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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on 18.11.2022*

+ CRL.REV.P. 25/2021 & CRL.M.A. 994/2021

SC NARANG

..... Petitioner

Through: Mr. S. Rajappa, Mr. N.B. Joshi & Mr.
R. Gowrishankar, Advocates.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Ritesh Kr. Bahri, APP for State.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner has filed this revision petition against order dated 24.12.2020 passed by the learned Additional Sessions Judge in case FIR No.528/2017, PS Dwarka (South), Delhi under Section 21 of the POCSO Act read with Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), summoning the revisionist to face the trial.

2. In brief facts, it is mentioned that Maxfort School, Dwarka admits children from Nursery up to Class 12. In Nursery-KG and Class 1, there are two teachers and one Aayah per classroom. The FIR was lodged on 19.11.2017 by respondent no.2, who is the mother of a girl child studying in KG, aged about 4.5 years.

2.1 It is mentioned in the FIR that after returning from school on 17.11.2017 (Friday), the girl child complained of pain in her private parts and upon enquiry from the child, the complainant/respondent no.2 learnt from her daughter that her classmate, another boy of the same age had

touched her private parts and had inserted his finger inside.

2.2 The FIR was registered under Section 376 IPC and Section 21 of the POCSO Act. Investigation was taken up. The statements of the witnesses were recorded. Documents were seized alongwith footage from CCTV cameras. It is admitted that several CCTV cameras were installed in the school in and around the corridors and near the classroom and the work of installing the CCTV cameras in classrooms was going on.

2.3 The victim told the doctor that the incident had taken place inside the classroom and inside the washroom. The complainant/respondent No.2 had contacted the school authorities through Whatsapp messages and telephonic conversations but the school thought it prudent to wait for better particulars before filing a complaint with the police, keeping in view the tender age of the boy and the girl child.

2.4 The school authorities assembled in the school premises on 19.11.2017 awaiting for respondent no.2, however, she informed that she was getting an FIR registered with the police. After making enquiries and having attempted to get better particulars, the school authorities independently informed the police on 20.11.2017 vide DD Entry No.26B lodged at PS Dwarka (South).

2.5 The information sought by the police authorities was provided vide letter dated 21.11.2017. Since the prime accused was less than 7 years of age, so the police filed the charge sheet under Section 21 of the POCSO Act read with Section 75 of the JJ Act against the four persons being the Principal of the school, two teachers and the Vice-Chairman/Officiating Chairman of the Managing Committee of the school.

2.6 The petitioner was described as the silent Chairman of the school. All

the four accused appeared before the Court and they were admitted to bail. In the charge sheet, the IO had specifically mentioned about the CCTV footage which showed that the two concerned children did not go to the washroom together and they were seen coming out of the classroom with other children. Teacher Mrs. Aastha Kalra was in the classroom and Ayah Pushpa Juial was seen periodically entering and leaving the classroom.

2.7 The first protest petition was filed by the complainant on 26.04.2018 alleging that some more accused ought to be arrayed before the learned Trial Court. Accordingly, on 29.11.2018, a supplementary report under Section 173 Cr.P.C. was filed by the IO in which 7 persons named by the complainant in her protest petition were placed in Column No.12 as during investigation, the IO did not find sufficient material to put up the said persons for trial. In the investigation, it has been noted that the petitioner is not an authorised signatory on cheques or on salary slips and even before Education Department he was not the authorised signatory, so the IO concluded that the petitioner has not been an active but only a silent Chairman and he has no role in the functioning of the school.

2.8 The second protest petition was filed by the complainant on 09.09.2020 and in that petition, the present impugned order was passed on 24.12.2020, summoning the present petitioner to face trial under Section 75 of the J.J. Act. Same has been challenged before this Court.

3. The grounds cited in the present petition are that Section 75 of the JJ Act is attracted only against an accused person, who holds actual charge or actual control over a child at the time of the impugned incident and there cannot be a case of remote or constructive control exercised by virtue of holding a particular position in the hierarchy of an organisation.

3.1 The next ground is that in criminal law, vicarious liability cannot be fastened for a crime and the petitioner cannot be held liable for the negligence of the school staff. The further ground is that the status of the petitioner has been examined by the learned Trial Court by looking at the irrelevant material, for example, the petitioner was named in the magazine and on school website as Hon'ble Chairman, who was seen participating in Annual day function of the school.

3.2 The mobile telephone issued in the name of petitioner/Mr. S.C. Narang -Pitampura Leasing and Housing Finance Ltd. was being used by Mr. Naveen Narang, who was Vice-Chairman/Officiating Chairman of the School Management Committee. It is also submitted that the learned Trial Court proceeded on the basis of presumptions.

3.3 The next ground taken is that the impugned order suffers from an inherent lack of consistency and reasoning.

3.4 And lastly, the ground taken is that the presence and absence of a CCTV camera could not have avoided the incident from taking place but it is only an aid in investigation.

3.5 On these grounds, it has been prayed that the impugned order dated 24.12.2020 may be set aside.

4. Notice was issued.

5. The complainant/respondent no.2 has filed a short affidavit taking preliminary objections, mentioning therein that she was not served with a copy of the petition in advance, rather she received a message from the IO on the date when the matter was listed.

5.1 It is further submitted that the petition suffers from lack of jurisdiction as the revisional powers can be exercised only in exceptional cases and this

is not a case where this Court can be approached with a request to exercise its discretioning power under criminal revision. Section 75 of the JJ Act and Section 21 of the POCSO Act cast responsibility on the persons who failed to report the commission of an offence under these Acts and whose wilful negligence has caused the child to be assaulted, abused or exposed and the school management is also covered in the same.

5.2 It has been further submitted that there is sufficient material on record to *prima facie* show that the present petitioner was Chairman of Maxfort School, Dwarka and there is no document to show the contrary.

6. In brief submission, it is also mentioned that in the list of Managing Committee, the name of the present petitioner has been mentioned as Chairman; the petitioner in his capacity as Chairman had signed the letter of promotion, promoting Mrs. Priyanka Bhatkoti to the post of Principal of Maxfort School; the said Mrs. Priyanka Bhatkoti was a subordinate of the present petitioner and was in touch with him throughout and she was seeking instructions from him.

6.1 The phone number from which the call was made to Mrs. Priyanka Bhatkoti, Principal, is subscribed by the present petitioner. The call detail record shows that the petitioner was duly informed about the incident of sexual assault of the child as he was in constant touch with the Principal of the school.

6.2 The name of the petitioner was included in the supplementary charge sheet after the complainant had filed the protest petition but his name was mentioned in Column No.12 of the supplementary charge sheet, which was filed on 29.11.2018. No evidence has been placed on record by the petitioner to prove that the mobile phone subscribed to him was used by his son, who

is the Vice-Chairman of the school.

6.3 The official website of Maxfort School shows the petitioner as Chairman of the school and there are many photographs on the said website which make it clear that the petitioner is the Chairman of Maxfort School, Dwarka and is actively participating in the school activities and functions.

6.4 In February, 2020, an interview of the petitioner was published in Magazine 'Education Today' where he has been shown as the Chairman of the School. The petitioner has not followed the clear instructions of the Directorate of Education dated 15.12.2017 whereby all the schools were required to install CCTV cameras throughout the school, including the classrooms and it was due to the failure to install the CCTV cameras in the classrooms, which facilitates the incident to take place.

6.5 The petitioner has been duly summoned by the learned Sessions Court by the impugned order and there is no procedural irregularity or defect in the impugned order and the present petition is misconceived. It is a glaring example of botched up investigation. Under these circumstances, it has been prayed that the revision petition may be disposed of.

7. I have heard the arguments. The relevant portion of the impugned order is as under:

“20. After hearing the detailed arguments and perusal of the record, the court has following observations to make:-

It goes without saying that if a parent sends a child to the school, the school authorities have to ensure the safety and security of the child. The initial charge sheet was filed by the IO against four accused persons u/s 21 POCSO Act and section 75 JJ Act against the Principal Mrs. Priyanka Bhattikoti, Coordinator Mrs. Neetu Singh, Class Teacher of the child victim Mrs. Maitri Sarkar and Vice Chairman Mr. Naveen Narang. A protest petition was filed by the complainant against the charge sheet and further investigation was directed subsequent to which supplementary charge sheet was filed by the IO and all the accused namely Satish Chander Narang

(Chairman), Deepa Kumar (Director), Astha Kalra (Teacher), Pushpa Juyal (Maid), Madhuri Bisht (Teacher), Anu Sehrawat (Manager) and V.S.Ravindran (The School Counselor) and all the accused were kept in column no.12 without arrest. The present order is being passed for deciding the objections made by the complainant against the accused being placed in column no.12 in the supplementary charge sheet.

21. The first accused who has been placed in column no.12 of the charge sheet is Shri S.C.Narang. It has been argued by learned counsel for the complainant that Sh. S.C.Narang was the Chairman of the Maxford School and had been placed in column no.12 because he was referred as silent Chairperson and had no active participation in the school functioning. However, the list of the Managing Committee Members brought on record by the IO clearly shows that name of Chairman as Mr. S.C.Narang.

He was the signing authority for promotions and appointments and was continuously kept informed about the incident and its inquiry till the complaint was made to the police. The CDR collected by the IO also shows that the call was made on the phone of S.C.Narang. The record of the telephone number on which calls were made were procured from the Bharti Airtel and the same was found to be belonging to Mr. S.C.Narang. IO has kept nothing on record to show that the said number was used by someone else apart from the registered customer. The interview published in various magazines and on the social networking sites also show him as the Chairman and actively involved with various functions and activities of the school. It has been stated by the IO in the first charge sheet that the CCTV camera had to be installed as per the guidelines of the Directorate of Education but same were not present in the classroom. In the considered opinion of the Court, apart from the Principal and the other managing committee members, it was also a responsibility of the Chairman to ensure that all the guidelines of the Directorate of Education which had been made compulsory for the safety and security of the children had to be followed and as the classroom had no CCTV cameras which was against the guidelines. The guidelines of the Directorate of Education dated 15.09.2017 have made it mandatory to install sufficient number of CCTV cameras in school premises so as to mandatorily covered all classrooms, labs, corridor, parking, library, vacant rooms, areas outside washroom and all isolated areas and also ensure 360 degree coverage of the entire school premises. It has also been directed in the order that the CCTV camera should be functional round the clock along with recording facility of minimum 15 days or above.

As per the final report, CCTV footages of only playground, main gate and corridor were made available to the IO by the school on 28.11.2017 and CCTV technician gave a statement to the IO that no tampering had been

done w.r.t. the same on 6.12.2017. Other than the said CCTV footages no other footage was provided by the school and as per the final report filed by the IO, no CCTV had been installed in the school which was against the DOE recommendation. There has been a prima face neglect by the Chairman towards his duty in installation of CCTV cameras. I therefore take cognizance against accused S.C.Narang and S.C.Narang is summoned under column no.11 u/s 75 JJ Act for wilful neglect as a result of which cruelty was inflicted upon the child victim.”

7.1 It is clear that the learned Trial Judge has taken cognizance under Section 75 of the JJ Act against the present petitioner. The said Section is reproduced hereunder:

“75. Punishment for cruelty to child. – Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend upto five years, and fine which may extend upto five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended upto ten years and shall also be liable to fine of five lakhs rupees.”

7.2 The above Section clearly points out that any person managing the organisation to whom the care and protection of the child was handed over and he wilfully neglects the child or causes the child to be assaulted or abused or neglected the child in a manner, exposing the child to unnecessary

mental and physical suffering, the said act is included in the definition of the offence prescribed under Section 75 of the JJ Act.

8. In the present case, more or less, it has been accepted by the present petitioner that he was the Chairman of the School at the relevant time when the minor child was assaulted and abused. His defence that he was not in-charge of the day-to-day activities of the school and he was not even made aware about the incident. The mobile phone, which was subscribed in his name, was actually used by his son, who was the Vice-Chairman and in actual control of the affairs of the school. These are the issues to be decided during trial.

9. At the stage of taking cognizance under Section 75 of the JJ Act, the learned Trial Judge has to see as to whether the person was managing the institution where a child was physically/sexually abused and as mentioned in the impugned order, *prima facie* it has been brought on record that the petitioner was the Chairman of the School Management Committee at the relevant time and through the mobile phone duly subscribed in his name, he was in regular touch with the Principal of the School on 19.11.2017 and his active involvement in the affairs of the School is also proved on the basis of the promotion letter of the Principal duly signed by him, his active participation in the functions of the school and his interview to a Magazine wherein he has been interviewed as the Chairman of the School in question.

10. It is needless to repeat that at the stage of taking cognizance and summoning, the Court has to see only the *prima facie* material available before it. In my view there was sufficient material to take cognizance against the present petitioner under Section 75 of the JJ Act.

11. This Court is also conscious that the petitioner has invoked the

revisional jurisdiction of this Court where the scope of interference is quite limited to the extent that this Court can only examine the correctness, legality or propriety of any order, apart from legality of any proceedings of the lower Court. In the present case, on the basis of the facts and the law stated herein above, this Court finds that the impugned order does not suffer from any illegality, incorrect *prima facie* appreciation or any irregularity. In view of the above, the revision petition is liable to be dismissed and the same is hereby dismissed.

12. It is made clear that nothing stated herein above shall come in the way of the petitioner, when arguments are addressed on his behalf at the stage of charge, and the learned Trial Court shall hear the arguments on charge without getting influenced by anything stated herein above.

13. The petition is disposed of.

TALWANT SINGH, J

NOVEMBER 18, 2022/pa

[Click here to check corrigendum, if any](#)