



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPLICATION (APL) NOS. 295, 296 & 297 ALL OF 2017

APL. NO. 295/2017:

Kishor s/o Sureshchandra Darda
Aged about 57 years, occu: Business
R/o Darda Nagar, Yavatmal.

..APPLICANT

v e r s u s

State of Maharashtra
Through Police Station Officer
Wadgaon Road Police Station
Yavatmal.

..RESPONDENT

APL NO. 296/2017

Kishor s/o Sureshchandra Darda
Aged about 57 years, occu: Business
R/o Darda Nagar, Yavatmal.

..APPLICANT

v e r s u s

State of Maharashtra
Through Police Station Officer
Wadgaon Road Police Station
Yavatmal.

..RESPONDENT

APL NO. 297/2017

Tasnim Jafarali Ratlamwala
Aged about 47 years, occu: service
R/o C/o Fatemi Computers
State bank Chowk, Yavatmal.

..APPLICANT

v e r s u s

State of Maharashtra
Through Police Station Officer
Wadgaon Road Police Station
Yavatmal.

..RESPONDENT

.....
Mr.F.T. Mirza, Advocate for applicant in all the Applications
Ms.M.H. Deshmukh, APP for Respondent-State
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CORAM: ANIL L. PANSARE, J.
Date of Reserving : 02.11.2023
Date of Pronouncement : 06.11.2023

JUDGMENT :

Heard Mr. F.T. Mirza, the learned counsel for the applicants and Mrs.M.H.Deshmukh, the learned APP for the Respondent-State, at length.

2. The applicant in Criminal APL Nos.295/2017 and 296/2017 is one and the same, namely Kishor Sureschandra Darda. He is the Secretary of Jawaharlal Darda Education Society, Yavatmal, which *inter alia* manages and looks after Yavatmal Public School, Yavatmal. The applicant in APL No. 297/2017 was initially working as a teacher in the said School and at the relevant point of time, was working as a Coordinator in the School.

3. It appears that two first information reports ("FIRs") were lodged by two parents against two teachers, namely, Amol Kshirsagar and Yash Borundia, working with the aforesaid School. The allegations in both the FIRs are identical, *viz.* those two teachers have molested girl-students of the school by moving their hands on their chests and by

putting their hands inside undergarments. Accordingly, two FIRs came to be registered vide FIR Nos. 480/2016 and 489/2016. FIR No. 480/2016 is registered for offences punishable u/ss. 354 read with Sec. 8,10,12 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and FIR No.489/2016 was registered u/ss. 376 (2)(f) and 354 of the IPC and sections 6, 8, 10,12 and 21 of the POCSO Act. The charge-sheet, however, was filed in both the cases for the offences punishable u/ss. 354, 354A, 376(2)(f) of Indian penal Code and Sections 6,8,10,21 of the POCSO Act and Section 75 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (in short 'J.J.Act'). So far as the applicants are concerned, they have been charge-sheeted for the offence punishable u/s. 21 of the POCSO Act and Section 75 of the JJ Act.

4. Section 21 of the POCSO Act provides as under:-

"21. Punishment for failure to report or record a case - (1)
Any person, who fails to report the commission of an offence under sub-section (1) of Section 19 or Section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of Section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section(1) shall not apply to a child under this Act."

Section 75 of the J.J. Act provides as under :

“75. Punishment for cruelty to child – Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extent to three years or with fine of one lakh rupees or with both :

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organization, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extent up to five lakhs rupees.

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.”

5. The applicants filed applications seeking discharge from the offences, which came to be rejected vide order dated 1st April, 2017 passed below Exh.23 filed by Kishor Sureshchandra Darda in Special Case No.79/2016; dated 1st April,2017 passed below Exh.11 filed by Kishor Sureshchandra Darda in Special Case No.78/2016 and order dated 1st April,2017 passed below Exh.24 filed by Tasnim Jafarali Ratlamwala in Special Case No.79/2016, passed by the learned Special Judge & Additional Sessions Judge,Yavatmal. The applicants are

aggrieved by rejection of the applications and have filed present applications to quash and set aside these two orders.

6. Mr.F.T. Mirza, the learned counsel for the applicants submits that there is absolutely no material to remotely indicate that the applicants had knowledge of the offence under question. He has invited my attention the oral report lodged by the respective informants. In the report dated 29th June 2016, the informant-mother of one of the pupils studying in 1st standard, stated that on 25th June 2016 her daughter informed her that the Drawing teacher Amol Kshirsagar and Dance teacher Yash Borundia, when the students go to wash room to wash their hands, comes there and kiss them and move their hands over their private parts. She made an enquiry with other parents and, to her utter shock and dismay, found that the information is correct. All the parents got annoyed and, therefore, on 29th June, 2016 at 10.00 am, in the parents' meeting made a complaint to the management that the teachers are molesting the pupils and, accordingly demanded an action against them, to which the applicant-Kishor responded by saying that he will enquire with the concerned teachers and will watch the CCTV footage. The parents were not happy with this lackadaisical response and, therefore, lodged the complaint.

7. In the second report lodged on 2nd July, 2016, the mother of another pupil, modified this version. She has stated that on 28th June 2016 at 1.30 p.m, the informant in the first FIR (hereinafter referred to as '1st informant') made a phone call and called her in one hospital where she stated that in YPS School some serious matter is going on. Two teachers namely, Yash Borundia and Amol Kshirsagar are molesting

the students. The second informant came back home and started enquiry. The informant's daughter and her sister-in-law's two daughters were also studying in the same school. The students informed her that Amol Sir, assaults them and the dance teacher catches hold of their hands and kiss them. One of the students also stated that the Drawing teacher and Dance teacher were molesting the girls by moving hands on their chests, so also by putting their hands inside the clothes. The informant further stated that on 29th June 2016 at about 7.00 am, the 1st informant called her and said that there is a parent meeting in the school on that day. The annoyed parents, 60 to 70 in number, reached the school at 10.30 am. They informed about the activities of these two teachers and demanded to summon the Secretary of the School. Accordingly, the Secretary applicant-Kishor came to the school. The parents narrated him about the incident and gave a representation in writing. The applicant-Kishor kept the representation in his file and sought half an hour to an hour, to enquire into the matter. The parents were not satisfied, upon which the Secretary assured that the teachers will be removed from the service, whether they have committed the offence or not. The parents, however, were not satisfied and said that they will report the matter to the police, to which the applicant-Kishor said that if they approach the police they will be asked several questions, as also their children and they will have to repeatedly visit the police station. The parents, however, thought it appropriate to report the incident and accordingly, the said FIR came to be lodged.

8. The learned counsel for the applicants submits that the first FIR indicates that the 1st informant came to know of the incident on 25th June, 2016. The second FIR indicates that the 2nd informant came to

know about the incident on 29th June 2016. The informant in both the FIRs have stated that on 29th June 2016 at about 10.30 am in the parent-teacher meet, the parents ventilated their grievance about the molestation of students at the hands of the two teachers. The applicant-Kishor assured of taking action against the teachers if they are found to be responsible. Despite such facts, the parents lodged the reports. He further submits that the incident was disclosed to the applicants for the first time on 29th June 2016. The FIR has been lodged on the same day. In the circumstances, there arises no question of not complying with Section 19 of the POCSO Act by the applicant-Kishor. So far as another applicant is concerned, the informants have not even stated in the FIRs that the said applicant was either aware of the incident or was made to know of the incident on or prior to 29th June, 2016. Thus, according to him, there arises no question of this applicant not reporting the offence to the local police.

9. The learned counsel for the applicants has further invited my attention to the statement dated 15th August, 2016 of Ms. Alka Sohan Gaikwad, Police Sub-Inspector of Police Station, Wadgaon Road. She has stated that on 29th June 2016 at about 13.00 hrs, she received a call on mobile informing her that in Yavatmal Public School, agitating parents have gathered and that there is utter chaos. He requested the police officer to send police personnel at the school. Accordingly, the PSI along with her staff reached the School. She found that many persons had gathered. The applicant-Kishor and one Jacob Das were having a meeting with the parents. The parents were seeking action against the teachers who allegedly molested the students. The parents got annoyed because their demand to take action, was not met. Considering the

charged atmosphere, this witness sought additional police force. Accordingly, one Mr Dongre with additional police staff reached the School. They have somehow pacified the charged atmosphere and took both the teachers in custody and brought them to the police station. At that time about 50 to 60 parents were present in the Police Station. The 1st informant has then lodged the report.

10. The learned counsel for the applicants contends that the statement of this witness clearly disclose the presence of the police in the School. They took custody of both the delinquent teachers and thereafter they were taken to police station and then FIR was lodged. He submits that the statement itself would prove that the local police was made aware of the incident and, therefore, the applicants cannot be said to have not discharged their duty by not reporting the crime to the police, since the crime was already registered.

11. Mr. Mirza, has relied upon the judgment of the Hon'ble Supreme Court, in the case of A S Krishnan & another vs. State of Kerala, reported in 1998 Cri.L.J 207 (Kerala). The Supreme court while distinguishing the term, "intention", "knowledge" and "reasons to believe", has observed in para nos. 9 and 10 as under :

"9. Under the IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of statement of mind. Likewise "knowledge" will be

slightly on higher plane than “reason to believe”/ A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26, IPC explains the meaning of the words “reason to believe” thus.

26. “Reason to believe” A person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing but not otherwise.”

10. In substance what is meant is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. “knowledge” and “reason to believe” have to be deduced from various circumstances in the case. (See Joti Parshad v. State of Haryana (AIR 1993 SC 1167).

12. The learned counsel for the applicants, then, relied upon another judgment of the Supreme Court, in the case of **Dr.Sr. Tessy Jose and others vs. State of Kerala**, reported in AIR 2018 SC 4654. While dealing with section 19(1) of the POCSO Act, the Supreme Court has held in para nos. 9 and 10 as under :-

9. The entire case set up against the appellants is on the basis that when the victim was brought to the hospital her age was recorded as 18 years. On that basis appellants could have gathered that at the time of conception she was less than 18 years and was, thus, a minor and, therefore, the appellants should have taken due care in finding as to how the victim became pregnant. Fastening the criminal liability on the basis of the aforesaid allegation is too far fetched. The provisions of Section 19(1), reproduced above, put a legal obligation on a

person to inform the relevant authorities, inter alia, when he/she has knowledge that an offence under the Act had been committed. The expression used is “knowledge” which means that some information received by such a person gives him/her knowledge about the commission of the crime, There is no obligation on this person to investigate and gather knowledge. If at all, the appellants were not careful enough to find the cause of pregnancy as the victim was only 18 years of age at the time of delivery. But that would not be translated into criminality.

10. *The term “knowledge” has been interpreted by this Court in A.S. Krishnan and others vs. State of Kerala, to mean an awareness on the part of the person concerned indicating his state of mind. Further, a person can be supposed to know only where there is a direct appeal to his senses. We have gone through the medical records of the victim which were referred by Mr. Basant R., Senior Advocate for the appellants. The medical records, which are relied upon by the prosecution, only show that the victim was admitted in the hospital at 9.15 am and she immediately went into labour and at 9.25 am she gave birth to a baby. Therefore, appellant No.1 attended to the victim for the first time between 9.15 am and 9.25 am.”*

13. Mr.Mirza, by taking aid of these two judgments submits that the “knowledge” can be said to be awareness on the part of the person concerned indicating his state of mind and is a term which is slightly on higher footing than “reason to believe”. He submits that in the present case, the applicants were only informed of the commission of crime by the parents of the students. The applicant-Kishor sought time to verify the allegation but the parents did not allow him to do so. Accordingly, he submits that the applicants were not even aware of commission of crime and, therefore, could not have been charge-sheeted for the offence punishable u/s 19 of the POCSO Act.

14. As regards Section 75 of the JJ Act, Mr Mirza, the learned

counsel submits that to attract the ingredients of this Section, the person accused of crime should either assault, abandon, abuse, expose or wilfully neglect the child or cause or procure the child to be assaulted, abandoned, abused exposed or neglected in a manner likely to cause such child unnecessary mental and physical suffering. In the present case, there is absolutely no evidence of the applicants doing any of these acts.

15. Accordingly, Mr.Mirza submits that even if the case of the prosecution is accepted on its face value, the charge u/s 19 of the POCSO Act and Section 75 of the J.J. Act is not made out.

16. Mrs. M.H.Deshmukh, the learned APP has opposed the applications on the count that the Court below has taken into account these submissions. The Court has also noted that the applicants have prevented the parents from lodging the FIRs. The applicant-Kishor instead of reporting the matter to the police has, in a way, prevented the parents from approaching the police when he said to them that if the parents approach the Police, they will be grilled on several aspects of the case as also their children and they will be required to repeatedly visit the Police station. She further submits that the students were in-charge of the applicants and, therefore, they ought to have taken due care. They have neglected to do so which resulted into teachers molesting the students. Thus, according to her, both the provisions viz. Sec. 19 of the POCSO Act and Section 75 of the J.J. Act will be attracted.

17. Having given my thoughtful consideration to the submissions made by both the sides, I find substance in the submissions

made by Mr Mirza, for the reason that both the FIRs would show that the applicants herein or, for that purpose, the school authorities and management, were not aware of the occurrence of any incident prior to 29th June, 2016. These people were made to know of the incident for the first time at about 10.30 am on 29th June 2016. The parents have for the first time on that day, raised the grievance with the school authorities. The parents demanded presence of Secretary, who promptly attend the school and responded to the grievance made by the parents. He sought some time i.e. half an hour to an hour, which could be said to be reasonable time, to verify the incident from the teachers and by watching the CCTV footage. In addition and responding to the nature of allegations levelled against the teachers, applicant Kishor has removed both the teachers on the same day i.e. 29th June 2016. In that sense, the applicant-Kishor has taken prompt action against the so called delinquent teachers. This response will be relevant to understand whether the applicant-Kishor had knowledge of the offence or was just informed of the commission of the offence. He sought half an hour to an hour to verify the incident from the concerned teachers and also by watching CCTV footage. This opportunity was, however, not given to him. In the circumstances, what was within the knowledge of the applicant was the information of commission of offence and not the knowledge of commission of offence.

18. The Supreme Court in the aforementioned cases, has described “knowledge” to be something which will be slightly on a higher pedestal than the expression “reason to believe”. In the present case, merely on the basis of the grievance of parents, one cannot attribute knowledge of commission of offence to the applicants. In fact,

it will be difficult to even suggest that applicants had reason to believe unless they were given opportunity of verifying the allegation of commission of an offence. The Supreme Court has described “reasons to believe thing”, so as to mean if the person has sufficient cause to believe that thing but not otherwise. Mere information cannot be equated with “sufficient cause to believe” the occurrence of the incident. The verification of the information and not investigation therein, may lead to a state of mind of a person to have sufficient cause to believe of the occurrence of the incident/ offence informed of. The term “knowledge” is on a higher footing than that of the expression “reasons to believe”. The person can be supposed to know the fact only where there is a direct appeal to his senses. Considering above concept what transpires in the present case is that on 29th June 2016, except for passing on information by the parents to the applicant-Kishor nothing more has happened prior to police coming in the school, who took custody of both the teachers. Thus, prior to acquiring the knowledge by the applicants, the local police arrived at the spot and took custody of the teachers.

19. Even otherwise and even if it is presumed that applicant-Kishor had knowledge of commission of offence by the teachers, the information of alleged offence was provided to the local police, in the presence of applicant-Kishor and, therefore, there was no reason why should he report the offence to police again. In fact, if passing on information was the only requirement to attribute knowledge, all those who were present in the meeting will then be and ought to have been booked under section 19 of the POCSO Act. This cannot be the purport of Section 19 of the POCSO Act. The provisions has been made with a

view to discharge duty to report the matter relating to the child victim to the police. There is, however, no reason for such person to report the matter which has already been reported to the local police. In the circumstances, it cannot be said that the applicant-Kishor has not discharged his burden as required under Section 19 of the POCSO Act.

20. So far as the applicant in APL No. 297/2017 is concerned, she has not been named anywhere to show that even the information of commission of the offence was passed on to her. In absence thereof, it will be far-fetched to expect from her to report the incident to the local police.

21. As regards Section 75 of the J.J. Act, there is nothing to indicate that the applicants have assaulted, abandoned, abused, exposed or wilfully neglected child in a manner likely to cause a child unnecessary physical or mental suffering.

22. The submission by learned APP that the applicants have wilfully neglected to supervise the child, is without any substance. One cannot expect the Secretary or the Coordinator of the school to keep watch on each and every movement of the teachers or students. They may be responsible for overall discipline but not for the personal activities of the teachers/employees or students.

23. The learned trial Court has given unwarranted weightage to the statement of the informants, to infer that the applicant -Kishor has prevented the parents from lodging the reports. The trial Court appears to have not been properly informed of the statement of PSI, who has

stated that police party had arrived at the school premises upon receiving a phone call and have taken custody of the teachers in the school itself. The police have pacified the charged atmosphere. Thus, the matter was already reported to the local police and they swung into action even prior to conclusion of the meeting.

24. Put all the things together, even if the case of the prosecution is taken at its face value and accepted in its entirety, the ingredients of Section 19 of the POCSO Act and Section 75 of the J.J. Act are not spelt out. The trial Court has committed an error in not appreciating the facts as mentioned above. The impugned orders are, thus, not sustainable. Hence the following order:-

ORDER

- i) The Criminal Application Nos. 295, 296 and 297 all of 2017 are allowed.
- ii) The impugned order dated 1st April, 2017 passed below Exh.23 in Special Case No.79/2016; dated 1st April,2017 passed below Exh.11 in Special Case No.78/2016 and order dated 1st April,2017 passed below Exh.24 in Special Case No.79/2016, passed by the learned Special Judge & Additional Sessions Judge, Yavatmal, are quashed and set aside.
- iii) The applicants are discharged for the offences punishable under Sections 21 of the POCSO Act and Section 75 of the J.J. Act.

Rule is made absolute in the aforesaid terms.

(ANIL L. PANSARE, J.)