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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 44/2018

PANKAJ VOHRA & ANR.Petitioners

Through: Mr. G.K. Bharti and Mr. Rajesh
Kumar, Advocates

Versus

STATERespondent

Through: Ms. Neelam Sharma, Additional
Public Prosecutor with SI Inder Pal
Singh

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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02.05.2019

Impugned order of 22nd August, 2017 puts petitioners on trial for the offences under Section 370 IPC and under Sections 3/14 of the Child Labour Act and under Section 23 Juvenile Justice (Care and Protection of Children) Act, 2000.

The challenge to the impugned order and the charges framed by petitioner's counsel is on the ground that the age of the prosecutrix is not established. To submit so, attention of this Court is drawn to copy of FIR of this case, to point out that as per the statement of the prosecutrix, she was aged ten years when her Jijaji-Vinod had brought her to Delhi to work and in her family there are four sisters, who are living in the village and she is the eldest one.

Attention of this court has been drawn to copy of the ration card which shows that as per the ration card issued in April, 2014, there is

mention of four sisters in this ration card and the eldest sister, as per the ration card was of 15 years and the name of the prosecutrix is not mentioned in the said ration card. It is submitted that no ossification test of the prosecutrix was got done nor her school certificate has been obtained. So, it is submitted that in the absence of the aforesaid reliable evidence, the prosecution of petitioners for the offences in question is unjustified. Lastly, it is submitted that the impugned order and the charge framed deserves to be set aside and the matter be remitted back to the trial court for re-hearing petitioners on the point of charge after the age of the prosecutrix is ascertained.

On the contrary, learned Additional Public Prosecutor for respondent-State supports the impugned order and submits that prosecutrix was not available and so, her ossification test could not be got done and since the prosecutrix had not gone to school, therefore, there is no question of obtaining her school certificate. It is submitted that contradiction, if any, in respect of ration card is required to be put to prosecutrix at trial and the evidentiary value of the prosecution version is not required to be pre-determined at this initial stage.

The parameters governing the framing of charge as reiterated by the Supreme Court in *State of Rajasthan v. Fatehkaran Mehdu* (2017) 3 SCC 198, are as under:

“The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is

strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.”

The aforesaid dictum has been recently reiterated in *State of Madhya Pradesh v. Deepak* 2019 SCC Online SC 429.

Upon hearing and on perusal of the impugned order and the charge-sheet filed, I find that the prosecution has relied upon copy of the ration card and any discrepancy regarding the ration card in relation to prosecutrix's age is required to be put to the prosecutrix at trial and it cannot be prematurely considered at this initial stage. Non-holding of ossification test of prosecutrix cannot be a ground to discharge petitioners, as due to non-availability of prosecutrix, ossification test could not be got done. The absence of school certificate of the prosecutrix would not by itself justify discharge of petitioners. Whether the age of prosecutrix is conclusively proved or not, is not required to be considered at the threshold of trial and is required to be determined at the trial.

Finding no illegality or infirmity in the impugned order, this petition is dismissed while refraining to comment upon merits of this case.

(SUNIL GAUR)
JUDGE

MAY 02, 2019

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