



CRR-1148-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.115

Case No. : CRR-1148-2024

Decided On : November 06, 2024

Mehak Petitioner
vs.
State of UT, Chandigarh Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. K. P. Singh, Advocate
for the petitioner.

Mr. Manish Bansal, PP, UT
with Mr. Shubham Mangla, Advocate
and Mr. Shaurya Nagpal, Advocate

Ms. Livleen Brar, Advocate
for Mr. Anil Mehta, Advocate
for the complainant.

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GURBIR SINGH, J. :

1. The present petition has been preferred against the order dated 03.05.2024, passed by the Fast Track Special Court, Chandigarh, whereby charge under Section 10 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as – POCSO Act) has been ordered to be framed against the petitioner and others.
2. Shorn of unnecessary details, the brief facts, necessary for disposal of the present revision petition, are that FIR No.21 dated 06.02.2024, under Section 10 of the POCSO Act was registered at Police Station West, Sector 11, Chandigarh, at the instance of complaint made by one Sukhminder Pal



Bedi, wherein he alleged that his son (name is not disclosed) (hereinafter called – child victim), aged 10 years, was subjected to physical, mental, emotional and sexual abuse by the Therapists and Staff of Aastha Therapy Center for Autism, Chandigarh, where his son was enrolled for treatment of Autism. The allegations, levelled against the staff members of aforesaid Aastha Therapy Center (including the present petitioner), are that they used to take the children in washroom, took off their clothes, touch their bodies including their private parts, physically abuse them by pinching and hitting. All this was also done with the complainant's son, due to which he was badly traumatized and became violent. He used to cover his face in protection whenever someone would come near him and at the time of bath, he used to be full of fear and cover his private parts with hands. Severe bruises were also noticed by parents on his arms and legs. With the passage of time, instead of any improvement in the behaviour of child, it rather became more erratic and he became increasingly stressed about going to the aforesaid Aastha Therapy Center for treatment. Sensing some suspicion, the complainant gained confidence of one of the workers of the Aastha Therapy Center namely Suman Kumari, who then disclosed about physical and mental assault of the children by the staff members. She also narrated that all this was being done to quicken the children to understand verbal commands and follow instructions and sometimes, to assert the authority over the kids so that they did not trouble the staff members. It also came to the notice that though there were CCTV cameras installed, but even then the assault was taking place in the areas which were not having coverage of



CCTV cameras i.e. washrooms etc. The name of the petitioner was specifically figured out that she used to take son of the complainant in washroom every day, disrobe him, examine and touch his body including private parts.

3. After completion of investigation, Challan under Section 173 Cr.P.C. was presented before the concerned Court. Keeping in view that prima-facie offence punishable under Section 10 of the POCSO Act was made out, the Court, vide impugned order dated 03.05.2024, ordered the charge under Section 10 of the POCSO Act to be framed against the petitioner and others. The petitioner, by way of present revision petition, has approached this Court to challenge the aforesaid order.

4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case as the same is based on false, twisted and manipulated facts. No preliminary inquiry was conducted before registration of FIR and even thereafter, proper investigation was not done to ascertain the truth. The affidavit, sworn by alleged eye-witness Suman Kumari, on the basis of which the FIR in question was registered, is a procured one, wherein the deponent has inter alia asserted that verbal and physical assault used to be done at the places, where CCTV cameras were not installed. In this situation, it is highly unbelievable as to how the aforesaid Suman Kumari came to know about any assault taking place. It has also been submitted that there is apparent contradiction in the versions recorded under Section 164 Cr.P.C., Section 161 Cr.P.C. and the affidavit in question. The wording of aforesaid affidavit is different from that of FIR and



some words have been added in order to attract the provisions of POCSO Act. In the statement of said Suman Kumari, recorded under Section 164 Cr.P.C., no person has been named by his/her name.

5. To defend the position of petitioner, it has further been contended by learned counsel for the petitioner that complainant's son was highly allergic prior to his enrolment for treatment. In his Travel Plan (Annexure P-5), issued by ASCIA (Australian Society of Clinical Immunology and Allergy), it was specifically recorded that he was allergic to egg, sesame, all nuts and coconut. He was also allergic to pollen and grass. For all these problems, he was also getting treatment at Australia as on 22.01.2021. He was enrolled for his treatment in India in December 2021. Since his admission, he had the problems of rashes, itching, redness, allergy, swelling, bleeding and wounds due to scratching on different parts of the body, which was because of his pre-existing allergies. At the time of admission for treatment, even special cream was provided by the complainant for his minor son. Though the parents were very well aware about the condition of their child, but they did not disclose about the same while enrolling their child.

6. It is the further contention of learned counsel for the petitioner that the staff members of the petitioner's Center were always under instructions to closely monitor symptoms of skin allergies of the complainant's son and to inform the complainant about the same. For this purpose, even if the child was taken to washroom and was being checked, the said bona fide act should not be termed as 'sexual abuse' in any manner. The staff was doing



their duty of helping the child to go to washroom, noting his bruises/rashes and applying cream/lotion etc. Copies of different communications, showing prompt actions taken by staff members and their method of taking care of the child, have been annexed as Annexure P-6. Reliance is placed on a judgment of Hon'ble Supreme Court in case Attorney General for India vs. Satish and another reported as (2022) 5 SCC 545.

7. Coming to the reason behind registration of FIR, learned counsel has argued that along with son of the complainant, another special child namely Udayjot Singh (son of complainant's brother) was also admitted in the Center. The complainant did not pay therapy charges from September 2023 till December 2023. When the said money amounting to Rs.5,62,500/- was demanded from the complainant, he, in collusion with one Suman Kumari, hatched conspiracy and got registered the FIR in question. In return, Suman Kumari was engaged to provide therapy to the complainant's son at home.

8. Learned counsel for the petitioner has also referred to Medical Examination Report dated 07.02.2024 (Annexure P-7), prepared by the Board of Doctors, constituted for the medical examination of the victims of sexual abuse at the General Hospital, Sector 16, Chandigarh, wherein nothing was found to show that the child victim was sexually assaulted.

9. On the other hand, learned counsel for UT and learned counsel for the complainant have opposed the submissions made by learned counsel for the petitioner on the ground that the allegations against the petitioner are very serious and the victim in this case is an innocent child of 10 years, who,



due to his medical problem, is not even in a position to explain everything whatever has happened to him. So, this kind of inhuman behaviour of petitioner should be dealt with a heavy hand so that a strong message is conveyed to the Society, with a motive to control such like crimes in future.

10. I have heard the submission of both the parties and have gone through the record.

11. At the stage of framing of charge, the Court has to consider the material brought on record only with a view to find out if there is ground for presuming that the accused has committed an offence and not for the purpose of arriving at the conclusion as it is not likely to lead to a conviction. It is so held in case of **Niranjan Singh Karam Singh Punjabi & Ors. vs. Jitendra Bhimraj Bijja & Ors.** reported as **(1990) 4 SCC 76.** In **State of Maharashtra & Ors. vs. Som Nath Thapa & Ors.** reported as **1996 (2) RCR (Criminal) 480,** the Hon'ble Apex Court, referring to dictionary meaning, explained the word “presume” as :

“...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution



has to be accepted as true at that stage.”
(emphasis supplied)

12. In case of **Dinesh Tiwari vs. State of Uttar Pradesh** reported as **(2014) 13 SCC 137**, it is held that at the initial stage of framing charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed the offence. The final test of guilt is not to be applied at that stage.

13. In the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao** reported as **2023 LiveLaw (SC) 874**, the same issue has been dealt with in detail. The relevant extract of the said judgment reads as under :-

“8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the chargesheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to



determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. *It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu Vs. N. Suresh Rajan And Others (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held:*

“29. *We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame*



the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document 5 at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

*12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the **State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659** and the **State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338** has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.*

13. The power and jurisdiction of Higher Court under Section 397 Cr.P.C. which vests the court with



*the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings. It would be apposite to refer to the judgment of this court in **Amit Kapoor Vs. Ramesh Chandra (2012) 9 SCC 460** where scope of Section 397 has been considered and succinctly explained as under :*

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the



CrPC.”

14. This Court in the aforesaid judgement has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr.P.C. is sought for as under :

“27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.



27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

15. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge.”

14. Coming to the case in hand, there are very serious allegations that the child victim, who is suffering from mental illness, was subjected to sexual abuse by the petitioner and co-accused. When such an offence is committed in a Therapy Centre, then it is not possible to immediately come to know about the offence as such a child cannot explain and there is no person to come forward to tell to the parents. When conscience of some employee or person associated with such a Centre wakes up, then only such a crime comes to light. It is a question of evidence if there was sexual intent or not. No doubt, such an intent is to be gathered from the circumstances but

it is too early to comment on this issue at this stage. A minor suffering from

Autistic disorder is subjected to such an assault in the Therapeutic Centre and as per allegations, the minor was assaulted by the staff members of the said Centre and no one would level such false allegations unless there is enmity or some special motive, which is a question of defence. The allegations are very serious. The same are required to be proved or disproved by way of trial.

15. Accordingly, I find that there is no illegality, infirmity or perversity in the impugned order dated 03.05.2024, passed by the Fast Track Special Court, Chandigarh, thereby ordering framing of charge against the petitioner and others. Therefore, finding no merit in the present revision petition, the same is hereby dismissed.

16. However, nothing observed herein above shall be construed to be an expression of opinion on the merits of the case. The observations recorded above are only for the purpose of deciding the present revision petition.

17. Pending applications, if any, shall stand disposed of along with this judgment.

November 06, 2024

monika

(GURBIR SINGH)

JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.