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Crl.R.C.No.1101 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024

DELIVERED ON : 04.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.R.C.No.1101 of 2023

Preethi Narayanan

... Petitioner/A2

Vs.

1.State rep by.
Inspector of Police,
W-4, AWPS,
Kilpakkam,
Chennai – 600 010.

2.Anand

3.Swetha
[R3 impleaded as per order dated
25.07.2023 in Crl.M.P.No.10685/2023
in Crl.R.C.No.1101 of 2023]

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.1615 of 2021 in Spl.S.C.No.144 of 2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai dated 11.05.2023 impleading the petitioner as accused invoking Section 319 of Cr.P.C. and set the petitioner at liberty.



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For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent-1 : Mr.S.Raja Kumar
Additional Public Prosecutor

For Respondent-2 : Mr.K.Thenrajan

For Respondent-3 : Mr.S.Sathiachandran
for Ms.M.Muthu Yazhini

ORDER

The petitioner/Accused No.2 in Spl.S.C.No.144 of 2021 had filed this petition challenging the order passed in Crl.M.P.No.1615 of 2021 dated 11.05.2023 impleading the petitioner as Accused No.2 by invoking Section 319 of Cr.P.C.

2.The second respondent/Accused No.1 in Spl.S.C.No.144 of 2021 filed a petition under Section 173(8) of Cr.P.C. in Crl.M.P.No.1615 of 2021 to conduct further investigation in the case for the reason that he has been victimized by selective prosecution by the investigating officer. Further from the statement recorded under Section 161 Cr.P.C. of Mrs.Preethy Narayanan/petitioner herein, Mrs.Periya Nayagi and Mrs.Saraswathy, it is clear that these persons have committed offences under Sections 16, 17, 19



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and 21 of the Protection of Children from Sexual Offences Act (hereinafter 'POCSO Act') for abetment and non reporting of commission of offence under POCSO Act. The trial Court, by order dated 11.04.2022, though found that ordering further investigation at the instance of accused is abuse of process of law and it will cause only delay and petition under Section 173(8) of Cr.P.C. cannot be entertained, but ordered to summon the petitioner as an accused by invoking Section 319 of Cr.P.C. Aggrieved against the same, the petitioner preferred a revision before this Court in Crl.R.C.No.930 of 2022. This Court, by order dated 15.07.2022, set aside the order passed by the trial Court insofar as impleading the petitioner as an accused in the case and remitted back Crl.M.P.No.1615 of 2021 to the trial Court for fresh disposal. Further impleaded the petitioner as second respondent in the said Crl.M.P.No.1615 of 2021 and directed the trial Court to give an opportunity to the petitioner to file her counter and make her submissions and thereafter to take a decision as to impleading the petitioner in accordance with law. Further confirmed the finding of the trial Court with regard to the non requirement of further investigation. Thereafter, the trial Court again heard the petition in Crl.M.P.No.1615 of 2021 and passed the impugned order dated 11.05.2023. The trial Court came to the conclusion that there is a *prima facie* case made out against the petitioner to summon her as an accused under



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Section 319 Cr.P.C. passed the impugned order.

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3.The primary ground on which the petition has been filed by second respondent/A1 is that the child victims in this case, who are ex-students of Maharishi Vidhya Mandir School, Chetpet, Chennai, had stated that the victims reported the sexual assault committed by the second respondent to the school management, namely, Mrs.Preethi Narayanan (petitioner)/L.W.22, Mrs.Periyanayagi/L.W.20, Mrs.Saraswathi/L.W.7 and Mr.Namachivayam (who is no more) and as per Section 21 of the POCSO Act, any person, who fails to report the commission of offence under Section 19 or 20 of the POCSO Act, is bound to be prosecuted and punished, is not sustainable, for the reason except for a passing reference by the de-facto complainant and another victim, no other witnesses spoke against the petitioner and there is no material against her.

4.The learned counsel for the petitioner submitted that the petition filed by A1/second respondent herein is nothing but, are with diversionary facts to prolong the trial. An accused have no right to file application seeking further investigation and the petition ought to have been dismissed in limine. Further the accused/A1 after filing of charge sheet, came out with a petition



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under Section 173(8) of Cr.P.C. with baseless facts. During the investigation the petitioner was examined as witness and her statement recorded and listed as L.W.22. Section 161 and 164 of Cr.P.C. statements of the victims does not reveal any *prima-facie* case against the petitioner. Since the Senior Principal Namachivayam passed away during investigation, this petitioner now arrayed as an accused. The petitioner is a person with unblemished record and never failed to report to her superior about any complaints of the students with the Management. He further submitted that in this case the investigating authorities not filed application seeking further investigation.

5.He further submitted that the complaint given by the victim/de-facto complainant/L.W.1 is that she was a student in Maharishi Vidhya Mandir School during the years 2014 – 2016 and the second respondent, who was a Commerce and Accountancy teacher, made sexual assault on her and other students. She admits in the complaint that she had not made any complaint about these facts to the school Management at that time, there is nothing against the petitioner in the complaint. Even in her statement under Section 161 Cr.P.C., de-facto complainant states that she heard about several students complaining to the school Head Mistress/petitioner herein about the improper act of the second respondent. In this case, L.W.1, L.W.2, L.W.3,



L.W.4 and L.W.5 are projected as victims. All these witnesses are ex-students of the school, who all made complaints five years after the incident. It is also to be seen that the de-facto complainant/L.W.1's mother Saraswathi (L.W.7) was employed as teacher in the said school. L.W.1 confirms that she informed her mother and her mother also not taken any steps to pursue the complaint. Thus the de-facto complainant and her mother/L.W.7 both confirmed that they have not made any complaint to the petitioner.

6.Likewise, L.W.1/de-facto complainant in her 164 Cr.P.C. statement states that L.W.4 made a complaint against the second respondent to the petitioner and at that time the petitioner not taken proper action. Further, in her statement she states that she complained to one Ganga (Teacher), Kayalvizhi (Librarian) about the second respondent. She further states that one of her class mates informed about the sexual assault committed by the second respondent to her senior students and the school Management not taken any protective steps to safeguard the students from the sexual assault committed against them. L.W.2 not whispered against the petitioner in both statements under Sections 161 and 164 of Cr.P.C. L.W.3 in her 164 Cr.P.C. statement states that her mother was a teacher in the same school and there was a misunderstanding between mother and daughter. The



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second respondent further created wedge between them. When the same was complained to the petitioner, the petitioner asked L.W.3 to concentrate on her studies. L.W.3 made no complaint of sexual assault to the petitioner. L.W.4 both in her statement states about the complaint made by her and her father to the petitioner. The petitioner called the second respondent, enquired him about the complaint, who gave explanation that mistakenly he touched the victim on her back instead of back of the shoulder and it was unintentional one. Thereafter, the petitioner strictly warned second respondent. The next day the father of L.W.4 along with the petitioner met the Senior Principal Namachivayam, who promised that he would take action against the second respondent. Thus, it was Namachivayam, Senior Principal of the school, who was incharge of the school administration. The petitioner has reported the incident to Namachivayam, as per Section 21 of POCSO Act, he is the responsible person to have reported to the Law Enforcement Agencies.

7.He further submitted that in the year 2017, L.W.4 informed about the incident to Periyannayagi/L.W.20, the student Counsellor. The other victim L.W.5 not stated anything about the petitioner. Apart from these victims, in this case, the other students examined are L.W.14 to L.W.19. None of them had whispered anything against the petitioner. He further submitted that in this case, L.W.6/Kannan, father of L.W.3, L.W.7/Saraswathi, mother of



L.W.1, who is still working as a teacher in the same school, have stated that they have not reported about the incident, which took place in the year 2014 - 2016. L.W.20/student counsellor clearly states that L.W.4 informed her about the sexual assault by the second respondent and she reported to the Senior Principal Namachivayam about the second respondent. He further submitted that L.W.6, L.W.7, L.W.20, L.W.23 and the petitioner all reported the incident of L.W.4, to Senior Principal Namachivayam and none of the witnesses spoken about the incident of L.W.1. The Lower Court failed to consider the statement of the petitioner that when L.W.4 complained about the second respondent to the petitioner, she immediately called the second respondent, enquired him and warned him, further it was reported to Mr.Namachivayam, Senior Principal of the school.

8.The complaint of the petitioner is that Namachivayam (Senior Principal), Periyanaayaki (Student Counsellor), Saraswathi (Teacher), Ganga (Teacher) and Kayalvizhi (Librarian) were all informed about the sexual assault committed by the second respondent. But the trial Court arrayed the petitioner alone as accused invoking Section 319 of Cr.P.C. There are positive evidence in favour of the petitioner. The trial Court not considered the statements in its entirety and it adopted a pick and choose method in



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summoning the petitioner as an accused. The statement of L.W.1/de-facto complainant referring to the petitioner is bald and sweeping one. The other victims, namely, L.W.2, L.W.3 and L.W.5 does not whisper anything against the petitioner. L.W.4 on the other hand gives positive statement in favour of the petitioner in taking immediate steps, enquiring the second respondent and warning him. From the statement of witnesses it is seen that Namachivayam (Senior Principal) is the person having over all control and authority with all the teachers, staff and students of the school. Since Namachivayam is no more, the petitioner has been targeted. The Lower Court had taken statements out of context referring to stray incidents, innocuous, not sufficient in invoking Section 319 Cr.P.C.

9.The learned counsel further referring to the judgment of the Hon'ble Apex Court in the case of *N.Manogar and another vs. The Inspector of Police and others* reported in *Neutral Citation: 2024 INSC 130*, wherein the Apex Court relied upon the Constitution Bench judgment of the Apex Court in the case of *Hardeep Singh vs. State of Punjab and others* reported in *(2014) 3 SCC 92* in which guidelines given as to under what circumstances Section 319 Cr.P.C. to be invoked. It had clearly stated that only where strong and cogent evidence occurs against a person from the



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evidence laid before the Court that such power should be exercised and not in a casual and cavalier manner. Further it had held that the test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge, short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. Further submitted that the trial Court invoking Section 319 Cr.P.C. and summoning the petitioner as an accused on coming to a conclusion that there is a *prima facie* case made against the petitioner, is in total disregard to the guidelines and dictum of the constitution bench of the Apex Court in *Hardeep Singh* case.

10.He further submitted that in *N.Manogar* case, the Hon'ble Apex Court found fault to implead a person invoking Section 319 Cr.P.C. on the satisfaction of a *prima facie* finding that the complaint, statement under Section 161 Cr.P.C. and the evidence therein are sufficient to proceed against a person was not in consonance with the Supreme Court dictum. Hence, he prayed for allowing this petition.

11.The learned Additional Public Prosecutor submitted that in this case there are five victims, who were minors and students of Maharishi Vidhya Mandir School, Chetpet, Chennai, who studied during the year



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2014 - 2016. They were sexually assaulted by the second respondent, who is a Commerce and Accountancy teacher. He made improper touch using abusive words and having dominant position as teacher committed sexual assault on the students. The students were voiceless, feared and not lodged complaint immediately on the apprehension that repressive measures would be taken against them by the Management. The de-facto complainant after completion of her school studies joined Dr.Ambedkar Law College and she was in the final year when she lodged the complaint. After lodging the complaint, posted in Social Media. On coming to know about the postings, other victims, who were also abused by the second respondent, came forward to lodge the complaint. L.W.1 to L.W.5 had given statements, confirming the sexual assault committed by the second respondent. The prosecution not filed any petition seeking further investigation. The second respondent filed a petition before the trial Court seeking further investigation. The trial Court finding that further investigation at the instance of the accused cannot be entertained, invoking Section 319 of Cr.P.C., issued summons to the petitioner alone, though the complaint was against four others. The petitioner thereafter approached this Court by way of revision in Crl.R.C.No.930 of 2022 and this Court set aside the order passed by the trial Court on 11.04.2022 and impleaded the petitioner as second respondent in the petition



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filed by the accused. Further, this Court held that no further investigation required in the above case. The prosecution listed L.W.1 to L.W.24 and materials in the final report filed by the respondent police.

12.He further submitted that in this case, L.W.1 to L.W.5 are the victims. L.W.6 is the father of L.W.3, L.W.7 is the mother of L.W.1. L.W.8 and L.W.9 are the witnesses for the arrest and confession of the second respondent. L.W.10 and L.W.11 are the witnesses for the observation mahazar and rough sketch. L.W.12 and L.W.13 are the staff of the Maharishi Vidhya Mandir School, who handed over School registers to the investigating officer. L.W.14 to L.W.19 are the students of the school, who state about hearing the incident of sexual assault committed by the second respondent. L.W.20 is the student Counsellor of the school. L.W.21 is the Chief Education Officer of the school. L.W.22 is the petitioner, L.W.23 is another student Counsellor and L.W.24 is the Investigating Officer in this case.

13.The learned counsel for the second respondent submitted that in this case after investigation, charge sheet against second respondent alone filed. The third respondent/de-facto complainant claims that she had reported the sexual abuse to the school management, namely, Preethy



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Narayanan/petitioner herein, Periya Nayagi, Saraswathy and Namachivayam but the respondent police even after coming to know about the complaint made to them by the child victims had willingly concealed the material facts and the second respondent alone was charged leaving the other persons. Aggrieved against the selective prosecution, the second respondent filed a petition before the Lower Court for violation of Sections 16, 17, 19 and 21 of POCSO Act, and other persons also to be prosecuted. The statement of L.W.1, L.W.3 and L.W.4 refers to the petitioner's knowledge about the alleged sexual assault. The 161 Cr.P.C. Statement of petitioner (L.W.22), Periyannayagi (L.W.20) and Saraswathy (L.W.7) clearly proves that they had knowledge of the sexual assault. The trial Court rightly summoned the petitioner on finding materials against her, by exercising its powers under Section 190 of Cr.P.C. following the dictum laid down in the case of **Nahar Singh vs. The State of Uttar Pradesh and another** reported in **2022 Live Law (SC) 291**. He further submitted that the trial Court instead of stating Section 190 Cr.P.C., it had stated Section 319 Cr.P.C. The petitioner taking advantage of the mistake filed the above petition.

14.He further submitted that the Hon'ble Apex Court in the case of **T.Nagappa vs. Y.R.Muralidhar** reported in **CDJ 2008 SC 773** had held that



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it is well settled principle of law that non-mentioning or wrong mentioning of provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. The petitioner has got no right to test the veracity of the 164 Cr.P.C. statement of the victim at this stage, as per the dictum laid down in *Nagar Sing* case. Further referring to the judgment of the Hon'ble Apex Court in the case of ***Shankar Kisanrao Khade vs. State of Maharashtra*** reported in ***CDJ 2013 SC 371***, wherein the Apex Court had clearly held that non reporting of complaint by anybody after having come to know that a minor child below the age of 18 years was subjected to any sexual assault is a serious crime and by not reporting they are screening offenders from legal punishment and hence be held liable and prompt action be taken against them, in accordance with law. Accordingly, he prays for dismissal of the petition.

15.The learned counsel for the third respondent filed written submissions and submitted that the principal contention of the petitioner herein is that the third respondent/victim informed the commission of the offence by the second Respondent to the petitioner. The petitioner referring to the statement of her mother (L.W.7), and arraying the petitioner alone as Accused No.2 is unsustainable. He further submitted that from the 164



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Cr.P.C. statement of the third respondent, it is clear that the third respondent informed her mother with regard to the corporal punishment inflicted upon her by the second Respondent/A1 and not about the sexual harassment. The extract of the 164 statement of the Victim is as follows:

“என்னை பலமுறை ஆசிரியர் ஆனந்த் அடிப்பது குறித்து அதே பள்ளியில் பணிபுரியும் என் அம்மாவும் அல்லது என் அப்பாவும் ஆசிரியர் ஆனந்திடம் நேரிலும் தொலைபேசியிலும் தங்களுடைய ஒரே மகளை அடிக்க வேண்டாம் என்றும் நான் சரியாக படிக்கவில்லை என்றாலும்கூட அடிக்க வேண்டாம் என்றும் சொல்வார்கள்”

While so, the misinterpretation of the victim's statement is impermissible and unsustainable.

16.He further submitted that the present attempt of the revision petitioner is only made with an intention to dissuade the victim (3rd respondent) from deposing the facts, during evidence, with a threat that even her mother would be roped in as an accused in the case, in which event, any victim would resile from her position, weakening her testimony and prosecution case itself, which can never be permitted in law.



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17.He further submitted that the learned Trial judge in the impugned order arrayed the petitioner as Accused No.2 by rightly observing as follows:

"She further stated in her 164 statement recorded under Section 164 Cr.P.C that the 2nd respondent herself witnessed some of the occurrences in which, the petitioner/accused misbehaved with the students in person. But, she was not condoned the petitioner/accused for that".

18.He further submitted that as per Section 21(2) of POCSO Act, the person who are in charge of any institution has to report the commission of an offence under this Act. The petitioner who was the Head Mistress of the school in which the third Respondent studied, despite, the knowledge of sexual harassment made by the second respondent to the students of the school, failed to report the same and accordingly, she is arrayed as A2 by the learned Trial judge charging for the offence under Section 21(2) of POCSO Act. The Learned Trial judge has categorically observed in the order as follows:-

"25. .. when the students gave complaints against the



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Petitioner/ Accused to the 2nd Respondent she used to inform the same to the Petitioner/ Accused himself and thereafter, the Petitioner/ Accused retaliate the same against those students".

19.He further submitted that the present attempt made by the Petitioner is nothing but a dilatory tactic aimed at prolonging the trial and to somehow frustrate the victim witnesses who will naturally become weary of the long drawn legal process. When the final report was filed before the Special Court for Exclusive Trial of cases under POCSO Act, Chennai on 03.08.2021 itself, the trial ought to have commenced immediately as Section 35(2) clearly mandates that "the Special court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence."

20.The learned counsel further relied upon the judgment of the Hon'ble Apex Court in the case of ***Yashodhan Singh and others vs. The State of Uttar Pradesh and others*** reported in ***(2023) 9 SCC 108***, wherein it is held that when a person is summoned in exercise of power under Section 319 of Cr.P.C., it is for the limited purpose to ascertain that he is the very same



person who was summoned. On his appearance, no procedure of an inquiry or opportunity of being heard is envisaged, before been added as an accused to the list of accused already facing trial, unless such a summoned person had already been discharged. Thus the contention that the summoned person must be given an opportunity of being heard before added as accused to face the trial, is not contemplated under Section 319 of Cr.P.C.

21.Considering the submissions made and on perusal of the materials it is seen that the de-facto complainant lodged a complaint against the Commerce and Accounts Teacher of Maharishi Vidhya Mandir School for sexual assault, which is said to have been committed during the year 2014 - 2016. Neither in the complaint nor in the 161 Cr.P.C. statement of the de-facto complainant there is nothing against the petitioner. The de-facto complainant at the time of lodging the complaint was in the final year in Dr.Ambedkar Law College (School of Excellence). The complaint lodged after well thought over. Thereafter the respondent police registered the complaint, conducted investigation. The de-facto complainant also posted about the complaint in the Instragram and Social Media and thereafter the other victims, namely, L.W.2 to L.W.5, who are the students under the second respondent in the said school, who were also subjected to sexual



assault, had come forward to lodge a complaint. In this case, there are 5 victims, namely, L.W.1 to L.W.5., 164 Cr.P.C. statements of L.W.1, L.W.2 and L.W.3 recorded.

22.In the 164 Cr.P.C. statement of L.W.1, she makes reference about the petitioner, who is the Head Mistress of the school. She complained to the petitioner that while she was climbing the stairs in the third floor of the school, the second respondent was passing by and at that time, he tapped the back of the de-facto complainant. When the same was informed to the petitioner, the petitioner is said to have stated that it might be an accidental touch. Further, her statement is that L.W.4/Mohana was also similarly treated by the second respondent. She admits that her mother is employed as a teacher in the said school. Further, she complained to her parents about the second respondent beating her and in turn, her parents requested the second respondent not to beat her daughter. Further, she was informed by the sister of Sruthi that second respondent acted in improper manner with his sister Sruthi, which is known to the petitioner. In this case neither Sruthi nor her sister cited as witnesses. Her further statement is that the school management not taken any steps against wrong doing of second respondent. She also states that during her studentship in the school no complaints made fearing repressive measures, she might be subjected. In sum and substance, the



statement is sweeping in nature and mostly in the nature of hearsay as regards the petitioner.

23.It is to be seen that in this case the de-facto complainant's mother Saraswathi examined as L.W.7., She does not state anything against the petitioner. More particularly about sexual assault. L.W.2, in both statement under Sections 161 and 164 Cr.P.C., stated nothing against the petitioner. In Section 161 Cr.P.C. statement of L.W.3, there is no mention about the petitioner. In her 164 Cr.P.C. statement, she states that taking advantage of her father's untimely death, the second respondent used to show extra concern to her and later committed sexual assault. Further her mother is also a teacher in the said school and there was some difference of opinion between L.W.3 and her mother, wedge was created by the second respondent. This was complained to the petitioner, who advised her to concentrate on the studies. L.W.4 the other victim statement is that the second respondent touched her bum, which was objected by her and she informed to the petitioner, who immediately called the second respondent, enquired about the incident, for which, the second respondent gave explanation that he only attempted to touch her behind the shoulder but accidentally he touched the bum of L.W.4. The petitioner warned the second respondent about his act. It was a solitary



incident. The next day, L.W.4 came along with her father, the petitioner along with them went to meet the Senior Principal Namachivayam, where L.W.4's father complained about the act of the second respondent, the Senior Principal assured to take appropriate action. Thus in sum and substance, the victims L.W.1 to L.W.5 statement is that the second respondent committed sexual assault on them and other students, which was not informed to the management and school authorities at that time. Except sweeping allegation against second respondent about a solitary incident while L.W.1 was climbing stairs in the third floor, the other allegations are in the nature of hearsay.

24.The other victim L.W.4 on the other hand gives positive evidence confirming petitioner, immediately calling the second respondent, warning him and also taking L.W.4 and her father to the Senior Principal Namachivayam and reporting about the complaint. Thus, the finding of the Lower Court that the petitioner had knowledge of sexual assault being committed by the second respondent and not taken immediate action, is not correct. It is a co-education school, where girls and boys study together. The statements reveal a solitary incident, informed to the petitioner by L.W.1 and L.W.4 and the petitioner in the normal course had reacted to the complaint,



questioned second respondent and warned him. It is the Senior Principal, who is incharge of, over all administration of the school, who was informed about the complaint against second respondent. Apart from L.W.1 to L.W.5, the other students, namely, L.W.14 to L.W.19, not stated anything against the petitioner. Thus it is clear that L.W.2, L.W.3, L.W.5, L.W.14 to L.W.19 (students of the school), L.W.6 and L.W.7 (parents), L.W.20 (student counsellor) and L.W.21 (Chief Education Officer of the school), none of them have stated about the petitioner having knowledge of the second respondent's conduct and act of committing sexual assault on the school students. The de-facto complainant alone in her 164 Cr.P.C. statement states about the solitary incident, which she complained to the petitioner and the other allegations are hearsay and sweeping in nature. The statement of L.W.4 is that the petitioner, enquired the complaint, warned second respondent, further took L.W.4 and her father/L.W.6 to the Senior Principal Namachivayam, complained about second respondent's behaviour.

25. On considering the statements and materials as a whole, there is nothing to show that the petitioner had knowledge about the second respondent's act and sexual assault on the students. Admittedly, victims L.W.1 to L.W.5 state they made no complaint when they were students



studying in the school, which is confirmed by the parents L.W.6 and L.W.7.

It is to be seen, in this case the petition was filed by the accused/second respondent under Section 173(8) of Cr.P.C., which he is not entitled to. The trial Court entertained the same and passed an order invoking Section 319 of Cr.P.C. The Hon'ble Constitution Bench of Apex Court in **Hardeep Singh** case had formulated questions (i) at what stage powers under Section 319 Cr.P.C. can be exercised; (ii) whether the word “evidence” used in Section 319 (1) Cr.P.C. has been used in a comprehensive sense; (iii) whether the word “evidence” in Section 319 Cr.P.C. means includes examination in chief and cross examination; (iv) what is the decree of satisfaction required for invoking powers under Section 319 Cr.P.C.; and (v) under what situation powers under Section 319 Cr.P.C. to be exercised and also answered to the same by a detailed judgment.

26.It would be apposite to extract paragraph 105 and 106 of the above judgment:

“105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of



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committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence it requires much stronger evidence which is more probative than the evidence applied in a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent of complicity. The test that has to be applied to the evidence, if goes un rebutted, would lead to conviction. In the absence of satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

The Hon'ble Apex Court thereby held that the Court to come to a satisfaction to an extent that the evidence if goes un rebutted, would lead to conviction. In sum and substance, the evidence and materials available in the case should be short of conviction not merely *prima-facie*. In this case, the trial Court came to a conclusion that the statement recorded under Section 164 Cr.P.C. has



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been considered as a material evidence and found there is a prima-facie case made out, which is not the requirement and dictum of the Constitution Bench of the Apex Court. Thus from the above it is clear that there is no materials against the petitioner to show that the petitioner had knowledge of second respondent's act of sexual assault. The petitioner is only a Head Mistress. Above the petitioner, it is the Namachivayam, Senior Principal, who was in overall incharge and control of the teachers, staff and students of the school to whose knowledge the act of the second respondent was complained. The inaction of Namachivayam cannot be attributed against the petitioner. Further the statements and materials available in the case, does not satisfy the test contemplated, as per the dictum of the Hon'ble Apex Court to invoke Section 319 of Cr.P.C.

27. Thus, this Court finds that the impugned order is improper, lacks correctness, legally not sustainable. Hence, the impugned order dated 11.05.2023 passed in Crl.M.P.No.1615 of 2021 in Spl.S.C.No.144 of 2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai is set aside and the revision is, accordingly, allowed. The petitioner stands discharged from the above case.



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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
rsi

To

1. Inspector of Police,
W-4, AWPS,
Kilpakkam,
Chennai – 600 010.
2. The Sessions Judge,
Special Court for Exclusive Trial of
Cases under POCSO Act, Chennai.
3. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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**Pre-delivery order in
Crl.R.C.No.1101 of 2023**

04.06.2024