

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1336 of 2019

Smt. Hemlata Verma, W/o.- Dilip Verma, Aged About 45 Years, R/o.- Ridhhi-Sidhhi Colony, Basantpur, District- Rajnandgaon, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, Through - P.S.-Ghumka, District- Rajnandgaon, Chhattisgarh.

-----Respondents

For Petitioner : Mr. Hemant Gupta, Advocate

For Respondent/State : Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/11/2019

1. This petition has been brought being aggrieved by the order of framing charge dated 17.09.2019 by the trial Court, whereby the trial Court has framed charges under Section 6/16, read with Section 17 and 21 of the Protection of Children from Sexual Offences Act, 2012 (in short the "Act, 2012") against the applicant.
2. It is submitted that there is no iota of evidence for framing charges under Section 6/16 and 17 of the Act of 2012 and further the applicant was not in any responsible position to have made the report of the incident. It is also submitted that the applicant was not in the knowledge of the incident as well. The witnesses have developed their statement in later on stage by stating that they had informed this applicant about the incident. Therefore, there is no substance presence for framing charge against the applicant.

3. Counsel for the applicant placed reliance on the judgment of High Court of Kerala in case of **Letha J. T Samuel Mathew, N Santhakumar Vs. State of Kerala**, reported in **(2015) (3) Crimes (HC) 12** and the judgment of Supreme Court in case of **Tessy Jose and Others Vs. State of Kerala**, reported in **AIR 2018 SC 4654** and it is submitted that the persons in-charge as defined under Section 19 and 21 of the Act, 2012 can be held responsible for the commission of offence and the applicant herein is not such person. Therefore, the revision be allowed and the applicant be discharged.
4. State counsel opposes the petition and the submissions made in this respect. It is submitted that the applicant was teacher of the institution and the applicant is the person responsible for giving information regarding offence committed to the authorities regarding that there is sufficient evidence present for framing charges against her. Therefore, the revision petition be dismissed.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Complaint was given by the mother of the victim on 15.03.2019 that her daughter, the victim complained that the co-accused Jitendra Kumar Patel, who is the teacher of primary school Bhardakhurd has outraged her modesty on that basis FIR was registered for the offence under Section 354 of the Indian Penal Code and Section 10 of the Protection Children from Sexual Offences Act, 2012 against the co-accused Jitendra Kumar Patel. During the investigation, it was found that co-accused had outraged the modesty and committed such offence with other minor girls also, whose statements have been recorded.

7. On perusal of the statement of the witnesses recorded under Section 161 of Cr.P.C., it is found that the victims had informed this applicant about the incident before lodging of FIR on which this applicant had given assurance that she will inform about the incident to the superior authorities. This is the only a evidence i.e. present against this applicant in the whole charge-sheet.
8. Section 16 of the Act, 2012 defines the abetment of an offence according to which when any person instigated, engaged or intentionally aids in the commission of any offence that shall be regarded as abetment for commission of offence. Section 17 provides for punishment. In this case apart from the evidence this applicant was informed by the victim about the incident that has been taken place, there is no such statement that this applicant instigated, engaged or aided in the commission of offence as alleged in this case. Therefore, there is altogether no substance for framing charge against the applicant for offence under Section 6/16 read with Section 17 of the Act, 2012 against the applicant.
9. Section 19 of the Act, 2012 provides 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.

- (2). Every report given under sub-section (1) shall be-
 - (a). ascribed an entry number and recorded in writing;
 - b. be read over to the informant;
 - c. shall be entered in a book to be kept by the Police Unit.

(3). Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4). In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5). Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6). The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7). No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

10. The provisions of Section 19 includes that any person having knowledge of any commission of such offence has a duty to inform the authorities, which are mentioned in the Section 19 of the Act itself.
11. As per the statement given by the witness, this applicant had knowledge of the commission of offence, before it was reported to the police by mother of one of the victims. Therefore, sufficient evidence is present on the basis of which prima-facie case is made out for framing of charge under Section 21 of the Act, 2012 against this applicant. Reliance placed by the counsel for the applicant do not come to any help because this case is not covered under Section 21 (2) of the Act, 2012, on the basis of which the judgment of **Letha J. T Samuel Mathew, N Santhakumar** (supra) which was passed by the High

Court of Kerala and the judgment of Supreme Court in **Tessy Jose** (supra) makes it clear that persons having knowledge of the commission of offence is duty bound to provide information to the relevant authorities. Another reliance of the applicant on the judgment of this Court in **Kamal Prasad Patade Vs. State of C.G. & Another**, reported in **2016 (4) C.G.L.J. 209** has detailed the meaning of knowledge in that judgment. There is sufficient evidence in the present case regarding this fact that the applicant had knowledge about the commission of offence, therefore, no assistance is found from this judgment in favour of the applicant.

12. Hence after over all consideration and on the basis of the discussion made herein above I am of this opinion that revision petition is fit to be allowed in part. Therefore, this revision petition is allowed in part. The charge against the applicant under Section 6/16 read with Section 17 of the Act, 2012 is set-aside, however, the charge against the applicant under Section 21 of the Act, 2012 is maintainable, in which the trial against the applicant shall proceed in accordance with law.
13. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge