

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 9 OF 2023

THE ST. DOMNIC SAVIO HIGH SCHOOL
REP. BY ITS CHAIRMAN JOS PETER
D'SOUZA.

..... APPLICANT.

VERSUS

STATE OF GOA, THR. OFFICER
INCHARGE/POLICE INSPECTOR
CALANGUTE POLICE STATION,
CALANGUTE AND ANR.

..... RESPONDENTS.

Mr. Terence Vaz, Advocate for the applicant.

Mr. S. G. Bhobe, Public Prosecutor for respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Terence Sequeira,
Advocate for the intervenor.

CORAM: PRAKASH D. NAIK, J

Reserved on: 29th August 2023

Pronounced on: 31st OCTOBER 2023

ORDER.:

1. The revision applicant has invoked jurisdiction of this Court under Section 397 of Cr.P.C. challenging the order dated 27.12.2019 passed by Children's Court at Panaji allowing "B" summary report submitted by Sub Divisional Police Officer Porvorim Goa in Crime No.18/2015 registered with Calangute Police Station.
2. The applicant is educational institution known as St. Dominic Savio High School, formerly known as Calangute People's High

School. Complaint was filed by institution with Calangute Police Station on 26.1.2015 alleging that it was brought to the notice of the managing committee that one of the teacher named therein has been misbehaving with the girl students who are minors which is offensive in nature. Some of the students have shown their willingness to co-operate in whatever action initiated by the complainant. Names of three students were mentioned as persons who had agreed to take necessary action. It was alleged that concerned teacher is touching some of the girls on their back and pulling their hair despite being told by them that they do not like such behaviour and he should not touch them. He holds their hand against their wishes. On receipt of the complaint FIR was registered on 27.1.2015 with Calangute Police Station for offences under Sections 323, 354A of IPC, Section 8(2) of Goa Children's Act 2003 and Section 8 of Protection of Children from Sexual Offences Act 2012. Prior to lodging the complaint managing committee of the institution had emergency meeting on 26.1.2015 and resolved that complaint be lodged with Calangute Police Station for investigation and necessary action against the teacher (intervenor). Pursuant to the registration of FIR statements of three students were recorded. Instead of disclosing their names they are referred to as students A, B and C. statement of student A was recorded on 27.1.2015. She stated that accused is her teacher. On few occasions during the class, teacher had hit her with ruler because she

had not done her work correctly. He had hit her on left arm. Besides this she does not have any complaint against him. Statement of student B was also recorded on 27.1.2015. She stated that accused had touched her on her back on several occasions and he used to say that she is nice girl. He used to tell her to get lost whenever she used to go to him with some difficulty. Student C in her statement dated 27.1.2015 stated that accused teaches them science and mathematics. Accused had rubbed her back with his hand and used to say that she is nice girl. She told her she do not like touching her back. After that he stopped touching and talking to her. Accused had touched her hair and pulled it many times. He also pulled her hand. He had hit her with hand and back without her fault. She had informed about this to computer teacher and her mother. Statement of mother of student C was recorded on 27.1.2015. She stated that her daughter had informed her that accused used to rub her back with his hand and pulled her hand and that he used to bit her. Her daughter had informed her that she had informed about this incident to another teacher. Documents on record indicates that students/victims refused to consent for medical examination. During the course of investigation statement of father of the student B was recorded on 31.1.2015. He stated that his daughter is studying in the concerned school. His daughter had informed him that one of the school teacher insisted her to give complaint against the accused. He

believed that daughter is nicely studying in school and scoring good marks in mathematics and all teachers used to appreciate her. Since last two years her daughter had never complained about school teacher. His niece is ex-student of the school and she informed him that the accused is nice person by character and teaching well. He is innocent. He came to know that because of his promotion which is due, case has been filed by management against him. When he visited the school he came to know that accused is likely to be promoted as Headmaster and therefore management has filed complaint against him. Considering this he has filed an affidavit before police mentioning the truth. Investigating Officer wrote a letter to Headmaster calling for details of information and required documents vide letter dated 30.1.2015. Statement of incharge Headmaster was recorded on 2.2.2015. He stated that he knew the accused since last 25 years. There are no complaints against him since last 25 years. He is a good teacher having untarnished record and good moral character. Accused had told him that he has dispute with the school management and they do not wish to promote him to the post of Headmaster and insisting him to give no objection to promote some other teacher as Headmaster. One of the teacher had retired from service and her service extension was granted for one year. The victims had never complained to him about harassment or ill-treatment and he was surprised how management manager filed a

complaint against accused without intimation to the incharge Headmaster. Statement of father of student A was recorded on 31.1.2015. He stated that his daughter had informed him that one of the school teacher had insisted her to give complaint against the accused. He was surprised to hear this. His daughter is nicely studying in school and scoring good marks in mathematics. Accused is innocent. He came to know that due to promotion, case has been filed against him. Statement of Jaganath Palyekar was recorded on 6.2.2015. He stated that his daughter is studying in the said school. He was told by relative of one of school teacher for giving statement against the accused. He came to know that management had filed false complaint against accused. His daughter told him that the accused is teaching mathematics and science. He is a good teacher. Hence, he felt that statement of his daughter should not be recorded as she has already told him about the case.

3. During the course of investigation statement of other witnesses were recorded. Statement of the teacher to whom student had allegedly complained was recorded on 27.2.2015. Investigating officer issued letter to learned Judicial Magistrate, First Class on 18.12.2015 with a request to record the statement of victims and their parents as per provisions of Section 164 of Cr.P.C. Father of Student B stated that his daughter had informed him that no incident of molestation had ever taken place. On inquiry with his daughter she

revealed that she was forced by lady teacher to given false statement stating that accused is assaulting them and touching them. Father of student A filed similar affidavit. Father of student C also filed an affidavit stating that he and his daughter has no complaint against accused. Statement of other teachers were recorded . Even the said teachers filed affidavits. Computer teacher in her affidavit stated that she spoke to two students who made complaint against the teacher. Another teacher stated that student had made grievance against the accused. The third teacher also filed affidavit with similar averments.

4. Intervenor/accused preferred an application for anticipatory bail before the Children Court. Application was allowed vide order dated 3.3.2015. While allowing the application it was observed that applicant and complainant had relied upon correspondence and documents which are sufficient to show indifference between the applicant/accused and the management of the school. Complaint is filed by manager of the school who was intervenor in the application for Anticipatory bail. These facts support the claim of the accused that management had adverse interest against him who is admittedly teaching in the said school for 25 years with clean record. Court made reference to statement of three victims. It was also recorded that victims refused to go for medical examination. Reference was made to the affidavits of the parents wherein they have stated that victims have been forced to give statements. Court further observed

that even after ignoring the affidavits of the parents of the victims girls for sometime, it is seen that statement of the victim girls recorded in presence of Assistance Unit does not reveal anything incriminating as against the accused that would implicate him with the offence under section 354-A of IPC, Section 8(2) of the Children's Act and Section 8 of the Protection of Children from Sexual Offences Act 2012. Basic ingredient of section 7 of the POCSO Act which is punishable under Section 8 is sexual intent and none of the statements of the victim girls or even the staff members of the said school who have stated about the acts of the accused reveal this basic ingredient on the part of the accused. Like the parents of the victim girls even three teaches have filed affidavits. It it is assumed that parents were pressurised to file the affidavits supporting the claim of the applicant it was teachers who were pressurised by the management to file affidavit in support of their claim against the accused especially when incharge Headmaster had expressed his inability to remain present before the Calangute Police Station to give his statement vide letter dated 31.1.2015 but sworn an affidavit on 12.2.2015. Statement of incharge of the school states that accused is teaching mathematics and science for last 25 years and there was not a single complaint against him of any kind. He was professional and very good teacher, having untarnished record and good moral character. Accused was in disputed terms with school management

as they did not want to promote him at the post of Headmaster and were constantly insisting him to give no objection to promote some other teacher as Headmaster. There is no material to reveal any act on the part of the applicant with girls students of the said school including the victims girls which statement does not amount to sexual harassment. Learned Judge after evaluating the material held that presence of the accused in custody is unnecessary and allowed the application for anticipatory bail. Statements of victims students A, B and C were recorded on 5.3.2015 by the learned Magistrate under Section 164 of Cr.P.C. All of them have stated before learned Magistrate that they are students of the school. Accused teaches them mathematics and science and he do not do anything against them. Accused did not trouble them. He is a good person. Statement of student A recorded under Section 164 spells out more details wherein she has elaborately stated that accused had not done anything. One of teacher whom she had mentioned therein had told her to tell the persons who came in the office of the school that accused teacher touches her. She was threaten that if she does not state so it will be seen that she will be failed in her exams. Teacher never touched her. She was never assaulted by him. Concerned teacher who told her to make statement was present when she made the statement to the persons who visited school office. Similar statement of the parents whose statement was recorded by police who tendered affidavit was

recorded under Section 164 of Cr.P.C. by the Magistrate by reiterating their version in their affidavits and earlier statements. On completing investigation with the aforesaid materials the Sub Divisional Police Inspector submitted report with all the documents before Children's Court on 24.8.2016. Learned Judge issued notice to the complainant. Reply was filed by the complainant dated 5.7.2017 opposing the report and praying that "B" summary be dismissed. Learned Judge vide order dated 27.12.2019 granted "B" summary to the proceedings. This order is under challenge by the revision applicant in this application.

5. Learned Advocate Mr. Vaz appearing for the applicant submitted that impugned order is contrary to law. There was sufficient evidence to proceed with the case. Court could have issued process against the accused or directed further investigation in the case. Court committed an error in granting "B" summary. The Court has failed to take the objection urged by the applicant/complainant. Court failed to consider the statements of the victims under Section 161 of Cr.P.C. Procedure under the provisions of POCSO Act was not followed by the Investigating Agency. Section 24 of the POCSO was not adhered to by investigating machinery. There has been delay in recording the statement under Section 164 of Cr.P.C. The impugned order is cryptic. It does not reflect application of mind. Learned Judge has not assigned reasons. Merely showing that Court has

perused the record is not sufficient. Court should have discussed as to why report is accepted. Investigation is biased. There was no question of taking affidavits of the witnesses. Victims had mentioned the name of the accused. Investigation should not have been conducted by male officer.

6. Mr. Vaz has relied upon following decisions:-

1. *Sant Lal Gupta and others vs Modern Cooperative Group Housing Society Limited and others*,¹
2. *Vishal Ashwin Patel Vs Assistant Commissioner of Income Tax Circle 25(3) and ors.*²
3. *Shravan Baburao Dinkar Vs N. B. Hirve Additional Inspector of police and others*³
4. *Mrs. Celine Suman Sequeira Vs The State*⁴
5. *G. V. Rajagopal Chetty Vs The State*⁵
6. *Smt. Reenu Saini Vs State of Uttarakhand and others.*⁶

7. Senior Advocate Mr. Lotlikar submitted that FIR was lodged against intervenor with malafide intentions. Management was biased against intervenor. Complaint was false. Complainant was manager of the institution. Complaint was mooted through one of the teacher at the instance of the management. The management was interested

1 (2010) 13 SCC 336

2 2022 4 SCC 241

3 (1997) 1 Mah. LJ 412

4 2020 2 KCCR 1504

5 2017 4 MLJ(Cri) 562

6 Writ Petition (Criminal) No. 1591 of 2018 dated 29.8.2018

in denying promotion to the intervenor. Intervenor cannot be harassed again for under going same process. Investigating machinery had conducted the investigation, statement of the victim girls and parents were recorded. Affidavits were filed by parents as well as teachers. Said teachers were supporting management wherein parents have stated that complaint was false. Statement of the victims recorded under Section 164 of Cr.P.C. cannot be discarded. Said statement had sanctity of law. Having stated that accused is not involved in the crime, he cannot be subjected to investigation. Investigating Agency has rightly submitted "B" summary report which has been accepted by the Court. Statements were on record. Order clearly reflects that learned Judge has perused the record. It is not necessary that every order should be lengthy. Assuming that the order is short it reflects complete application of mind to the facts of the case and statements on record. Intervenor was granted anticipatory bail and the reasons spelt out in the order itself indicate the nature of the evidence against the intervenor. Complainant filed objection in writing by way of reply. Thereafter he remained absent which is evident from the roznama. Intervenor had filed a petition in this Court viz writ Petition no.806/2023/F which was disposed of by order dated 19.7.2023. Order clearly refers to the conduct of the management. Intervenor had sought direction to appoint him as Headmaster of the school. Intervenor was working as

teacher since last 25 years. There were no complaints in the past. While disposing of the petition vide order dated 19.7.2023, this Court had referred to grant of “B” summary by Court and the statement recorded under Section 164 of Cr.P.C. before JMFC in which students have stated that teacher was good and did not trouble them. It was also observed that “B” summary report was accepted by the Court. Petition was disposed of by directing that fresh DPC should be conveyed to make recommendations to regularly fill up the post of Headmaster in the school. School management committee was directed to appoint intervernor as Headmaster incharge.

8. Mr. Lotlikar, has relied upon decision of supreme Court in ***Kanti Bhadra Shah and ors. Vs The State of West Bengal***⁷

9. Factual matrix of complaint has been narrated herein above. It is evident that manger of the institution lodged the complaint with Calangute police station. On the basis of that complaint, FIR was registered. Initial statement of the victim girls were recorded wherein they stated that they were touched by the accused. Statement of the parents of the victim students were recorded. Statements of the victims as well as parents were recorded under section 164 of Cr.P.C. Parents in their statements under Section 161 and Section 164 has completely exonerated the accused. Victims although have made

7 AIR 2000 SC 522.

reference to the fact that they were being touched on the back in their statement under Section 161, in their statement under section 164 of Cr.P.C., they have clearly stated that accused had not indulged in any such acts. One of the statement also depicts that grievance was made at the instance of one of the teacher. Entire record was placed before learned Magistrate seeking grant of “B” summary. Learned Magistrate vide order dated 27.12.2019 granted “B” summary. There is no reason to interfere in the said order.

10. Mr. Vaz appearing for the applicant has relied upon several decisions. In the case of *Sant Lal Gupta and others vs Modern Cooperative Group Housing Society Limited and others*, (supra), it is observed that judicial order must be supported by reasons. In the case of *Vishal Ashwin Patel Vs Assistant Commissioner of Income Tax Circle 25(3) and ors.* (supra), it is observed that reasons constitute the soul of judicial decision and how Judges communicate in their judgment is a defining characteristic of judicial process since quality of justice brings legitimacy to the judiciary and order bereft of reasoning causes prejudice to the parties. In the case of *G. V. Rajagopal Chetty Vs The State* (supra), it is observed that Magistrate has passed cryptic order after discussing minimum reasons which constitute satisfaction of the magistrate either to accept or reject the contentions of the petitioner. In the case of *Mrs. Celine Suman Sequeira Vs The State* (supra), the Karnataka High Court has

observed that if the Court is of the opinion that material available in the 'B' Summary report makes out a cognizable case against the accused and the same is sufficient to take cognizance, and to issue process, then the Court has to record its opinion under Section 204 of Cr.P.C. In the case of *Shravan Baburao Dinkar Vs N. B. Hirve Additional Inspector of Police and others* (supra) it is observed that the function of the police, is distinct from the role assigned to the judiciary. One is not permitted to trample upon the province reserved for the other. Once a report under Section 173(2) is submitted by the police to a Magistrate, a Magistrate has the jurisdiction to take cognizance. In the case of *Smt. Reenu Saini Vs State of Uttarakhand and others* (supra) it is observed that procedure has been provided in Chapter 6 of the POCSO Act for recording statement of the child which is complied with.

11. In the case of *Kanti Bhadra Shah and ors Vs The State of West Bengal*, it is observed that, the time has reached to adopt all possible measures to expedite the the Court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial Courts would further be slowed down. The Court has come across interlocutory orders of Sessions Courts and Magistrate running into several pages. It is quite

unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stage in the trial etc. The High Court could have re-examined the records to consider whether the charge framed was sustainable or not. If the High Court decides to quash the charge it is open to the High Court to record the reasons thereof. The direction to the Magistrate to consider the materials once again and then to frame a charge for the same offence if the Magistrate reaches the opinion that there is ground for presuming the commission of offence is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial Court.

12. The impugned order in the present case has to be seen in the context of the material on record.

13. Order indicates that learned Judge has perused entire final report submitted before the Court. Learned Judge had read statements of witnesses and victim girls. It is seen that complaint is false and hence “B” final summary granted. What is required to be seen is not the length of the order but its quality and whether there is application of mind by concerned Court. Order clearly indicates that Court has perused entire final report. Final report consist of statement of the victims, complainant, witnesses and various other

documents which are referred to herein above. Order indicates that Court is alive to the statements of the victim girls. “B” summary report filed by police itself indicates that complaint was false and therefore Court has formed an opinion that based on the material perused by the Court it is found that complaint is false. It was not necessary that Court should analyse each and every statement. No case is made out to set aside the order and to remand the case back to the trial Court on this ground. Even otherwise perusal of all the documents on record including statement of the witnesses, victim girls more particularly statements recorded under Section 164 of Cr.P.C. wherein victim girls have completely exonerated accused there is no question of subjecting the accused to further agony. Record indicates that management approach is adverse towards interest of the intervenor. Except the victim girls there was no other complaints. Nature of the statement of the victims girls under Section 161 and further statement under Section 164 smacks false implication of the intervenor. The investigating Agency has made all efforts to investigate the crime. The complainant filed reply to the report. Roznama indicates that thereafter the complainant did not appear before the Court. Although the Court has other option to take cognizance of the proceedings and to direct further investigation, Court felt that the material on record would indicate that complaint is false and hence it was not expected to take cognizance or to direct

further investigation. Hence no case is made out to interfere in the impugned order. Revision application is required to be dismissed.

ORDER

(i) Criminal Revision Application No. 9 of 2023 is dismissed and stands disposed of.

PRAKASH D NAIK, J.