No.182 dated 13.05.2015 under Sections 354, 354A IPC and Section 8 of the POCSO Act pertaining to Police Station Sector 39, Chandigarh (in short, 'the FIR case') had made a statement before the police wherein he alleged that his daughter, who was then aged five years, was studying in KG class in the school being run by the petitioner. It is claimed that the girl student used to be ferried by the school bus whose driver was one Jasbir Singh and conductor was Jagjit Singh, the latter being an accused in FIR case. It is alleged that on 07.05.2015 when his daughter was dropped by the school bus, the father found that the child was perturbed and itching on her private parts. On further talking to the child and

examining her, it was revealed by the daughter that the bus conductor Jagjit Singh used to do wrong acts with her with his hand, and which matter was reported to the Principal of the school who failed to take any effective steps into it and it is thereafter, the complainant approached the police authorities through complaint (Annexure P1) leading to registration of a criminal case. It is worthwhile to refer here that the Court of learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh through judgment and order of sentence dated 28.09.2016 found the accused guilty for commission of various offences and sentence him as follows:

Offence u/s	Period of sentence (RI)	Fine imposed (Rs.)	Period of sentence in default of payment of fine (SI)
354 IPC	5 years	25,000/-	Three months
354-A IPC	3 years	3,000/-	One month
10 POCSO Act	5 years	25,000/-	Three months

During the course of events, Chandigarh Commission for Protection of Child Rights (UT)-respondent No.2 (hereinafter referred to as, 'the Commission') sent its recommendations dated 16.05.2015 (Annexure P10) to the Inspector General of Police, Police Headquarters, Sector 9, Chandigarh (UT) directing registration of another FIR against the present petitioner being the School Administrator and against the owner of the bus Amrik Singh. It was on the basis of this, the Court of learned Additional Sessions Judge-cum-Judge, Special Court,

Chandigarh took cognizance and recorded deposition of the witnesses by way of preliminary evidence. In the preliminary evidence, CW-1 Prof. Devi Sirohi, Chairperson of the Commission testified, proving documents Ex.C1 and Ex.C2; followed by the testimony of CW-2 Prof. Nishtha Jaswal, Member of the Commission, and thereafter, Inspector Arti Goyal stepped into the witness box as CW-3 and proved the complaint Ex.C2, her endorsement Ex.C3 and FIR Ex.C4. Thereafter, the father of the girl testified as CW-4. It is on the basis of this preliminary evidence, the Court vide orders dated 05.08.2017 on the basis of enquiry report and the letter of the Commission Ex.C2, found that there were sufficient grounds to summon the petitioner and the owner of the bus (hereinafter referred to as, 'the transporter') to face trial for commission of offence under Section 19 punishable under Section 21 of the POCSO Act. That is how the present petition has come about.

Appreciating the arguments of the two sides, the first and the foremost argument that has come about by the petitioner side is that the occurrence is alleged to have taken place on 07.05.2015 and the Commission has taken cognizance on 16.05.2015 whereas the summoning order has been passed belatedly on 05.08.2017, and therefore, the complaint was hopelessly time barred and belated one. The same is sought to be controverted by learned counsel for the respondents arguing that it was the inherent inertia in the system which was at work

and because of the influence wielded by the petitioner School, the authorities did not move and is in itself self-explanatory for this delay.

The very opening lines of Section 19 of the POCSO Act are reproduced herein below to lay emphasis:

*“19. **Reporting of offences.** – 1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, -*

(a) the Special Juvenile Police Unit; or

(b) the local police.”

The POCSO Act has been enacted under the provisions of Article 15 of the Constitution of India which inter-alia confers upon the State powers to make special provisions for children. Furthermore, Article 39 of the Constitution provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. Our country has ratified way back on 11.02.1992, the United Nations Convention on the Rights of Children, and had undertaken to make appropriate laws to prevent inducement or coercion of a child to engage in any unlawful sexual activity as well as exploitation of children in prostitution or other unlawful sexual practices including pornographic materials. The same has been necessitated

because of the ever increase in cases of sexual offences against the children and it has been observed by the National Crime Records Bureau in the country that a large number of cases are neither specifically reported nor adequately penalized, and it was with this object in mind the POCSO Act has come about by way of Act of 32 in the year 2012. Since the Act is a special legislation and has kept aside the provisions of the Code of Criminal Procedure and the procedure and powers of the special courts having been duly enumerated by Chapter VIII of the POCSO Act, makes sufficiently clear the very purpose for which the same have been brought about.

Looking from another side, as per the testimony of the father of the girl as CW-4, it was on 07.05.2015 the parents for the first time have discovered the abuse of their minor daughter and upon their gaining confidence of the child, it was brought to their notice how she was being abused by the conductor of the school-bus. It is well enumerated in his testimony that since it was late evening, on the next day the family had gone to the school of the child where they met the transporter and narrated the incident even to the Principal of the school but who failed to act into the matter and the parents were assured of a suitable action on which they returned back waiting a call from the authorities, but to no avail, and when the family was ultimately called to the school, they again narrated the incident to the Principal and the Principal promised them of suitable legal action and on 10.07.2015 (sic.) the father had given a

complaint in writing to the Principal and thereafter, visited the school on 11.05.2015 to know the fate of their complaint and then, the family again came to the school on 12.05.2015 and met the Principal and he has proved on record his complaint made to the school authorities. When the school authorities failed to initiate any action, on 13.05.2015 parents of the school children had raised hue and cry, which led to filing of the criminal complaint against the accused and thus, was arrested and put to trial.

This statement by the father of the child victim is in itself illustrative of the reticence shown by the school authorities, of whom the petitioner happens to be the Administrator and instead of having been given the knowledge, has tried to sweep under the carpet for a sinister design and a motivated cause and thus, in itself sufficient explanation how the matter was got intentionally delayed by cohorts bent upon frustrating in putting to place the law of the land, and therefore, to the mind of this Court, is in itself sufficient explanation for what has led to this delay. Furthermore, it is well settled golden principle of criminal jurisprudence that mere delay in lodging of criminal proceedings is not taken to be fatal and the Court needs to lift the veil to see the very reason how it has come about and whether it was justified on the part of the victim side and not an outcome of embellished account for a motivated cause. Learned counsel for the petitioner could not enliven his arguments

to support his submissions and therefore, this submission as such is brushed aside.

It is not the case of the petitioner, as is sought to be projected by the learned counsel representing him that he has no role to play in the administration of the school and since the matter was specifically brought to the notice of the school authorities and being the Administrator, by all means the petitioner is responsible to ensure due redressal of the grievances, especially in matters involving the provisions of the POCSO Act. More so, this omission to act tantamounts to abetment of an offence as provided under Section 16 of the POCSO Act.

Section 19 read with Section 21 of the POCSO Act casts a heavy onus on any person who fails to report the commission of an offence under sub-section (1) of Section 19 or Section 20 of the POCSO Act including for failure to record commission of an offence. Sub-section (2) of Section 21 of the POCSO Act is reproduced as below to lay emphasis:

“21. Punishment for failure to report or record a case.-

1. xxxx xxxx xxxx
 xxxx xxxx xxxx

2. *Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.”*

Thus, a plain reading of these provisions is in itself illustrative that the legal obligation that is cast upon the school authorities in the present case is to have reported the commission of offence by all means which they failed to do so. Often it has been observed, the disturbing trend in our society in not reporting the instances of sexual assault on minor children and which is a classical example in the present case as well. The studied silence of the school authorities including the petitioner is in itself suggestive that by keeping mum they are trying to screen the culprit of commission of such an offence.

In their vociferous arguments by the two sides, learned counsel for the petitioner Mr. Puneet Jindal, Senior Advocate assisted by Ms. Neha Anand Mahajan and Mr. Nitin Kumar, Advocates has sought to distinguish intention, knowledge and reason to believe, by seeking support from '**A.S. Krishnan vs. State of Kerala**' 2004(2) RCR (Criminal) 312; and '**Joti Parshd vs. State of Haryana**' 1993(1) RCR(Criminal) 554. However, with due apologies the cited ratios pertain to allegations of counterfeit and forgery punishable under the Indian Penal Code, a general substantial law code and which is factually at much variance from the facts before this Court. This Court seeks support from '**Dr. Sr. Tessy Jose and others vs. State of Kerala**' 2018(4) RCR(Criminal) 114, wherein in a latest view of August 2018, the Hon'ble Supreme Court in a matter pertaining to the POCSO Act has held that the word 'knowledge' means that some information received by

such person gives him/her knowledge about commission of crime and therefore, casts no obligation on that person to investigate and gather knowledge. By virtue of Section 19(1) of the POCSO Act, an obligation is sought to be cast upon the person who receives such an information to inform the relevant authorities of such a knowledge so as to ensure that the law is put into motion. Learned counsel for the petitioner to the specific query of the Court could not in any manner convince what action was initiated either in providing such information to any Special Juvenile Police, local police or even entering in his school records for furthering action into the matter, or what action has been prompted by the school authorities as well as transporter on the receipt of this information, and it could not be accepted, as is sought to be projected by the petitioner side, that foisting this criminal liability upon the petitioner and his associate, the transporter, would be too far fetched. As has already been detailed, these provisions have been specially enacted for a specified purpose in attainment of the object and the goals for which the said law has come into force. Child protection is more than a right. It is a framework or system by which the rights of a child can come to be. The framework consists of various duty bearers such as the departments of the government, police, school, civil society, who all have roles to play to ensure that a child's rights are met, and in the case that a child's rights are violated that the violator be brought to justice and care be provided to the child. Child protection is not only treatment, but should also be

preventive in nature. Risk management needs to take place to reduce the risk of violation of child rights in any given circumstances or space.

In another view, a Single Bench of the Hon'ble Bombay High Court in '**Balasaheb @ Suryakant Yashwantrao Mane vs. State of Maharashtra**' 2017(2) RCR(Criminal) 534, has expressed its opinion that where there is enough material to come to the conclusion that despite having knowledge that the offence punishable under the POCSO Act has been committed, the Management (Director of the Trust in the said case) who instead of reporting the matter either to the Special Juvenile Police or to the local police, had insisted the first informant and relatives of the victim, a female child, to settle the matter, is itself sufficient ground to proceed against the person so showing reticence into the matter. In this case, besides the petitioner, his associate transporter and even the Principal of the school, as has come in the evidence, need to be hauled up for this collusion inter-se between them and thus, trying to extinguish the embers of this occurrence by suppressing the same with a mala fide intention, which is well illustrative from the testimony of the father of the girl. In the light of what has been observed in the deposition of CW-4 Harvinder Singh apparently, the Court of learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh in its summoning order dated 05.08.2017 has missed this material point and thus, to meet the ends of justice, this Court deems it essential to exercise the powers under Section 482 Cr.P.C. and direct the Court below, where the matter is

pending, to ensure that even the Principal, who had the knowledge of this incident of abuse of a minor school girl, is not let off the hook and to take appropriate action and to proceed ahead against her as well, fully in accordance with law.

From what has come on the records, the petitioner cannot hide behind the façade of lack of knowledge or information and rather was duty bound being an Administrator of the school relating to which and where the occurrence has taken place and which is well substantiated from the proceedings of the Court whose orders have been put to challenge in this petition. The fact that the Commission has done its duty and the judicial Court, on the basis of evidence before it, has passed summoning order and framed charges and put the guilty to trial, cannot in any manner be termed to be unfounded, illegal or perverse necessitating exercise of inherent powers by this Court.

Though the question of maintainability of this petition is also there but however, this Court refrains itself from venturing into this at this juncture.

Since it cannot be assumed that this is a solitary case of such a school child abuse and there might be similar incidents where the matter might have been swept under the carpet and not reported for obvious reasons and to ensure that the very objects of the POCSO Act are met by all means, this Court deems it its duty to issue directions to the District Magistrate, Chandigarh and the Director of School Education,

UT Chandigarh to ensure that appropriate steps are initiated in this direction for carrying on the duties and obligations under Section 43 and allied provisions enshrined under the POCSO Act as well as under the Convention of United Nations Organization. A copy of this order be sent to these authorities for initiating necessary action into the matter. Trial Court to ensure due compliance of this order as well.

With these observations, the present petition stands dismissed and disposed off as such.

(FATEH DEEP SINGH)
JUDGE

November 20, 2018

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No