

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 751 OF 2022****Madhavi Prashant Kadam****...Petitioner****Versus****Dadaso Natha Shinde and Anr.****...Respondents**

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Mr. Kuldeep Nikam a/w Mr. Prasad Avhad Advocate for Petitioner.

Mr. Satyavrat Joshi i/by Mr. Nitesh J. Mohite, for Respondent No.1 to 9.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D.NAIK, J.**DATE : 8th JUNE, 2023.****P.C.:-**

1. Heard both sides.
2. The petitioner is the original complainant in First Information Report bearing No.41 of 2020 lodged against the Respondents for offences punishable under Sections 143, 147, 148, 324, 323, 504, 506 and 427 of Indian Penal Code. Supplementary statement of Petitioner/complainant was recorded on 7th May 2020. In the said statement, she had referred to the act committed by accused outraging modesty of her daughter. Statement of victim girl aged around 13 years, who is the daughter of petitioner was recorded on 15th May 2020 wherein it is alleged that the

accused had committed act of outraging her modesty. On completing investigation, charge-sheet was filed for the offences punishable under Sections 354, 143, 147, 148, 149, 324, 323, 427, 504, 506 of I.P.C. and Section 8 of Protection of Children from Sexual Offences Act, 2012.

3. Learned Sessions Judge (POCSO) Sangli vide order dated 25th February 2021 framed the charge for offences under Sections 354, 143, 148, 324, 427, 506 and 392 of I.P.C.

4. Pursuant to order framing charge, the learned Sessions Judge vide order dated 12th August 2021 has observed that, offences for which charge is framed, are triable by judicial Magistrate First Class. The case was transferred to learned Chief Judicial Magistrate, Sangli for further action/trial under Section 228 of Cr.P.C. and the accused were directed to appear before the learned Chief Judicial Magistrate, Sangli on 30th August 2021.

5. Learned Advocate for the Petitioner submitted that, the order framing charge as well as the order transferring the proceeding to the Chief Judicial Magistrate, Sangli are contrary to law. The charge-sheet was filed for various offences including the offence under Section 8 of the POCSO Act. The learned Judge has failed to frame charge under the provisions of POCSO Act and proceeded to frame charge for offences under I.P.C. and transferred the proceedings to the Court of learned Chief Judicial Magistrate. The supplementary statement of the complainant/petitioner

and the statement of the victim girl categorically mentions the fact that the accused had committed an act of outraging modesty of child/victim. The victim girl was aged around 13 years at the time of incident and hence, Section 8 of the POCSO Act was squarely applicable in this case. Without assigning any reason, the Court did not frame the charge under the provisions of POCSO Act and committed an error in transferring the proceedings to the Court of learned Chief Judicial Magistrate, Sangli.

6. Learned APP supported the submissions of the learned Advocate for the Petitioner and submitted that, the order passed by learned Sessions Judge not framing charge under POCSO Act and transferring proceedings to Lower Court is erroneous and required to be set aside.

7. Learned Advocate for Respondent Nos.1 to 9 has strongly opposed the relief sought in this petition. It is submitted that, the learned Sessions Judge has appreciated the facts on record and has framed the charge for the aforesaid offences. There is no infirmity in the impugned orders framing charge as well as the subsequent order transferring the proceedings to the appropriate Court.

8. Although, FIR was registered on 3rd May 2020 for the offences as stated above, the supplementary statement of the Petitioner/complainant was recorded on 7th May 2020 wherein she has referred to the offence of outraging modesty committed by accused against her daughter aged around 13 years. The statement of witness Mr. Prashant Kadam (husband of

petitioner/complainant) was recorded on 15th May 2020 wherein he has referred to the act of outraging modesty of his daughter. During investigation, the statement of minor child (victim) was recorded on 15th May 2020 and she has referred to the fact that the accused had outraged her modesty. The learned Sessions Judge has framed the charge for various offences including the charge under Section 354 of I.P.C. but failed to frame the charge under the provisions of POCSO Act. It is pertinent to note that, charge-sheet was filed for the various offences under Section 354 of I.P.C. as well as Section 8 of the POCSO Act. It is also relevant to note that, the victim child was subjected to sexual assault. She is the minor girl aged around 13 years. Although, the Court proceeded to frame charge under Section 354 of IPC, failed to frame charge under Section 8 of the POCSO Act. This reflects is non application of mind on the part of the learned Judge. As consequence to the order of framing charge, the trial Court has transferred the proceedings to the Court of learned Chief Judicial Magistrate.

9. In the aforesaid circumstances, the order framing charge dated 21st February 2021 will have to be set aside since charge under Section 8 of POCSO Act is not framed. The consequential order dated 12th August 2021 transferring the proceedings to the Court of learned Chief Judicial Magistrate is also required to be set aside. If the proceedings are already transferred to the Court of learned Chief Judicial Magistrate, the same be

returned to Sessions Judge (POCSO), Sangli immediately.

ORDER

- (i) The impugned order framing charge dated 25th February 2021 passed by learned Extra Joint District Judge and Additional Sessions Judge (POCSO) Sangli vide exhibit No.29 in Special Case (POCSO) No.221 of 2020 as well as order dated 12th August 2021 passed by same Court are set aside and the proceedings are re-transferred to the Court of Extra Joint District Judge and Additional Sessions Judge (POCSO) Sangli to frame the charge under the provisions of POCSO Act.
- (ii) The learned Sessions Judge (POCSO), Sangli shall pass fresh order framing charge including charge under Section 8 of POCSO Act.
- (iii) Petition stands disposed off.

(PRAKASH D. NAIK, J.)