

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.106 OF 2023

Uddhav S/o Pralhad Kale
Age: 30 years, Occu. Farmer,
R/o Manmodi,
Tq. Jintur & Dist. Parbhani

... Applicant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Police Station Selu,
Tq. Selu & Dist. Parbhani

2. XYZ

... Respondents

...

Mr. S. M. Kamble, Advocate for the Applicant
Mr. S. P. Deshmukh, APP for Respondent No.1-State
Mr. R. N. Bharaswadkar, Advocate for Respondent No.2

...

CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 27.09.2023

Pronounced On : 12.10.2023

PER COURT:-

1. The applicant / original accused no.3 in Special Case No.162/2022 pending before the Additional Sessions Judge, Parbhani, impugns the order dated 16/01/2023 passed below Exhibit-28, thereby rejecting his prayer for discharge in Crime No.371/2022 for the offences punishable under Sections 363, 366(A), 376(2)(i) 376(2)(j), 376(DB), 323 and 506 read with Section 34 of the Indian Penal Code [for short 'IPC'] and Sections 4,

8, 12 and 21 of the Protection of Children from Sexual Offences Act, 2012 [for short 'POCSO Act'].

2. Mother of respondent no.2, recorded information with police station Selu, stating that, she resides in field of Dattatray More at Selu. She has three daughters and a son. On 05/09/2022, her daughter, aged about 10 years along with her sister's son had been to the field. After having the lunch, they left the field for going towards Selu. At about 3:00 pm, the informant received a phone call of her husband, who told her that, the victim - daughter and sister's son have been kidnapped by motorcycle riders. The informant immediately rushed to the Selu. At about 5:00 pm, she received message that the victim/daughter and sister's son have been traced at Bori. The brother of the informant brought them to Selu. On inquiry by the informant with her daughter, she disclosed that, two motorcycle riders kidnapped them and they raped her at unknown place, thereafter, dropped her at Bori. On the aforesaid report, Crime No.371/2022 was registered at Police Station, Selu against the unknown accused persons.
3. The investigation progressed. The statement of the victim and others were recorded under Sections 161 as well as 164 of the Code of Criminal Procedure [for short 'Cr.PC']. A notice under Section 41(a) of Cr.PC was served to present applicant. His statement dated 22/09/2022 under section 164 came to be recorded

before the learned Magistrate at Selu, wherein, he disclosed that, on 05/09/2022, while he was working in his field, he received a mobile call from accused – Tukaram. He was saying that, he is at Bori along with accused – Macchu. Thereafter, he made a video call to him, in which, it was seen that, a girl is sitting on motorcycle in between them. The accused – Tukaram was asking to the girl that she should speak on the phone. Thereafter, due to the network issue, further communication was not audible. After that, he heard that, the accused - Tukaram saying that, he will drop the girl at Bori.

4. On the basis of aforesaid statement applicant is also added as one of the accused person in charge sheet, alleging to have committed an offence, punishable under Section 21 of POCSO Act. Thereafter, the applicant moved an application below Exhibit-28 in Special Case No.162/2022 seeking his discharge invoking provisions under Section 227 of Cr.PC on the ground that, Section 21 of POCSO Act would not attract against him and the material in charge-sheet is bereft to make out any such.
5. The application was opposed on behalf of the respondent-State. The Sessions court Parbhani, after hearing the parties, rejected the application below Exhibit-28 vide order dated 16/01/2023. Aggrieved by the order refusing to discharge the applicant, the present criminal revision application is filed under

Section 397 read with Section 401 of Cr.PC.

6. Mr. Kamble, learned Advocate appearing for the applicant would submit that the allegation against the applicant is limited to the extent that he failed to report commission of offence under POCSO Act to either Special Juvenile Police Unit or the Local Police in terms of Section 19 of POCSO Act although he had knowledge of such offence. He would submit that so far as other offences are concerned, no role is attributed against him. Learned Advocate appearing for the applicant would further submit that, except the statement of the applicant recorded under Section 164 of Cr.PC, no other material is relied in the charge-sheet, to make out the charge under Section 21 of POCSO Act against the applicant. He would submit that the statement of the applicant has been recorded as a witness no.5. Even taking contents of the said statement as it is, the applicant cannot be attributed with the knowledge of the commission of offence under POCSO Act. He would further submit that the statement of applicant recorded under Section 164 of Cr.PC as an witness cannot be used against him as confessional statement, as such, there is no admissible material to frame the charge against the applicant. He would further urge that the learned Sessions Judge failed to consider the aforesaid aspects and rejected the prayer of the applicant for discharge for erroneous reasons.

7. Learned APP appearing for the respondent – State so also learned Advocate appearing for respondent no.2 strongly opposes the contentions raised on behalf of the applicant. They would submit that while the accused persons were carrying the victim on the motorcycle, accused – Tukaram made a video call to the applicant and who has seen the victim being carried in between the accused persons on the motorcycle. The applicant in his statement recorded under Section 164 of Cr.PC gave the aforesaid version, which is sufficient to prima facie infer that, the applicant had knowledge of the offences under POCSO Act and he was under obligation to report the same to the police in terms of Section 19 of POCSO Act. As such, they urge to reject the application.
8. Before this Court proceeds to appreciate the rival contentions, it is apposite to refer Section 19(a) of POCSO Act, which reads thus:

“ 19. Reporting of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 to 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, -

(a) the Special Juvenile Police Unit; or

(b) the local police

(2)

(a)

(b)

(c)

Section 21 of POCSO Act provides for punishment for default in reporting the commission of offence by the person having knowledge.

9. The Supreme Court of India, in the matter of **The State of Maharashtra & Anr. V/s Dr. Maroti s/o Kashinath Pimpalkar¹**, examined the scope of term “knowledge” as well as the purpose behind the provision contained under Sections 19 and 21 of POCSO Act. It is observed that, to achieve the avowed purpose, a legal obligation for reporting of offence under the POCSO Act is cast upon on a person to inform the relevant authorities specified thereunder when he/she has knowledge that an offence under the Act had been committed. Such obligation is also bestowed on person who has apprehension that an offence under this Act is likely to be committed. The legislature thought it expedient to make failure to discharge the obligation thereunder as punishable, under Section 21 thereof.
10. In view of the aforesaid observations to bring home guilt under Section 19(1) of POCSO Act, the accused

¹ (2023) 4 SCC 298

must have the knowledge of the offence committed under the POCSO Act or apprehension that an offence under this act is likely to be committed. Upon such apprehension or knowledge, there must be failure to pass on the information to the specified authorities. The non-compliance is punishable under Section 21 of POCSO Act. The meaning of “knowledge” has been defined in the law lexicon as under:

“KNOWLEDGE : The certain perception of truth; belief which amounts to or results in moral certainty indubitable apprehension; information; intelligence; implying truth, proof and conviction, the act or state of knowing; clear perception of fact; that which is or may be known; acquaintance with things ascertainable; specific information; settled belief; reasonable conviction; anything which may be the subject of human instruction.”

11. Similarly, the term knowledge has been considered and interpreted by the Supreme Court of India in various judgments particularly, in the case of **Joti Prasad V/s State of Haryana**², the following observations are made as under:

“5. Under the Indian Penal law, guilt in respect of almost all the offences is fastened either on the ground of “intention” or “knowledge” or “reasons to believe”. We are now concerned with the expression “knowledge” and “reasons to believe”. “Knowledge” is awareness on the part of person concerned indicating facet of the state of mind. “Reasons to believe” is not the same thing as “suspicion” or “doubt” and mere seeing also cannot be equated to believing. “Reasons to believe” is higher level of state of mind. Likewise “knowledge” will be slightly on higher plane than “reasons to believe”. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same.”

² AIR 1993 SC 1167

12. The definition of knowledge as appearing in law lexicon coupled with the interpretation of the term adopted by the Apex Court in various judgments, makes it explicit that the person can be attributed with knowledge when the person can be supposed to know where there is a direct appeal to his senses.
13. In view of the aforesaid legal position, it will have to be examined if the material in charge-sheet is sufficient to establish that the applicant had exclusive knowledge of such an offence having been committed by co-accused under POCSO Act and he failed to report the same to the competent authorities. The perusal of the charge-sheet would show that the complicity of the applicant in the commission of offence is sought to be brought on record only on the basis of his own statement recorded under Section 164 of CrPC dated 22/09/2022 as a witness no.5. Pertinently, the 164 statement of the victim nowhere refers that any such video call was made by accused and the victim was asked to speak with the person on such call. Further assuming that the accused – Tukaram had made such video call and the applicant has seen the victim sitting on motorcycle in between two accused persons that itself would not appeal to the senses of a common man that any offence under the POCSO Act has been committed and it is his obligation to alarm the concerned authorities.
14. The trial court observed in the impugned order that the call detailed record of mobile of accused persons

reveals that on the day of incident, there were mobile communications in between accused persons, which indicate prima facie knowledge of kidnapping of the victim by accused nos.1 and 2. It is difficult to subscribe with the aforesaid observations. Merely because, someone sees the small girl sitting in between two motorcycle riders, one would not conceive or imagine that some offence under the POCSO Act has been committed.

15. Pertinently, the case of the prosecution is based on the statement of the applicant recorded under Section 164 of Cr.PC as a witness. Such statement can be used for limited purpose to corroborate other evidence on record. It would be inadmissible in evidence and can be used for the limited purpose as provided under Sections 145 and 157 of the Indian Evidence Act, 1872. Apparently, on the basis of statement of the applicant recorded under Section 164 of Cr.PC, no case can be made out against him.
16. It is well settled that the Court exercising jurisdiction under Section 227 of the Cr.PC can consider the entire evidence in charge-sheet for limited purpose to find out if on the basis of material relied in the charge-sheet, the strong suspicion can be raised against the accused regarding his involvement in commission of offence. In facts of the present case, after considering the material in the charge-sheet, there is no admissible evidence, by

which, the charge under Section 21 of POCSO Act can be made out against the applicant.

17. In that view of the matter, the case is made out to discharge the applicant by setting aside the impugned order dated 16/01/2023, passed by Trial Court below Exhibit - 28, in Special Case No.162/2022 pending before the Sessions Judge at Parbhani. Hence, the following order:

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) The impugned order dated 16/01/2023 passed the Additional Sessions Judge - 5 Parbhani below Exhibit - 28, in Special Case No.162/2022 is hereby quashed and set aside.
- (iii) The application [Exhibit-68] filed by the applicant under Section 227 of Cr.PC seeking discharge in Special Case No.162/2022 pending before the Additional Sessions Judge Parbhani is allowed.
- (iv) The applicant, namely, Uddhav S/o Pralhad Kale is discharged under Section 227 of Cr.PC in Special Case No.162/2022 for the offences punishable under Sections 363, 366(A), 376(2)(i) 376(2)(j), 376(DB), 323 & 506 read with Section 34 of IPC and Sections 4, 8,12 and 21 of POCSO Act.

[S. G. CHAPALGAONKAR]
JUDGE