

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.385 OF 2018

Jayashree Balaji Kendre & Ors.

... Applicants

Vs.

The State of Maharashtra & anr.

... Respondents

Mr.M.S. Mohite i/b Shirin Merchant for Applicants
Mr.A.R. Patil, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: APRIL 10, 2019

P.C.:

1. In this revision application, the applicants/accused are challenging the order dated 8.5.2018 passed by the learned Additional Sessions Judge, Pune below exhibit 5 in Special Case No.137 of 2017 filed under Protection of Children from Sexual Offences Act, 2012. The applicants are the original accused Nos.2, 3 and 4, who are prosecuted for the charge under sections 19 and 21 of POCSO. Their application for discharge is rejected by the learned Judge and hence, this revision.

2. The victim minor girl has lodged FIR on 30.12.2016 against the original accused No.1 and the offence is registered against him under section 376 of the Indian Penal Code and section 5(j)(ii), 5(l) and 6 of POCSO in C.R. No.1029 of 2016 by Yerawada police station, Pune. The victim had delivered a baby girl on 18.10.2016, out of this relation with accused No.1. She alongwith her mother had approached an NGO, namely, Bharatiya Samaj Seva Kendra of which accused Nos.2 to 4 are the office bearers and informed to them of the incident of 4.10.2016. As she was in an advanced stage of pregnancy, the applicants/accused advised her to inform the Doctor that she would be giving the complaint to the police after delivery. The applicants/accused reported about the incident to the police by sending a letter to the Senior Police Inspector, Yerawada police station on 22.12.2016. The police thereafter recorded the statement of the girl on 30.12.2016 and the offence was registered. The police also prosecuted the present applicants/accused for the offence under section 19(1) of POCSO that thought they had knowledge of the offence, they failed to report about the commission of the offence and therefore, the offence was registered against them. The learned Counsel for the applicants/accused has submitted that the applicants/accused are

the office bearers of Bharatiya Samaj Seva Kendra which is a trust working for the cause of women and children in difficulty since last 40 years. He submits that the Trust is having an unblemished record and till today, no offence is registered against the office bearers of the Trust. The Trust has itself reported about many cases to the police under POCSO. In the present case, the applicants/accused were trying to settle the matter between the boy i.e., the accused No.1 and the victim girl and finally they got them married and the girl is also taken by them. The learned Counsel submits that the family is rehabilitated. However, the applicants/accused are unnecessarily roped in this prosecution.

3. Learned Prosecutor submits that this is not a case for discharge in view of the delay of two months and 10 days in reporting the incident to the police.

4. Perused the FIR dated 30.12.2016; so also the report sent by the Bharatiya Samaj Seva Kendra to the police about the incident on 22.12.2016. As per the case of the prosecution, prior to 22.12.2016, there was no communication from anybody about the incident. Thus, it shows that the applicants/accused are the ones who first reported the incident to the police. Undoubtedly, there is

a delay of 2 months and 10 days in reporting the incident to the police. However, under sections 19 and 21 of POCSO, there is no such specific time mentioned for reporting of the incident. Thus, the Court has to consider whether a reasonable time is taken by the applicants/accused in reporting the incident to the police. The FIR was recorded on 30.12.2016. In the FIR, the victim has mentioned that she was advised by the applicant/accused to inform the Doctor that after the delivery, the report will be given to the police. Thus, consisten with this, the applicants/accused have reported the incident after delivery of the girl though not immediately but after two months. However, from the FIR, it appears that the baby had jaundice on the second day of her birth and she was admitted in the ICU. The victim abandoned the baby girl and thereafter, the applicants/accused took care of the girl and it appears that the girl was trying to patch up with the boy thereafter. Thus, the delay of two months can be considered as reasonable in reporting the incident to the police. If the incident would not have been reported by the Trust to the police, then, the prosecution under section 19 would have been justified by the police as it is mandatory for a person to report about the offence if he has knowledge about the same. Section 19 is a proactive and

special provision wherein omission is considered as commission of offence under POCSO. Hence, the order dated 8.5.2018 passed by the learned Special Judge (POCSO), Pune in Special Case No.137/2017 is quashed and set aside. The applicants/accused are discharged from the said case.

5. Criminal Revision Application stands allowed and disposed of accordingly.

(MRIDULA BHATKAR, J.)