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HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 270 of 2020

- Dr. Ramesh Prasad Dwivedi S/o Shri Vrindavan Prasad Dwivedi, Aged About 50 Years, R/o Plot No. 627/43, Awadhpuri, Risali, Police Station Nevai, District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, through the Station House Officer, Nevai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

----Non-applicant

For Applicant – Shri Goutam Khetrapal, Advocate.

For Non-applicant –Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-02-2020

1. This criminal revision has been brought challenging the legality, correctness and propriety of the order framing charge passed by the Additional Sessions Judge/Fourth F.T.C. Special Judge under the POCSO Act, Durg, Chhattisgarh.

2. It is submitted by learned counsel for the applicant that charges framed against the applicant under Section 354, 354A of the IPC and Section 9 read with Section 10 and Section 11 read with Section 12 of the POCSO Act are totally erroneous as there is no prima facie case present for framing of charge. Referring to the order passed by this Court in Criminal Revision No.127 of 2017 it is submitted that specific directions were given by this Court to the trial Court that Section 354A of the IPC defines four different acts, similarly Section 11 of the POCSO Act defines six different acts. On framing of charge without mentioning the specific act the procedure shall not be complete and would give impression that the accused has committed all the acts which are mentioned in the said provisions and the Court directed the trial Court to re-frame the charge resorting to Section 216 of the Cr.P.C. The trial Court then re-framed the charge against the applicant on 04-02-2020 under Section 354, 354A of the

IPC and Section 11 read with Section 12 and Section 9 read with Section 10 of POCSO Act.

It is submitted the FIR lodged, the statements of the witnesses do not make out any commission of offence for which the applicant has been charged. Therefore, the order of framing of charge is erroneous. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Tarkeshwar Vs. State of Bihar** (now Jharkhand), (2006) 8 SCC 560.

Further, reliance has been placed on the judgment of Bombay High Court delivered in the matter of **Akhil Ismail Pinjari Vs. The State of Maharashtra**, 2018 SCC OnLine Bom 5762 and it is prayed that the applicant be discharged.

3. Learned counsel for the State/non-applicant opposes the submission and submits that there is no material present in this revision petition. The order of framing charge is fully supported with evidence of the prosecution, hence, there is no need of any interference in the impugned order.

4. In reply, it is submitted by learned counsel for the applicant that on perusal of the whole evidence it would be found that there is no specific allegation to constitute offence under Section 11 of POCSO Act, Section 354 of the IPC and similarly no ingredients is present of Section 354A of the IPC. It is further submitted that the school authorities had made an enquiry and had exonerated the applicant in the enquiry report. Further, all the acts regarding which there is statement of witnesses are the acts of encouragement given by the applicant to the female students which should not be regarded as an act to outrage the modesty of any of the female students. Hence, this revision petition be allowed and relief be granted to the applicant.

5. Heard learned counsel for the parties and perused the documents.

6. Perused the entire copy of the charge sheet which has been filed along

with the petition. Although, the enquiry report of the Delhi Public School has favoured the applicant in some manner, but the statement of the witnesses that has been recorded in the investigation are not altogether same. There is statement of the witnesses that the applicant used to touch the female students on various parts of the body which was not welcomed and the female students had objection to the same. Therefore, any touch which not welcomed takes a shape of force, hence, on this basis, prima facie, it can be said that the female students felts offended by the touch of the applicant.

7. On perusal of the statement of the witnesses, it is found that there is prima facie presence of evidence for framing of charge under Section 354 and 354A of the IPC, details of which need not be mentioned. Similarly, the applicant being a staff of educational institution appears prima facie responsible for the act which is defined under Section 9 of POCSO Act which is punishable under Section 10 of the same Act. However, there appears to be no material in the whole case to frame charge under Section 11 read with Section 12 of POCSO Act. Therefore, I am of this view that the trial Court has made an incorrect approach in framing charge against the applicant under Section 11 read with Section 12 of POCSO Act.

8. Therefore, after due consideration on all the submissions and material present, this revision petition is entertained in part. Framing of charge against the applicant under Section 354, 354A of the IPC and Section 9 read with Section 10 of POCSO Act need no interference. However, framing of charge against the applicant under Section 11 read with Section 12 of POCSO Act is without any substance which is set aside.

9. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge