

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.391 OF 2022

Pravin Juharmal Chauhan (Referred .. Applicant
in charge-sheet as Chavan)

Versus

The State of Maharashtra & Anr. .. Respondents

...

Mr.Sanjeev P. Kadam with Ms.Aditi Rajpur and Mr.Pratik
Deshmukh i/b Mr.Prashant P. Raul for the Applicant.

Mr.S.H.Yadav, A.P.P. for the State/Respondent.

Ms.Sayali S. Sawant, Appointed Advocate for the Respondent
No.2.

PSI Chandrakant Pawar, attached to Mahim Police Station,
Mumbai, present.

...

CORAM: BHARATI DANGRE, J.

DATED : 21st AUGUST, 2023

P.C:-

1. The Applicant is charge-sheeted for the offences punishable under Sections 292, 377 of IPC alongwith Sections 8 and 12 of POCSO Act. The Applicant moved an application before the Court of Sessions, in POCSO Special Case No.543 of 2019, seeking the following reliefs :-

“a. No charge be framed against accused u/s 292, 377 of IPC and section 8 & 12 of POCSO Act and he be discharged from all the offences alleged.

b. for such and other relief as this Honourable Court may deem fit and proper.”

The Special Judge, on 08/08/2022, rejected the discharge application by reasoning that there is no prima facie merit in the contention that Section 292 is not attracted and by relying upon the decision of the Apex Court in the case of ***Navataj Singh Johar & Ors. Vs. Union of India***¹, even the contention that Section 377 is not attracted, is also rejected.

2. Heard the learned counsel Mr.Sanjeev Kadam for the Applicant, learned counsel Ms.Sayali S. Sawant appearing for Respondent No.2 and the learned A.P.P. Mr.S.H.Yadav for the State.

The charge-sheet filed against the Applicant allege that the Complainant, the father of one of the victim boys, aged 11 years, lodged the complaint, when he noticed his son in a petrified condition, when he returned home. His son was accompanied by his friend, aged 12 and when he inquired with them, the two children named the Applicant and described that when they were proceeding towards the bakery, the Applicant induced them to enter into his shop and made them view objectionable video and, thereafter, inappropriately touched one of the victims.

It is a specific version of the victim, who narrated the incident to the complainant, that he was touched on his private part and this touch was described as “bad touch”. It is further alleged that when the Applicant attempted to pull down the shutter of the shop, they somehow managed to escape.

¹ (2018) 10 SCC 1

The above incident, apart from the complainant, was also narrated to the mother of the other victim.

3. The statement of the victims came to be recorded immediately, where they confirmed to the version narrated to the complainant and the mother of one of the victims. Both the victims referred to the “bad touch” of the Applicant and display of objectionable video in his mobile phone.

The statements of the victims are also recorded by the Magistrate under Section 164 of Cr.P.C. and they reiterated the version of being badly fondled by the Applicant in his shop, after making them view the objectionable video with naked men and women therein, in his mobile phone.

4. The material in form statement of the complainant, including the statement of the mother of the other victim boy as well as the statements of the victims under Section 164 of Cr.P.C. before the learned Magistrate are compiled in the charge-sheet. The version of the victim boys remained consistent, as regards the “bad touch” and objectionable act of the Applicant. Based on the above statements, what is invoked are Sections 8 & 12 of POCSO Act.

5. Section 8 of POCSO Act punishes an act of sexual assault and ‘sexual assault’ is defined in Section 7 to mean touching of the parts mentioned therein with sexual intent, which necessarily involve physical contact without penetration. As far as Section 12 is concerned, it punishes the act of sexual

harassment upon a child and which would cover an act of showing an object to a child in form of media. The material in the charge-sheet, which hint at the commission of offence under Section 8 and 12, in my considered opinion, deserve a trial and, ultimately, whether the act is committed with sexual intent or not, shall be determined at the outcome of the trial.

However, the submission of Mr.Kadam is, Section 377 of IPC is not attracted, since the offence specifically contemplate carnal intercourse against the order of nature with any man or woman and the explanation appended to the Section clearly set out that penetration is sufficient to constitute the carnal intercourse for the purpose of attracting the ingredients of the Section. It is not their case that an attempt was made to have carnal intercourse, and since it is not their case, that they were made to remove their clothes before the Applicant indulged in the alleged act.

As far as Section 292 of IPC, which punishes the act of sale etc. of obscene books is concerned, it is also not attracted in the present case, as it can be seen that there is no recovery of the mobile phone, which is alleged to have been used for the purpose of display of alleged vulgar/obscene videos and, Section 292 specifically contemplate that display of any figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest so as to tend to deprave and corrupt persons, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. It necessarily contemplate the medium through which the obscenity is projected or displayed.

Here, the prosecution has failed to seize the mobile phone and the charge-sheet specifically states that no mobile phone was recovered.

In these circumstances, Section 292, which pertain to sale, distribution, import, export or advertisement of any obscene object for the purposes set out in sub-section (1), is prima facie not attracted.

6. In the wake of the above, Sections 377 and Section 392 of IPC are not attracted in the given case and the learned Special Judge has perfunctorily rejected the application, seeking discharge from these offences.

Hence, I deem it appropriate to set aside the impugned order limited to that extent.

7. This must, therefore, result in discharge of the Applicant under Sections 292 and 377 of IPC, as proceeding the trial for the aforesaid Sections would be an empty formality, in absence of necessary ingredients of the said Sections, being attracted.

8. The Revision Application is partly allowed, by discharging the Applicant under Sections 292 and 377 of IPC. Needless to state that the Applicant shall face charge under the POCSO Act.

(SMT. BHARATI DANGRE, J.)