

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

CRIMINAL REVISION APPLICATION NO.388 OF 2019

Manoj Tulsidas Sawani	..Applicant
V/s.	
The State of Maharashtra	..Respondent

Mr.Milan Desai i/b Mr.I.R. Patel for the Applicant.

Mrs.M.R. Tidke, APP for Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 12th MARCH 2020

PC.

1. The challenge in this Revision Application is to the order dated 18th July 2019 passed by the learned Special Court at Mumbai in Special Case No.245 of 2017. By the impugned order the learned Special Court has rejected the application at Exh-6 filed by the applicant for his discharge under Section 227 of the Code of Criminal Procedure.

2. The incident in question is alleged to occurred on 10th October 2015 at about 5.20 p.m. at a bus stop on S.V. Road, Goregaon (West). According to the complainant who is a girl aged 16 years she along with her friends were awaiting at the bus stop for

bus no.359. At that time at about 17.45 hours one person who according to the prosecution is none other than the applicant/accused, came from behind. It's the gravamen of the allegation that the applicant stood in front of the complainant and others with the zip of his pant open with his private part visible to the complaint and others.

3. On the basis of the complaint lodged on 10th October 2015 an offence came to be registered and after investigation the applicant has been chargesheeted before the Special Court for the offences punishable under Section 509 of the Indian Penal Code ('IPC' for short) read with Section 11(i) of the Protection of Children From Sexual Offences Act, 2012 ('POCSO Act' for short).

4. The petitioner filed an application Exhibit-6 before the learned Special Court for his discharge *inter alia* on the ground that the petitioner is suffering from some mental ailment. It was also contended that even otherwise on the basis of the complaint and the statement of the witnesses, *prima facie* no offence under Section 509 of IPC or Section 11(i) of the POCSO Act is made out.

5. The learned Special Court by impugned order has rejected the application.

6. I have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent. With the assistance of the learned counsel for the parties I have gone through the statement of the complainant and other witnesses and also the impugned order.

7. The learned counsel for the petitioner strenuously urged that even if the allegations as made in the complaint and the statements of the witnesses (which are identical) are taken at their face value no offence under Section 509 of IPC or Section 11(i) of the POCSO Act is made out. For this purpose the learned counsel has taken me through the statement of the complainant and other witnesses. In the submission of the learned counsel the intention behind the act is a necessary ingredients of the offence. In other words, it is submitted that unless and until it is *prima facie* shown that the act is done with a “sexual intent” no offence as envisaged by Section 11(i) of the POCSO Act can be said to be made out. The learned counsel submitted that in a given case the act which is attributed to the petitioner can also happen inadvertently. It is

submitted that there is no material to show that the petitioner did the act intentionally or with a 'sexual intention' or knowing that the complainant is a 'child', within the meaning of the POCSO Act.

8. It is submitted that under Section 227 of the Cr.P.C. the Trial Court has to see whether on the basis of the material produced by the prosecution there are 'sufficient grounds for proceeding against the accused', which are lacking in this case.

9. The learned Additional Public Prosecutor has supported the impugned order.

10. I have carefully considered the rival circumstances and the submissions made. Section 11(i) of the POCSO Act which is relevant for the purpose reads thus:-

"Section 11:- Sexual Harassment:- A person is said to commit sexual harassment upon a child when such person with sexual intent:-

(i):-Utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

There cannot be any manner of doubt that the sexual intent is an integral part of the offence under Section 11(i) of the POCSO Act. However, it is necessary to emphasise that intention or *means ria* for any offence is always a matter of inference based on the attending circumstances inasmuch as intention is always an intangible thing. Normally this Court would be slow in interfering with the order referring to discharge the accused, where *prima facie* the allegations would be the show that the offence as alleged, is committed by the accused.

11. It is necessary to note that the complainant has not only stated about the fact that while passing by her the zip of the pant of the applicant was open, *Prima facie* there is also an allegation that the applicant stood in front of the complainant and others with a view to see that his private part is visible. It is neither necessary nor appropriate at this stage to appreciate the said evidence in details so as to either prejudice the prosecution or the accused at the trial. A detailed appreciation can only be done at the trial.

12. I have carefully gone through the statement of the complainant and other witnesses. It is not possible, at least *prima facie* to accept that no ingredients of the offence punishable under

Section 509 of IPC or Section 11(i) of the POCSO Act are made out in this case.

13. Insofar as the ground based on the alleged mental condition of the petitioner is concerned, the learned counsel for the petitioner submitted that it is an alternate ground. Be that as it may having regard to Section 84 of the IPC, it would be for the petitioner to substantiate any such ground of defense at the trial.

14. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to require interference in the revisional jurisdiction of this Court. The petition is without any merit and accordingly dismissed.

Nilam
Kamble

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15. It is made clear, that the observations herein are essential of a *prima facie* nature only for the limited purpose of examining, the validity of the order refusing to discharge the petitioner. Thus the Special Court shall not be influenced by any such observations at the trial of offence.

C.V. BHADANG, J.