

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 369 of 2021**

Sanjay Sahu, S/o Gendram Sahu, aged about 30 years, R/o Village –
Avrethi, Police Station – Simga, District - Balodabazar – Bhatapara (C.G.)
(not in jail)

---- Applicant**Versus**

State of Chhattisgarh, Through: S.H.O., Police Station – Komakhan,
District – Mahasamund (C.G.)

----Respondent

For Applicant	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent	: Mr. Dinesh Tiwari, Dy. Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****02.08.2021**

(1) The proceedings of matter have been taken-up through Video Conferencing.

(2) This revision is directed against the order dated 08.6.2021 passed by Special Judge (The Protection of Children from Sexual Offences Act, 2012) Fast Track Court, Mahasamund, Distt. Mahasamund in Special Criminal Case (POCSO) No. 20/2021 whereby charges under Sections 363/109, 366/109, 376 (2) (a)/109 of the IPC and Section 6/17 of the Protection of Children from Sexual Offences Act, 2012 (henceforth "POCSO Act") has been framed against the applicant.

(3) The facts of the case in brief is that minor victim/prosecutrix and main accused of this case namely Parmanand Miri were having lover affair with each other. In the night of 13.03.2021, main accused abducted her with the help of

other co-accused persons, and one of the co-accused persons is present applicant – Sanjay Sahu. They took her to village Pacheda (Abhanpur) in the maternal uncle's house of main accused – Parmanand Miri in the Bolero vehicle bearing registration No. CG-04-M 2436 (henceforth “Bolero vehicle”) and there main accused – Parmanand Miri committed rape upon her. On being reported the matter by father of the victim/prosecutrix, police of police Station Komakhan registered the crime under Section 363 of the IPC and after recovery of victim/prosecutrix from the possession of main accused – Parmanand Miri on 15.03.2021, statements of the victim/prosecutrix and other witnesses were recorded by the police.

(4) After usual investigation, charge sheet has been filed against the applicant and three other co-accused persons under Section 363, 366, 376 (2) (ॢ), 34 of the Indian Penal Code and Sections 6, 17 & 21 of the POCSO Act.

(5) After considering the material available with the charge sheet, learned trial Court, vide impugned order dated 8.6.2021, framed charges against the applicant as mentioned in paragraph 2 to this order, which has been challenged by the applicant by filing the instant revision petition.

(6) Learned counsel for the applicant submits that main accused of this case is Parmanand Miri, with whom, the victim/prosecutrix was having love affair. He further submits that present applicant is driver of the said bolero vehicle, who is bound to comply with the order of his owner. The present applicant did not know about the said incident. None of the witnesses, even victim/prosecutrix, have stated in their statement that applicant was aware with the incident and knowingly well about incident, he involved in the said incident. Although, victim/prosecutrix has identified the applicant and bolero vehicle but except this no other incriminating evidence has been collected by the prosecution with regard to involvement of the applicant in the crime in question, therefore, necessary ingredients have not been attracted against the applicant but learned trial Court, without properly appreciating the documents available in the record, has framed such charges of heinous crime against the applicant, which is

erroneous and not sustainable in law and, therefore, the impugned order deserves to be set aside and the applicant be discharged from the charges framed against him by the trial Court.

(7) On the other hand, learned counsel for the State, while opposing the arguments advanced on behalf of the applicant, would submit that requisite ingredients are available on the record for framing the aforesaid charges against the applicant, therefore, the trial Court has not committed any error in framing the aforesaid charges against the applicant, which does not call for any interference in the instant revision.

(8) I have heard learned counsel for the parties and perused the records of criminal revision which contains copy of entire charge-sheet.

(9) A careful perusal of the charge-sheet, especially, statements of victim/prosecutrix recorded by the police under Section 161 of the Cr.P.C. and also her statement recorded under Section 164 of the Cr.P.C. would show that victim/prosecutrix was kidnapped and was taken in the Bolero vehicle at village Pacheda (Abhanpur) in the house of maternal under of main accused – Parmanand Miri, where he (main accused) committed rape with her. It seems that neither the applicant known to the victim/prosecutrix because she has not stated his name in her both the statements recorded under Sections 161 & 164 of Cr.P.C. before the trial Court nor she has told his name to her parents but in the Test Identification Parade, she has identified the applicant and the bolero vehicle, which has been driven by the applicant.

(10) Considering the offence of “abetment” enacted under Section 107 of IPC, in the matter of **State of Kerala and others v. S. Unnikrishnan Nair and others** reported in **2015 AIR SCW 4815**, their Lordships of the Supreme Court observed as under :-

“10. To appreciate the rivalised submissions in the obtaining factual matrix, it is necessary to understand the concept of abatement as enshrined in [Section 107](#) IPC. The said provision

reads as follows:-

“107. A person abets the doing of a thing, who –

First – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 – Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

11. The aforesaid provision was interpreted in [Kishori Lal v. State of M.P.](#)¹ by a two-Judge Bench and the discussion therein is to the following effect:-

“[Section 107](#) IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in [IPC](#). A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of [Section 107](#). [Section 109](#) provides that if the act abetted is committed in consequence of

¹ (2007) 10 SCC 797

abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in [Section 109](#) means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

(11) Taking a girl with other person in the night at 1 O'clock *prima facie* shows that something wrong is being done, that too, without the consent of her parents or without assistance of her relatives. These facts *prima facie* demonstrate the requisite ingredients pertaining to Sections 363 & 365 of the IPC against the applicant but from the material available with the record ingredients of “abetment, *prima facie*, does not appear against the applicant because as has stated above that he was not knowing that victim/prosecutrix was being kidnapped for rape or illicit intercourse, instead thereof, common intention for kidnapping of victim/prosecutrix *prima facie* shows against the applicant, therefore, learned trial Court ought to have framed charges under Sections 363/34 and 365/34 of IPC instead of Sections 363/109 and 366/109 of the IPC.

(12) So far as the charges under Section 376 (2) (a)/109 of the Indian Penal Code and Sections 06/17 of the POCSO Act framed against the applicant are concerned, material available on record does not show that the applicant did know about the love affair between victim/prosecutrix and main accused – Parmanand Miri and she (victim/prosecutrix) was being kidnapped for committing the rape or illicit sexual intercourse. Even she has not stated in her both the statements recorded under Sections 161 & 164 of the Cr.P.C. with regard to the aforesaid facts. Thus, *prima facie*, necessary ingredients under Section 376 (2) (a)/109 of the Indian Penal Code and Sections 06/17 of the POCSO Act also do not attract against the applicant/accused.

(13) In view of the above discussion, I find that learned trial Court has committed error by framing charges under Section 376 (2) (a)/109 of the Indian Penal Code and Sections 06/17 of the POCSO Act against the applicant and, thus, he is

entitled to be discharged under these sections therefore, he stands discharged from the offences under Sections 376 (2) (a)/109 of the Indian Penal Code and Sections 06/17 of the POCSO Act. However, charges framed against the applicant under Sections Sections 363/109 and 366/109 of the IPC are required to be modified and instead of that charges [under Sections 363/109 and 366/109 of the IPC], charges for commission of offence punishable under Sections 363/34 and 365/34 should have been framed against the applicant/accused.

(14) For the foregoing reasons, the revision is partly allowed to the extent as indicated hereinabove and learned Special Judge (The Protection of Children from Sexual Offences Act, 2012) Fast Track Court, Mahasamund, Distt. Mahasamund is directed to discharge the applicant/accused from the charges under Sections 376 (2) (a)/109 of the Indian Penal Code and Sections 06/17 of the POCSO Act and shall frame charges under Section 363/34 & 365/34 of the IPC against the applicant/accused and to proceed further in accordance with law.

Sd/-

(N.K.Chandravanshi)
Judge

D/-

