



2024:DHC:8027



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(CRL) 1030/2023 & CRL.M.A. 9620/2023,**
CRL.M.A. 27591/2023

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Date of Decision: 16th October, 2024

DR. AZEEM

.....Petitioner

Through: Mr. Kush Chaturvedi, Mr.
Syed Faraz Alam,
Mr. Atharva Gaur and Mr.
Aayushman Aggarwal,
Advs.

versus

STATE

.....Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
with SI Suman, PS Sarita
Vihar.
Ms.Rupali Bandhopadhyaya,
ASC for the State with Mr.
Abhijeet Kumar, Adv.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. By way of the present petition, the petitioner seeks quashing of the proceedings arising out of FIR No. 269/2021 dated 25.07.2021, registered at Police Station Sarita Vihar, for offences under Section 376 of the Indian Penal Code, 1860 ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). The petitioner also challenges the order dated 28.02.2023, passed by the learned Trial Court in Sessions Case No. 350/2021, wherein the learned Trial Court directed the charges to be framed against the

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petitioner under Section 19 read with Section 21 of the POCSO Act.

2. The FIR was registered when the victim (since deceased) disclosed that repeated penetrative sexual assault was committed with her. The victim is stated to be 12-13 years of age at the time of the incident. The health condition of the victim was vulnerable and she was admitted in the Emergency Ward of All India Institute of Medical Sciences (AIIMS). Further, multiple assaults in the month of April 2021 by an unknown person, namely, Saurabh were alleged by the victim. It is alleged that the victim, pursuant to the assault, was bleeding profusely and was sent to her aunt's house in Faridabad, who administered her some tablet. The victim was discharged on 16.08.2021. However, her condition deteriorated again and she was admitted to Safdarjung Hospital and finally died during the treatment on 12.09.2021.

3. Chargesheet was filed against the petitioner alleging offence under Section 19 of the POCSO Act. The same reads as under:

“19. Reporting of offences

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

(a) the Special Juvenile Police Unit; or

(b) the local police.

(2) Every report given under sub-section (1) shall be—

(a) ascribed an entry number and recorded in writing;

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(b) be read over to the informant;

(c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1)."

4. The petitioner was made accused pursuant to the supplementary chargesheet filed by the prosecution alleging that the petitioner was aware that the victim was subjected to sexual assault and still did not inform the police authorities.

5. The investigation revealed that the victim, pursuant to sexual assault, was pregnated and the foetus was aborted which

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led to various complications, and ultimately led to her death.

6. The learned counsel for the petitioner submits that the petitioner runs a well-known diagnostic centre and provides the radiology services to his patients.

7. He submits that during the course of providing services, the victim had come with her mother on 03.07.2021, for ultrasound of her urinary bladder, uterus and ovaries.

8. He submits that the report of the ultrasound was provided to the victim. He submits that perusal of the report categorically indicates that no opinion in regard to pregnancy of the victim was given.

9. He submits that in such circumstances, the allegation that the petitioner was aware that the victim had been sexually assaulted is an erroneous presumption.

10. The learned Additional Public Prosecutor for the State submits that the petitioner, during the course of investigation, had stated that the victim was most likely pregnant at the time of examination on 03.07.2021 and therefore was aware of her pregnancy.

11. It is undisputed that the statements of the victim and her mother were recorded by the Police during the course of investigation. It has not been mentioned in any of the statements that the petitioner was aware of the pregnancy of the victim. It has only been stated that the victim along with her mother, visited the clinic of the petitioner for the purpose of ultrasound.

12. It appears that the victim had not even informed her mother about the sexual assault when she visited the clinic of the



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petitioner. The same was disclosed later as per the statement of the victim, that is, one week before the registration of the FIR on or about 18.07.2021.

13. This Court has perused the ultrasound report given by the petitioner. The report indicates that the urinary bladder was found normal in size, shape and position and there was no evidence of any stone formation. The ultrasound of the uterus mentions that its endometrial thickness was 12.4 mm, it was heterogeneous. The cervical canal was also distended and hyperechoic specks with fluid were seen within. The ultrasound of the adnexas & ovaries mentions that a cyst measuring 2.6 x 2.1 cms was noted in the left ovary.

14. It is not disputed that one of the reasons for the condition of the uterus, as stated in the ultrasound report, could have been pregnancy from the sexual assault. However, it cannot be presumed that the Doctor, doing the ultrasound, would be aware or would be sure that the same was for the reason of sexual assault of the patient.

15. As noted above, even as per the case of the prosecution, the victim had informed about the sexual assault only a week prior to registration of the FIR, that is, after the ultrasound was carried out by the petitioner.

16. On perusal of the medical report, suspicion can arise that the petitioner was aware of the condition of the victim, that is, she was sexually assaulted, however, that does not give rise to a grave suspicion for the purpose of framing of charges.

17. It is trite law that the Trial Court, while framing charges

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under Section 228 of the CrPC, is not required to conduct a mini trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are prima facie made out against the accused persons. The Hon'ble Apex Court, in the case of **Sajjan Kumar v. CBI : (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and



must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

(emphasis supplied)

18. In the case of ***Amit Kapoor v. Ramesh Chander: (2012) 9 SCC460***, the Hon'ble Apex Court had noted that while considering the point of charge, the Court is required to consider the record of the case and discern whether there are grounds to believe that the accused has committed the offence. It was noted that the Court has to satisfy itself as to the existence of elements of the alleged offence. The Hon'ble Apex Court, advertent to a catena of precedents, had also noted that the test for quashing an order on charge in exercise of revisional jurisdiction or inherent jurisdiction is limited to whether the allegations, as made from the record of the case, taken at their highest, are patently absurd and whether the basic ingredients of the offence, for which the charge is framed, are not made out.

19. The term 'knowledge' in Section 19 of the POCSO Act has been interpreted by the Hon'ble Apex Court in several cases.



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It has been held that knowledge means awareness on the part of the person concerned only if there is a direct appeal to his senses.

20. As noted above, the medical report prepared by the petitioner may be interpreted to point towards sexual assault. However, it is undisputed that the petitioner was not made aware of the same when the ultrasound was conducted.

21. The PCOSO Act provides for a legal obligation on the person to inform the authorities if he / she has knowledge that an offence has been committed. The person is not obliged to investigate and gather the knowledge as to the commission of the offence. The possibility that the report could have been interpreted so as to show sexual assault cannot be translated into the knowledge as stated in Section 19 of the POCSO Act. The same in the opinion of this Court cannot be a criminality.

22. The Hon'ble Apex Court, in the case of ***Sr. Tessy Jose and Others v. State of Kerala : 2018 18 SCC 292***, while considering a petition in somewhat similar circumstances for quashing of the proceedings, held 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, the 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



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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 v. State of Kerala [A.S. Krishnan v. State of Kerala, (2004) 11 SCC 576 : 2005 SCC (Cri) 612] 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 a.m. and she immediately went into labour and at 9.25 a.m. she gave birth to a baby. Therefore, Appellant 1 attended to the victim for the first time between 9.15 a.m. and 9.25 a.m. on 7-2-2017. The medical records of the victim state that she was 18 years' old as on 7-2-2017. Appellant 1 did not know that the victim was a minor when she had sexual intercourse.

23. The Hon'ble Apex in a catena of judgments has held that if two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Courts would be empowered to discharge the accused.

24. In view of the above, I am of the opinion that the ultrasound report given by the petitioner does not raise grave suspicion as to the knowledge of the sexual assault for the purpose of framing of charges.

25. The petitioner is, therefore, discharged in the FIR No.269/2021.

26. The present petition is allowed in the aforesaid terms. Pending applications stand disposed of.

AMIT MAHAJAN, J

OCTOBER 16, 2024

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