

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 955 of 2019

Smt. Geeta Kunjam

Applicant

Versus

State of Chhattisgarh

Respondent

CRR No. 897 of 2019

Smt. Baby Sontapar

Applicant

Versus

State of Chhattisgarh

Respondent

Post for pronouncement of the order on 04.10.2019

Sd/-

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 22.08.2019****Order Delivered on : 04/10/2019****CRR No. 955 of 2019**

- Smt. Geeta Kunjam W/o Santosh Kumar Kunjam Aged About 39 Years R/o Village Kesal, Police Station Gendatola, District Rajnandgaon Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through The District Magistrate, Rajnandgaon, District Rajnandgaon Chhattisgarh.

---- Respondent**Order Reserved on : 27.08.2019****CRR No. 897 of 2019**

- Smt. Baby Sontapar W/o. Prakash Sontapar, Aged about 35 Years R/o Ward No. 45, Gokul Nagar, Gokul Dham Society, House No. 23, District Rajnandgaon, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through The District Magistrate, Rajnandgaon, District Rajnandgaon Chhattisgarh.

---- Respondent

For Applicant	: Shri Gautam Khetrapal & Shri Sumit Shrivastava, Advocates
For Respondent/State	: Shri Samir Sharma and Shri Wasim Miyan PL

Hon'ble Smt. Justice Rajani Dubey**C A V Order**

04/10/2019

As both these revisions arise out of the common judgment and order dated 03.05.19, they are being disposed of by this order.

2. These are the two revision petitions that have been preferred seeking to challenge the orders dated 24.04.2019 and 03.05.2019 in Special Sessions Trial No. 37/2018 passed by the Additional Sessions Judge (FTC) Rajnandgaon, framing of charges under Sections 8/16,10/16 and 17 of the Protection of Children from Sexual Offences Act against the applicants.

3. Facts of the case which needs to be noted to appreciate the controversy arising herein is that on 22.4.2018, one written complaint was given by the Block Education officer, Dongergaon, Assistant Education Officer and others along with a departmental enquiry report for lodging the FIR against Ajesh Kumar Shukla, In charge, Head Master, Government Middle School, Village Arjuni Rajnandgaon. It is alleged that Ajesh Kumar misbehaved, made sexual remarks and also outraged the modesty of some minor students therefore FIR was lodged against him. During investigation it was found by the Investigating Officer that some teachers of the school were aware of the act of the accused and therefore they are also implicated as accused and charge sheet was also filed against them. The trial court framed charges under Sections 8/16,10/16 and 17 of the Protection of Children from Sexual Offences Act against the applicant. Hence, the present revision.

4. Counsels for the applicants submit that the main allegation against the applicants is that they did not disclose the matter to the

higher authorities even though they were fully aware and had the knowledge of such an offence being committed by the accused but the same has not been informed or reported to the requisite authority for taking any action against said Ajesh Kumar Shukla. Counsels for the applicants submit that some of the children have disclosed about the incident to their parents and it was the duty of the parents to lodge FIR. It is further submitted that the applicants have made their effort and before they could act any further, as the investigation is already going on, they gave fair statement and in the departmental enquiries as well. The charges were framed on the basis of only assumption that applicants were aware of the incident but nowhere it is found that they were abating the accused or even concealed any facts. Therefore framing of charge against these applicants is illegal, perverse and are liable to be discharged of the charges against them. Reliance has been placed upon the order dated 12.05.2016 passed by this court in W.P.(Cr.) No. 08/2016 (Kamal Prasad Patade Vs. State of Chhattisgarh & Another).

5. On the other hand, counsel for the State supported the impugned orders and submits that at the initial stage of framing of charge, prima facie case is to be looked into therefore the order impugned is proper and the revision petitions are liable to be dismissed.

6. Heard counsel for the parties and perused the material available on record.

7. Sections 8, 10, 16 and 17 of the Act provides as under :

8. Punishment for sexual assault - Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Section 10 of the Act is as follows:

Punishment for aggravated sexual assault.-

Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Section 16 of the Act reads thus:

16. Abetment of an offence.-

A person abets an offence, who-

First.- Instigates 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.

Explanation I.- A person who, by wilful misrepresentation, or by wilful 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.

And Section 17 of the Act is as follows:

17. Punishment for abetment.-

Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

8. Counsels for the applicants has filed FIR and statements of witnesses and victims/students who have deposed in their statements that they have informed about the incident to the teachers namely Deepa Madam, Baby Sontapar Madam, Sheetala Bande Madam, Veena Ramteke Madam, and Smt. Geeta Kunjam Madam and it is also clear from the DE report that the students have narrated about the incident to their teachers. Section 21 (2) of the POCSO is itself liable on any person being in-charge of any company or an institution to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control presumes imprisonment for one year with fine as a punishment if such person being in-charge failed to report the commission of the offence in accordance with Section 19(1) of the POCSO Act.

9. This Court in W.P.(Cr.) No. 08/2016 has held that :

11. At this stage, it is appropriate to notice Section 19(1) of the POCSO Act which reads as under:

19. Reporting of offences.-

1. "Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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.

Non-compliance of Section 19(1) of the POCSO Act is made punishable under Section 21 (2) of the POCSO Act, which reads as under:

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

(1) XXXXX XXXXX XXXXX

(2) Any person, being in-charge of any company or any institution (by whatever name called) who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or both.”

(3) XXXX XXXX XXXX

Thus, sub-section (2) of Section 21 of the POCSO Act is charging provision for non-compliance of the provisions of the POCSO Act, which is prescribed

under Section 19(1) of the POCSO Act. The Act which constitutes an offence under Section 21 (2) of the POCSO Act relates to failure to make report of commission of offence under the provision of the POCSO Act under Section 19(1) of the POCSO Act which prescribes that 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. Thus, this provision is in three parts:

(A) Any person including the child or

(B) who has apprehension that an offence under POCSO Act is likely to be committed or

(C) has knowledge that such an offence has been committed under POCSO Act.

12. The qualifying word in Section 19(1) of the POCSO Act is apprehension regarding an offence is likely to be committed or has knowledge that such an offence under POCSO Act has been committed, he shall provide such information to the Special Juvenile Police Unit or Local police. Thus, Section 19(1) of the POCSO Act can be invoked only when the person concerned was having exclusive knowledge of commission of offence under POCSO Act and if the person is in-charge of the institution who fails to report the commission of an offence under sub-section (1) of Section 19 of the POCSO Act in respect of a subordinate under his control, he would be liable for prosecution under Section 21(2) of the POCSO Act.

8. The charge sheet against the applicant/main accused was filed consolidatedly and simultaneously by the police in the competent court for trying the main accused for the offence under Sections 354,

354(B), 354(C), 354 (g) and 509 IPC and Sections 8,10 and 21 of the POCSO Act and Section 8/16,10/16 and 17 of the POCSO Act against the applicant for trying them jointly.

10. It is clear from the statement of the witnesses that the applicants did not instigate, engaged with or intentionally involved as described under Section 16 of the Act. The main allegation against the applicants is that they did not report the matter to the higher officials which is mandatory under Section 19 of the Act. A bare reading of Section 21(2) of the POCSO Act would show that it is a penal provision which obliges any person being in-charge of the institution, responsible person of the institution, to give information to the police about the commission of an offence under the POCSO Act. The said provision has been enacted for the purpose of screening the offender in relation to the offence committed by him under the Act with an intention that information relating to commission of offence under the Act must reach to the police authorities expeditiously so that the investigation for the offence under the said Act will start at the earliest and once the information reaches to the police station, requirement of Section 19(1) of the Act stands satisfied.

11. The offence against the applicants is prima facie made under Section 21 of the Act therefore, the orders dated 24.4.19 and 3.5.19 against the applicants are set aside. The trial court is directed to rehear the matter before framing of the charges and to reconsider its order with regard to framing of the charge and take further steps in accordance with law. It is clarified that the entire scrutiny is only for the purpose of framing of charge and nothing else. The learned Magistrate

will further proceed with the trial and decide the matter as per the evidence brought on record and shall not be influenced by any observations made in the order impugned. Accordingly, the revisions are allowed.

Sd/-

(Rajani Dubey)
Judge