

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2028 OF 2022

Lau Ramchandra Jadhav

..Petitioner

VS.

The State of Maharashtra and another

..Respondents

Mr. Avinash Avhad a/w Mr. Mahesh Rawool a/w Mr. Sachin D. Gawade for the Petitioner.

Ms. Anamika Malhotra, APP for Respondent No.1-State.

Ms. Megha Bajoria for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 7, 2023

P.C. :

1. Heard Mr. Avinash Avhad, learned counsel for the Petitioner, learned APP for the State and Ms. Megha Bajoria for Respondent No.2.

2. Under challenge in this Writ Petition is an order passed by the Judicial Magistrate First Class, Sawantwadi (hereafter "J.M.F.C.", for short) dated 16.02.2022 committing the trial to the Special Court, Sindhudurg-Oros.

3. Learned counsel for the Petitioner submitted that for the offences punishable under Section 354, 354-D (2) of the Indian Penal Code (hereafter "IPC", for short), the trial was proceeding before the J.M.F.C. and was at the stage of cross-examination of P.W. No.2. At that stage, the learned J.M.F.C. realised that the victim was a minor at the time of the commission of the alleged offences and therefore committed the case in view of provisions of Section 323 of the Code of Criminal Procedure (hereafter "Cr.P.C.", for short) to the Special Court as the offence attracted the provisions of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short).

4. Learned counsel for the Petitioner invited my attention to the FIR dated 17.02.2018. It is the submission of learned counsel that the date of birth of the victim on the date of lodging of the FIR was 28.01.2000. It is therefore submitted that the provisions of POCSO Act will not be attracted in the facts of the present case as the FIR was lodged after the victim attained majority. Learned counsel submitted that the date on which the FIR is registered will be relevant to

determine the applicability of the POCSO Act. Learned counsel urged that if on the date of lodging of the FIR the victim is above the age of 18 years, the offence will not fall within the ambit of POCSO Act. My attention is invited to the statements of the objects and reasons and the definition of child in Section 2(d) of the POCSO Act to contend that the child must be below the age of eighteen years on the date of which the offence is registered for the POCSO Act to apply. Learned counsel was at pains to point out that when the victim has already become a major on the date of registering the FIR, then there is no question of proceeding under the provisions of POCSO Act, as the victim is no more a 'child'. He submits that the Petitioner at the highest can be prosecuted under the provisions of the IPC, a course rightly adopted by the learned J.M.F.C. till the case came to be committed to the Special Judge by the impugned order. It is further his submission that when the trial was at an advanced stage, the learned J.M.F.C. should not have invoked the provisions of Section 323 of the Cr.P.C.

5. Learned APP and learned counsel for Respondent No.2

appointed to represent the victim through legal aid argued in support of the impugned order. It is submitted that the relevant consideration would be the date on which the alleged offence is committed for the applicability of the provisions of the POCSO Act. It is submitted that the trial Court having realised this, the case came to be committed to the Special Judge trying offences under the POCSO Act, in exercise of a power envisaged by Section 323 of Cr.P.C.

6. Heard. A reading of the FIR dated 17.02.2018 reveals that on the date of lodging of the FIR, the victim was above 18 years of age. The date of birth of the victim, as revealed from the FIR is 28.01.2000. The accusations in the FIR which constitute the alleged offences under the POCSO Act, as against the Petitioner, pertain to the period prior to the victim attaining the age of 18 years. On the basis of the materials forming part of the charge-sheet, an attempt was made by learned counsel for the Petitioner to contend that the accusations which would constitute the alleged offence under the POCSO Act are even otherwise after the victim attained majority on 28.01.2018. In my opinion, this

aspect is a subject matter of trial as the accusations in the FIR and other materials on the face of it do not demonstrate that they pertain to the period after the victim attained majority.

7. The POCSO Act was enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. Section 2(d) of the POCSO Act defines "child" means any person below the age of eighteen years. The Special Courts have been established for trial of offences of sexual assault, sexual harassment and pornography and for matters connected therewith or incidental thereto. The interpretation as sought to be expounded by learned counsel for the Petitioner if accepted will defeat the benevolent intent and object of enacting the POCSO Act. For the provisions of the POCSO Act to be attracted, the material consideration is whether on the face of accusations constituting the offence under the POCSO Act, the same are pertaining to the period prior to the

victim attaining 18 years of age. For genuine, bonafide and other reasons there may be a delay in lodging the FIR. As to what is the consequence of such a delayed FIR is a matter to be considered on its own merits at the appropriate stage. The alternative contention of learned counsel for the Petitioner that the victim was not a 'child' at the time when the alleged offence was committed is a subject matter for trial. I therefore do not find any merit in the submissions of learned counsel for the Petitioner.

8. So far as the contention of learned counsel for the Petitioner that the learned J.M.F.C. was not justified in committing the case to the Special Court at the stage when evidence was being recorded is concerned a reference to the provisions of Section 323 of the Cr.P.C. would be material. Section 323 of the Cr.P.C. reads thus :-

"323. Procedure when, after Commencement of inquiry or trial, Magistrate finds case should be committed. - If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained [and thereupon the provisions of Chapter XVIII shall apply to the commitment so made].

9. In the present case, the matter was fixed for cross-examination of P.W. No.2. The learned J.M.F.C. realised that the victim was a minor at the time of commission of the alleged offence which attracts the provisions of POCSO Act and hence the trial was committed to the Special Court. I do not find any error in such a view taken by the trial Court which is in consonance with the provisions of Section 323 of the Cr.P.C.

10. Needless to mention that all contentions of the Petitioner including the contention of the Petitioner that the victim was not a minor on the date of the offence are kept open.

11. As no interference in the impugned order is warranted, the Writ Petition stands rejected.

(M. S. KARNIK, J.)