

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2291 of 2022

Umashankar Ramnath Singh & Ors .. Petitioners
Versus
The State of Maharashtra & Anr .. Respondents

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Mr. Akhilesh Singh for the petitioner.
Mr. Rajesh Singh with Ranjan Mishra for respondent no.2.
Mr. N.B. Patil, APP for the State.
PSI Shri Prakash Sonawane from Pantnagar police station.

CORAM: BHARATI DANGRE, J.
DATED : 6th APRIL 2023

P.C:-

1 The applicants are the parents and sister of one Suraj Singh, who is facing accusation for committing an offence punishable u/s.376, 377 IPC and Section 4, 6 of the POCSO Act, are charged for abetting the commission of the said offence.

On completion of investigation, the charge-sheet which is filed on 4/2/2016 allege that the accused no.1 Suraj, aged 29 years, committed sexual intercourse with the prosecutrix on the pretext of marriage and videographed the act, and threatened that he shall make the clippings viral, in case she do not co-operate.

2 Section 109 of the IPC prescribe punishment for abetting an act, if the act abetted is committed in consequence of the abetment and where there is no express provision in the Code for prescribing punishment for such abetment.

 The Explanation appended to Section 109 reads as under :-

“An act of offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment”

3 Bare reading of Section 109 IPC coupled with the explanation would reveal that an offence of abetment is said to be committed if, an act is committed as a consequence of the instigation, or in pursuance of the conspiracy, or with the aid, which constitutes the abetment.

 With this position of law being clear, as regards abetment, it contemplate a positive act in form of instigation, conspiracy or aiding by the accused persons, and it is in pursuance of this act or rather consequence of this act of abetment, an offence is committed.

4 The position of law, as enumerated in Section 109 IPC, being stated as above, when I turn the facts involved in the Writ Petition, which seek a relief of discharge by the parents of

Suraj and his sister, on being charge-sheeted u/s.109, I must make a reference to the complaint lodged by the prosecutrix, who, undisputedly was a minor at the relevant time.

5 The case of the prosecution is, that the complainant who lodged a report on attaining majority, refer to an incident of 2013, when she was acquainted with the accused no.1. Her specific narration is he made physical advances towards her and she used to meet him often. In August 2014, as per her narration, by shutting the door of the cafe, he took her in his arms and a specific statement of the prosecutrix is, to on becoming emotional, she did not object and there was sexual indulgence amongst them. Her version is, thereafter, every alternate day, they used to have sex and frequently they used to visit Hotels. She informed her parents that she had extra classes and after roaming with him throughout the day, she used to be dropped at her home at 5.30 p.m.

After some days i.e. in February 2014, she was introduced to the present petitioners, as his lover and thereafter she started frequently visiting their family house.

6 In the month of May 2014, an unknown woman approached her and disclosed that she was already married to Suraj. The prosecutrix, therefore, avoided meeting him, but when she received phone call from his sister, she again established contact with him, as she was informed that he had attempted to

commit suicide. Once again, there was an assurance by accused no.1 that he would divorce his first wife and solemnize marriage with her.

7 The prosecution case which has surfaced through the statement of the complainant is, thereafter she again resumed relationship with accused no.1 and they used to meet frequently and indulged sexually. When she attained majority, she decided to elope with the accused no.1 and she meticulously planned the whole episode by shifting her clothes and belongings gradually. She started residing at the house of one of the accused and when it was revealed that his first wife had lodged a complaint against the husband as well as her in-laws, she was rescued. She returned back and also informed the police that she had accompanied the accused no.1 in Ahmedabad, but he left from there and therefore, she started working in an Ashram. She returned back with her parents and in the mean time, even her father had lodged a missing complaint.

8 Perusal of the entire statement would reflect that, she has assigned a limited role to the present applicants and the question is whether the role which is attributed to them, even in her supplementary statement, would amount to abetment for committing the offence with which the accused no.1 is charged i.e. offence u/s.376, 377, 506 and Sections 4 and 6 of the POCSO Act.

9 The case of the prosecution, clearly surface through the material compiled in the charge-sheet, is to the effect that the prosecutrix indulged with the accused no.1 physically before she was introduced to the applicants. She herself had admitted that “I had not opposed the physical indulgence” and the question therefore is, whether this act is abetted by the present applicants and the charge-sheet would give a negative response to the same, as it can be seen that though they have encouraged the marriage to be solemnized between the two, after she attained the majority and though the learned counsel for respondent no.2 would vehemently submit that they have concealed the information that he was married, this amounts to cheating and therefore, they have abetted the commission of the offence, I am unable to agree with the said submission. There is no offence of cheating registered and what is alleged to be abetted is only commission of an offence u/s.376, 377, 506 IPC along with Sections 4 and 6 of the POCSO Act.

10 This Court would definitely exercise its power u/s.482 of Cr.P.C, in order to prevent the abuse of process of law in the interest of justice.

Letting the applicants undergo the rigmarole of the trial, in absence of sufficiency of material, securing their conviction, would be nothing but an empty formality.

Undisputedly, the above observations are not applicable/available to the accused no.1, who is charged for committing an offence of rape as well as u/s.4 and 6 of the POCSO Act, the victim/complainant being minor at the relevant time.

However, merely on assumption that the prosecution will succeed in its case, can be no ground to continue the trial, if the material compiled in the charge-sheet, do not make out the ingredients of the offence u/s.109 of the IPC.

In view of the above, Petition stand allowed in terms of prayer clause (a), by setting aside the order dated 07/04/2022 passed by the Court of Special Judge at Mumbai in Special Case (POCSO) No.212 of 2016.

(SMT. BHARATI DANGRE, J.)