



Judgment

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

CRIMINAL WRIT PETITION No. 637/2016
& CRIMINAL APPLICATION [APL] NO. 642/2016.

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CRIMINAL WRIT PETITION NO.637/2016.

Jacob Joseph Das,
Aged about 48 years, Occupation – Service,
Principal, Yavatmal Public School,
Darda Nagar, Wadgaon Road,
Yavatmal.

...

APPLICANT.

VERSUS

1.State of Maharashtra,
through Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai – 32.

2.The Superintendent of Police,
Yavatmal.

3.The Police Station Officer,
Wadgaon Road Police Station,
Yavatmal.

4.Smt.Deepthi w/o Vinod Kachhawa,
Occupation – Service, resident of
Darda Nagar, Wadgaon Road,
Yavatmal.

Rgd.

5.Shri D.N. Dhole,
Police Station Officer,
Wadgaon Road Police Station,
Yavatmal.

... NON-APPLICANTS.

WITH

CRIMINAL APPLICATION [APL] NO.642/2016.

Jacob Joseph Das,
Aged about 48 years, Occupation – Service,
Principal, Yavatmal Public School,
Darda Nagar, Wadgaon Road,
Yavatmal.

... APPLICANT.

VERSUS

1.State of Maharashtra,
The Police Station Officer,
Wadgaon Road Police Station,
Yavatmal.

2.Sau. Kuldeep Kaur w/o Tadveer
Singh Sanga,
Occupation – Housewife, resident
of Prithviraj Nagar, Part-II,
Wadgaon Road, Yavatmal.

... NON-APPLICANTS.

Shri F.T. Mirza, Advocate for the Applicant.
Mr. S.S. Doifode, A.P.P. for Non-applicants/State.
None for the Complainant-Served.

**CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.**

DATE : JANUARY 24, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

The very applicant has sought quashing of two first information reports by invoking the inherent jurisdiction of this Court in terms of Section 482 of the Code of Criminal Procedure. For the sake of convenience, we have taken up both the matters for disposal by this common judgment.

2. Criminal Application No.637/2016 seeks to quash the first information report bearing Crime No.480/2016 registered with Wadgaon Road Police Station, District Yavatmal for the offence punishable under Sections 354, 354A of the Indian Penal Code, Sections 6, 8, 10, 12 and 21 of the Protection of Children from Sexual Offences Act (POCSO) and Section 75 of the Juvenile Justice [Care and Protection of Children] Act, 2015, which was lodged at the instance of the informant – Deepti. Whilst, Criminal Application

No.642/2016 has been filed to quash the first information report bearing Crime No.489/2016 registered with Wadgaon Road Police Station, District Yavatmal for the offence punishable under Sections 376[2][f], 354, 354A of the Indian Penal Code, Sections 6, 8, 10, 12 and 21 of the Protection of Children from Sexual Offences Act and Section 75 of the Juvenile Justice [Care and Protection of Children] Act, 2015, lodged at the instance of the informant – Sau.Kuldeep. Both first information report pertains to molestation of school going minor girls having similar allegations against the applicant, who is Principal of the concerned School.

3. It appears that two first information reports have been registered by the police against two teachers working in the School. The allegations in both the first information reports are identical stating that both the teachers have molested girl students of the school. On the basis of the respective reports, offences have been registered against both the teachers under the provisions of Indian Penal Code, Protection of Children from Sexual Offences Act and the Juvenile Justice [Care and Protection of Children] Act. The

applicant (Principal) and one Kishore Darda, Secretary of the aforesaid school have been implicated for the offence punishable under Section 21 of the POCSO Act, alleging that they failed in their duties in not reporting the offence to the police authorities in terms of Section 19 of the POCSO Act.

4. The learned Counsel appearing on behalf of the applicant would submit that the material collected during the course of investigation does not make out prima facie case against the applicant. It is submitted that on 29.06.2016 itself the alleged act was disclosed to the applicant by the parents and on the very same day within few hours crime came to be registered. He would submit that since already information had reached to the police culminated into registration of crime, there is no procedure or purpose in again lodging the report. He would submit that the co-accused Kishore Darda had applied to the trial Court for discharge, however, it was rejected. Being aggrieved by the said order, the co-accused Darda has filed Criminal Application Nos. 295 and 296 of 2017 before this Court seeking discharge. Copy of the common order dated

06.11.2023 has been produced showing that on merits, the co-accused – Darda facing similar allegations has been discharged by this Court. Admittedly, the said order has not been questioned before the higher forum, meaning thereby it has attained finality. In that context, he would submit that the applicant too is entitled for exoneration. Moreover, it is submitted that the case of applicant stands on better footing, as on the concerned date he was at Nagpur and he returned to the school at 12.30 p.m. when he learn about the things i.e. after disclosure to co-accused Darda.

5. The learned A.P.P. has resisted both the applications by contending that there is sufficient material to indicate the involvement of the applicant in the form of not disclosing the commission of offence, despite due knowledge. It is submitted that though the applicant came to know about the commission of offence on 29.06.2016 around 12.30 p.m., however, till next day he has not reported the matter, attracting the rigor of Section 19 of the POCSO Act. It is submitted that the applicant is also liable for the offence of abetment under Section 17 of the POCSO Act, which was not

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considered by the learned Single Judge while discharging the co-accused Darda. Moreover, it is submitted that the applicant being Principal, he is a responsible person and hence, his case differs from the case of co-accused Darda. Lastly, it is submitted that CCTVs were installed in the school and the monitoring unit was at the office of the Principal i.e. applicant. According to him since the applicant did not report the matter even after watching the CCTV footage, the offence is complete.

6. Both the parties are *ad idem* on the point that the applicant was serving as a Principal, whilst the co-accused Darda was Secretary of the Education Society. On 29.06.2016, first time the offence was disclosed to both of them when the parents gathered around 10 a.m. in the school complaining atrocities committed by two teachers. It is not in dispute that immediately parents meeting was arranged in the school to address the issue. Applicant admittedly was initially not present in the meeting, but, he came from Nagpur to the school around 12.30 p.m. It is also not in dispute that within half an hour the police arrived in the school and

thereafter, within few hours at the instance of two parents, crime came to be registered. Perusal of first information report bearing Crime No.480/2016 discloses that the information reached to the police on 29.06.2016 at about 3 p.m., whilst crime No.489/2016 was registered at 5.15 p.m.

7. On the canvass of admitted facts the matter need to be scrutinized. We have an advantage of going through the order passed by the learned Single Judge dated 06.11.2023, whereby the co-accused facing similar allegations has been discharged. The relevant observations made by this Court in paragraph nos. 17 to 19 are reproduced hereinbelow.

“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.”

8. The learned A.P.P. is unable to distinguish the role of the applicant. Though it is argued that the applicant is also liable for the offence of abetment punishable under Section 17, however, he is unable to satisfy us in that regard. Admittedly no such offence of abetment has been registered. The learned A.P.P. would submit that the applicant has abetted the commission of offence punishable under Section 354 of the Indian Penal Code, as well as Sections 8 and 12 of the POCSO Act. He would submit that though the applicant has seen the occurrence in CCTV, however, he did nothing and thus, abetted those offence. We are unable to accept said submission which is over stretched and imaginary. There is no material that the applicant has actually seen the alleged occurrence in the CCTV footage. The police papers indicate that one lady warden was assigned the job of monitoring the CCTV continuously during school hours. Therefore, on mere conjectures and surmises it cannot be presumed that too without any material that the applicant had seen the occurrence. Therefore, the submission about

applicability of offence of abetment is totally devoid of merits.

9. The learned A.P.P. would submit that though the applicant came to know about commission of offence at 12.30 p.m., however, he did not report. Our attention is invited to the communication made by the applicant on the following day to the police for registration of crime. The learned A.P.P. would submit that till next day the applicant waited and thus, the offence under Section 19 of the POCSO Act is complete. The said communication dated 30.06.2016 itself indicates that already first information was registered that is why no action was taken. We are unable to understand as to how there would be second first information report, since admittedly on the very same day within few hours crimes have been registered at the instance of parents. Moreover, it is noteworthy that already police has arrived in the school and taken both erring teachers into the custody. Since the said action was already taken by the police, there is no reason to hold that the applicant failed in his duty in not reporting the matter to the police.

10. The learned Counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court, in the case of **A S Krishnan & another vs. State of Kerala - 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 means 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).

11. 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 - 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.”

12. In said context it is submitted that the applicant has no knowledge about the occurrence, but, still both teachers were suspended on the very same day. Moreover, within the knowledge of the applicant, the crime was registered and thus, there was no necessity to again approach to the police. The legislative intent and purpose behind Section 19 is that the offence against children was not to be screened. Already police have been informed in the form of registration of the crime and thus, it cannot be said that the

applicant failed in his duty.

13. The learned A.P.P. has relied on two decisions in case of (1) **Balasaheb @ Suryakant Yashwantrao Mane .vrs. State of Maharashtra – 2017 [2] Mh.L.J. (Cri) 589** and (2) **Sanjay Manoharrao Shirbhate .vrs. The State of Maharashtra and others – 2019 All MR (Cri) 1627**. However, being different facts, they would not assist the prosecution in any manner. Admittedly it has been surfaced that the information had reached to the police, and thus, the applicant cannot be said to have been negligence in discharging his duties. Moreover, it is pointed out that two teachers were already tried and acquitted by the Court of competent jurisdiction.

14. In the light of above position, continuation of prosecution would be an abuse of the process of Court. The material collected during the course of investigation is insufficient to establish a prima facie triable case against the applicant. Already the learned Single Judge of this Court has discharged the co-accused facing similar allegations, and the said order has attained finality. The applicant

has made certain other grievance about his illegal arrest in violation of the directions of the Supreme Court in case of **Arnesh Kumar .vrs. State of Bihar and another – [2014] 8 SCC 273**. Already the applicant has filed Contempt Petition No.143/2017 for that purpose, which is still pending. In view of that, we are not inclined to entertain rest prayers. However, Criminal Writ Petition and Criminal Application needs to be allowed, hence the following order.

ORDER

- (i) Criminal Writ Petition No. 637/2016 and Criminal Application No. 642/2016 are allowed and disposed of.
- (ii) The first information report bearing Crime No.480/2016 registered with Wadgaon Road Police Station, District Yavatmal for the offence punishable under Sections 354, 354A of the Indian Penal Code, Sections 6, 8, 10, 12 and 21 of the Protection of Children from Sexual Offences Act (POCSO) and Section 75 of the Juvenile Justice [Care and Protection of Children] Act, 2015, as also the first information report bearing Crime No.489/2016 registered with Wadgaon Road Police Station, District Yavatmal for the offence punishable

under Sections 376[2][f], 354, 354A of the Indian Penal Code, Sections 6, 8, 10, 12 and 21 of the Protection of Children from Sexual Offences Act and Section 75 of the Juvenile Justice [Care and Protection of Children] Act, 2015, are hereby quashed and set aside, so far as it relates to the present applicant.

JUDGE

JUDGE