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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.14 OF 2021

PRANAV NAIK,
Son of Prabhakar Naik,
Aged about 22 years, and resident of
H. No. 223, Mollar,
Corlim, Tiswadi – Goa.

... Applicant.

Versus

1. State of Goa
Through Public Prosecutor,
Hon'ble High Court of Bombay at Porvorim Goa.

2. The Police Inspector,
Porvorim Police Station,
Porvorim – Goa.

... Respondents.

Mr. Kautuk A. Raikar, Advocate for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the Respondents.

CORAM : R.N. LADDHA, J.
DATE : 8th April 2022

JUDGEMENT:

The present revision application calls in question the defensibility and legal sustainability of the Order dated 08.09.2021, in Special Case No. 74 of 2020, passed by the learned Special Judge, Children's Court for the

State of Goa at Panaji, to frame the charge against the Applicant/Accused under Section 363 of IPC and under Section 8 of the Goa Children's Act, 2003.

2. It is the case of the Prosecution that the victim was abandoned by her parents when she was three months old. She was looked after by her granny till the age of three years. After her granny expired, Mr. Anthony Rodrigues took care of her as his daughter. On 19.10.2020, at about 12:50 hours, Father Alexander, who is the Parish Priest of Moira Church, had taken the victim, at her request, to Delfinos Mart at Porvorim from where the Accused took her on a bike to his place.

3. On the complaint of Mr. Anthony Rodrigues, father of the victim, crime vide Cr. No.133/2020 with the Porvorim Police Station came to be registered against an unknown person. The Police made a requisite investigation during the course of which they interrogated the witnesses and recorded their statements. On 21.10.2020, victim girl was traced in the house of Accused at Mollar, Corlim, Tiswadi-Goa. After finding the complicity of the Accused, charge-sheet was lodged against the Accused for the offences punishable under Section 363 of IPC and under Section 8 of the Goa Children's Act, 2003.

4. When the case was opened in the Children's Court for the State of Goa at Panaji, in Special Case No.74/2020, by the Public Prosecutor, in accordance with Section 226 of the Code of Criminal Procedure, a plea on behalf of the Accused was raised that there is no sufficient ground for

proceeding with the trial. It was stated that no case of kidnapping is made out since the victim on her own went with the Accused.

5. After the hearing was over, the learned Special Judge adverted to all these issues and answered those issues against the Accused by passing the aforesaid impugned order assigning the reason that the offence of kidnapping is complete, the moment child victim was taken away by the Accused from the lawful guardianship and who kept the victim at his residence for two days without intimating anyone.

6. I have heard Mr. Kautuk A. Raikar, learned Counsel for the Applicant and Mr. Pravin Faldessai, learned Additional Public Prosecutor for the Respondents. Perused the impugned order, grounds in the revision application and documents placed on record.

7. The learned Counsel for the Applicant/Accused submits that the ingredients of offences punishable under Section 363 of the IPC and Section 8 of the Goa Children's Act, are not present in the instant case. For this purpose, he took me through the charge-sheet and the statements of the victim and the witnesses recorded therein. He complained that the Trial Court did not evaluate the documents placed on record in a proper perspective and was influenced by a number of assumptions, which cannot be sustained on the material on record and this has resulted in grave miscarriage of justice.

8. Mr. Pravin Faldessai, the learned Additional Public Prosecutor has argued supporting the decision arrived at by the Trial Court. He submits that the revisional jurisdiction of the High Court is a very limited one. In his view, at the initial stage of framing of charge, the final test of guilt is not to be applied. On facts, it is premature for this Court to exercise its revisional powers in the peculiar facts and circumstances of this case and that the impugned order was legal, correct and proper.

9. The rival contentions now fall for my determination.

10. This is not a case where the Accused was convicted after full-fledged trial. The ingredients of Section 363 of IPC and Section 8 of the Goa Children's Act, prima facie, appear to co-exist in the present case in terms of the language of Section 228 of the Code of Criminal Procedure, subject to trial. Record indicates that at the time of incident, the victim girl was minor, aged about 14 years and the Accused who at the relevant time was waiting outside the mart, had taken her away on his bike to his place where he without intimating to anybody kept her for two days i.e. till she was traced out. The Applicant/Accused, prima facie, appears to be a party to this arrangement. Therefore, material before me discloses grave suspicion suggesting complicity of the Applicant/Accused in the crime in question. In the light of the material on record, this Court at this stage, cannot come to the conclusion that there is no sufficient ground to proceed against the Applicant/Accused. This is obviously a matter to be decided at the trial.

11. At the initial stage of the trial, if there is a strong suspicion which leads the Court to believe that there is ground for presuming that the Accused has committed the offence, then, it is not open to the Court to say that there is no sufficient ground for proceeding against the Accused. This Court, under its revisional powers will not appreciate the evidence in the manner as the trial. It is premature to say that the material placed before the Trial Court was insufficient for framing the charge or that the statement of the victim girl was not sufficient to proceed further against the Applicant/Accused. In this context, a useful reference may be made to the Judgment of the Hon'ble Supreme Court in the case of *Munna Devi, Appellant v. State of Rajasthan and another, Respondents*¹ wherein all these aspects were highlighted.

12. For the reasons aforesaid, I do not find any merit in the application. The Revision Application stands dismissed. The Trial Court shall proceed with the trial in accordance with law, uninfluenced in any way whatsoever from what has been recorded in this Judgment.

R.N. LADDHA, J.

¹ AIR 2002 SC 107