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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 26th April, 2024
Pronounced on: 07th May, 2024

+ CRL.REV.P. 401/2020 & CRL.M.A. 17536/2020, CRL.M.A. 3620/2022
JASVINDER KAUR & ANR. Petitioners

Through: Ms. Shobha Gupta, Ms Simranjeet Kaur,
Ms. Sankirti Sankuntala Gupta, Ms.
Mansavi & Ms. Akshita, Advocates.

versus

STATE& ANR. Respondents

Through: Mr. Amit Ahlawat, APP for the State with
SI Kailash, P.S. Karol Bagh.
Ms. Kamna Vohra, Mr. Shivam Tyagi
and Ms. Aditi Bhardwaj, Advocates
for complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present revision petition under Section 397 of the Code of Criminal Procedure seeks the following prayers:

- “a. That the impugned order dated 21.09.2020 by the Special Judge POCSO at Tis Hazari be set aside;
- b. That the matter for impleadment as Accused be re heard by the trial court;
- c. That the court may call for the records of the case exercising its power;

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By: AMIT SHARMA
Signing Date: 07.05.2024 20:21:18
CRL.REV.P. 401/2020



- d. That the Praveen Kumar, Ms. G.K. (name withheld) or any other person that the court may deem fit be summoned as the accused in the present matter before the Special Court;
- e. Any other remedy that the Hon'ble Court may provide in light of justice, equity and good conscience."

BRIEF FACTS:

2. The brief facts leading up to the present petition are as follows:
 - i. Respondent no. 2 sent a complaint dated 10.09.2018 to the Director, Directorate of Education, Delhi alleging that his son (heretofore referred to as Master "VA" / PW-1), a minor aged about 12 years then, studying in class 7th in a public school had been sexually assaulted by few of his classmates in the preceding year [*the name of the survivor and the school are withheld to protect the identity of the survivor in accordance with section 23 of the POCSO Act*] and that when Respondent no. 2 approached the school management with the issue and persisted with his adamant efforts requesting for rustication of the 5 alleged CCLs involved in the incident; the management responded to the same with rustication of "M" and "R" and with issuance of warning to the 3 other CCLs. Furthermore, in the aforesaid complaint, it was stated that even after the alleged incident leading to rustication and warning, school authorities and especially one Ms. J. K. S. (*name withheld*), Teacher-in-Charge of the school continued to mete out different treatment to the survivor (Master "VA" / PW-1), who intentionally was made to sit at the back of the classroom secluded from other students despite his poor eyesight and was failed in class VII.



- ii. One copy of the aforementioned complaint was sent to the DCP, Central District, Darya Ganj, on the basis of which, FIR no. 421/2018 under Sections 377/34 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (heretofore referred as “POCSO Act”) was registered in PS Karol Bagh against the CCLs on 02.10.2018 (**Annexure C-3**), which was further referred to Juvenile Justice Board where it is currently pending.
- iii. During investigation, on 06.10.2018, statement of the survivor “VA” (PW-1) under 164 of the Code of Criminal Procedure (heretofore referred as “Cr.P.C.”) was recorded; where he corroborated the allegations made in the complaint regarding forceful unnatural sex by 5 of his classmates. He further corroborated to the inequitable and exclusionary treatment meted out to him by the school authorities including the Vice-Chairperson and the Teacher-in-Charge, Ms. J.K.S.
- iv. On further investigation, all 5 CCLs were apprehended. The Principal and Vice-Chairperson namely Jasvinder Kaur, W/o Gurpreet Kaur, R/o GH-13/84, Paschim Vihar, New Delhi (petitioner no. 1) and Harvinderjeet Singh, S/o Sardar Satwant Singh, R/o I-16/390, Military Road, Anand Parbat, Karol Bagh (petitioner no. 2) were given notices under section 41A of the Cr.P.C.
- v. Chargesheet was filed. Charges under Section 21 POCSO Act were thereafter framed against the petitioners.
- vi. The petitioners in their application under Section 319 of the Cr.P.C. prayed for impleadment of Respondent no. 2 (PW-2) and Ms. G.K. (*name*



withheld) as accused(s) in the case under Section 19 read with Section 21 of the POCSO Act; however, the same was dismissed by the Special Judge (POCSO Act), THC (Central), Delhi on 21.09.2020 on the ground that inculpatory statement of Respondent no. 2 (father of the survivor/PW-2), who is a prosecution witness cannot make him liable to be arrayed as an accused under Section 319 of the Cr.P.C. (**Annexure A-1**). Hence, the present revision petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. The learned Counsel for the petitioners submitted that they had only received a complaint of bullying/quarrel amongst students of the class of the survivor, which was subsequently resolved by holding a meeting on 14.07.2017. Respondent no. 2 who is the father of the survivor was satisfied with the resolve made out in the issue by the school authorities, so much so that he had provided a letter of satisfaction to the school authorities on 15.07.2017 (**Annexure D-4**) assuring not to take any legal action against the school authorities.

4. The learned Counsel for the petitioners further submitted that Respondent no. 2's (complainant/ father of the survivor) explicit "admission" of the "knowledge" he had regarding commission of the sexual assault one year back does not provide him a leeway under POCSO Act and he is equally liable to inform the police about the incident as per the mandate of Section 19 and 21 of the POCSO Act, as Section 21 of the act renders "**any person**" liable for failure to report the case, which includes parents of the survivor as well. Furthermore,



it is submitted that there was a delay of 13 months on behalf of Respondent no. 2 in reporting the alleged incident to the police, who conveniently made the complaint when his son, i.e., the survivor (PW-1) was rusticated from the school on non-payment of his yearly fees.

5. It is further submitted that the intention of the legislature behind framing such a stringent law as that of POCSO Act was to protect the children from sexual abuse, in which the perpetrators sometimes happen to be close relatives/parents of the children; therefore, both Section 19 (1) which mandates reporting and Section 21 which makes non-reporting punishable have been worded with “*any person*”.

6. It is thus submitted that Respondent no.2 (the father of the survivor/PW-2) who is a prosecution witness in this case should be arrayed as an accused and there should not be any immunity given to him under the aegis of Section 132 of the Evidence Act as procedural law is always subservient to substantive law. Reliance was placed on **Saiyad Mohammad Bakar El- Edroos (dead) by LRs vs. Abulhabib Hasan Arab and others AIR 1998 SC 1624**. Since the complainant admitted voluntarily of his knowledge about the alleged incident in his complaint in the preceding year, it can be used as evidence against him in both civil and criminal proceedings. Section 132 of the Evidence Act protects against self-incrimination; however, in consideration of the above circumstances, statement given by Respondent no. 2 (father of the survivor/PW-2) cannot be construed as self-incriminatory.

7. Further reliance has been placed on the following judgments:



- a) **State of Maharashtra and another vs. Dr. Maroti S/O Kashinath Pimpalkar (2023) 4 SCC 298**
- b) **Kamal Prasad Patade vs. State of Chhattisgarh & Anr. 2016 SCC Online Chh 719**
- c) **Balin Chetia vs. The State of Assam, Rep. by PP, Assam CRL. A(J) 24/2019, Gauhati High Court, date of decision: 24.07.2023**
- d) **Surjeet Khanna vs. State of Haryana & Anr. 2024: PHHC: 023004**

SUBMISSIONS ON BEHALF OF THE STATE:

8. Learned APP for the State submitted that the petitioners have exhausted all their remedies, including challenging the order on charge and even for recalling of PW-2 (father of the survivor) for further examination. It is further submitted that Respondent no. 2 came in possession of the knowledge of the alleged incident from one Ms. G.K., i.e., mother of the survivor's friend, Master "MS", who in turn informed him and the school authorities.
9. It is further submitted that the school authorities had called the father (PW-2) and he was forced to sign the satisfactory letter dated 15.07.2017. Besides, in their testimonies, both the survivor child (PW-1) and the father (respondent no. 2) have explained the circumstances and corroborated the contents of the initial complaint. It was also submitted that the survivor has himself in his statement deposed about the acts of mistreatment by the Principal madam, the Vice-Chairperson of the school (the petitioners herein) and one J.K.S., the Teacher-in-Charge.



10. It is further submitted that complaint dated 10.09.2018 was addressed to the Director, Directorate of Education, Delhi and was also sent to the Hon'ble Lieutenant Governor and the DCP, Central District, Darya Ganj, on which the aforementioned FIR was registered.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2:

11. Learned Counsel on behalf of Respondent no. 2 submitted that “mandatory reporting” under Section 21 of the POCSO Act should not be confused with “delay in reporting” or “failure to report”, because if the “mandatory reporting” provision is given utmost importance, then the legislative intent of the framers as far as the best interest and primary well-being of the child are concerned, would be defeated. It is further submitted that the petitioners have blatantly revealed the identity of the survivor and respondent no. 2 which stands in contravention to the provision of POCSO Act and a catena of judgements.

12. It is further submitted that the revisional jurisdiction of the High Court and the Court of Sessions under Section 397 and 401 of the Cr.P.C. can only be invoked by the High Court or the Court of Sessions for the purpose of satisfying itself as to the correctness, legality or propriety of any finding. Reliance is placed on the judgement of the Hon'ble Apex Court in **Amit Kapoor vs. Ramesh Chand & Anr. (2012) 9 SCC 460**, wherein it is held as under:

“12. 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”

Reliance is also placed on the judgment of the Hon’ble Apex Court in **Rajasthan vs. Fatehkaran Mehdu (2017) 3 SCC 198**, wherein it is held as under:

“27 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 the proceeding.”

13. As far as mandatory reporting is concerned, the counsel for Respondent no. 2 submitted that Respondent no. 2 came in possession of the knowledge of the alleged incident from one Ms. G.K. (mother of the survivor’s friend, Master “MS”), who was also the first person to inform the school authorities on getting to know about it from Master “MS”. As soon as Respondent no. 2 got to know about it, he immediately met the school authorities who in turn had induced him to sign a “printed satisfactory letter” which immunised the school authorities against any legal action by stating *“I assure you that I will not take any legal action towards the school, parents and Management of the School.”* Reliance was placed on a judgment of the Hon’ble Punjab and Haryana High Court in **Sanjeev Kumar vs. State (UT Administration) & Anr. in CRM-M 48067/2017 dated 20.11.2018**, wherein it is held as under:

“14 where there is enough material to come to the conclusion that despite having knowledge that the offence punishable under the POCSO Act has been committed, the Management (Director of the Trust in the said case) who instead of reporting the matter either to the Special Juvenile Police or to the local police, had insisted the first informant and relatives of



the victim, a female child, to settle the matter, is itself sufficient ground to proceed against the person so showing reticence into the matter. In this case, besides the petitioner, his associate transporter and even the Principal of the school, as has come in the evidence, need to be hauled up for this collusion inter-se between them and thus, flying to extinguish the embers of this occurrence by suppressing the same with a mala fide intention, which is well illustrative from the testimony of the father of the girl.....

15..... From what has come on the records, the petitioner cannot hide behind the facade of lack of knowledge or information and rather was duty bound being an Administrator of the school relating to which and where the occurrence has taken place and which is well substantiated from the proceedings of the Court whose orders have been put to challenge in this petition”

14. As far as immunity to witnesses under section 132 of the Indian Evidence Act is concerned, it is submitted that the provision provides safeguard to the witnesses from any arrest in criminal proceedings except for prosecution giving false evidence. However, in the present scenario, the evidence of Respondent no. 2 does not fall within the purview of the admissible evidence as he was under obligation to state the truth because of the oath taken by him. Reliance is placed on the judgment of the Hon’ble Supreme Court in **R. Dinesh Kumar @ Deena vs. State represented by Inspector of Police & ors. (2015) 7 SCC 497**, which has held as under:

“44. The proviso to section 132 of the Evidence act is a facet of the rule against self incrimination and the same is statutory immunity against self incrimination which deserves the most liberal construction. Therefore, no prosecution can be launched against the maker of a statement falling within the sweep of Section 132 of the Evidence Act on the basis of the “answer” given by a person while deposing as a “witness” before a court.”



ANALYSIS AND FINDINGS:

15. Heard the counsel for the parties and perused the record.

16. Section 19 and 21 of the POCSO Act provides 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;

(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).”

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

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

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

17. The perusal of the aforesaid provisions reflects that the reporting of the nature of incident as mentioned hereinabove is mandatory. Keeping in view of the object of the aforesaid sections, a timely intervention is necessary and important. But the aforesaid provision provides for punishment in case of non-compliance of the provisions of Section 19 for reporting an offence and not a belated one. As has been noted in the impugned order that the charges *qua* the petitioner were framed *vide* order dated 18.04.2019 under Section 21 of the POCSO Act, which was challenged by way of revision petition before this Court, which was subsequently dismissed as withdrawn *vide* order dated 17.02.2020. Initially, the application under Section 319 of the Cr.P.C. on behalf of the petitioners was against respondent no. 2 herein and one Ms. G.K, i.e., mother of



friend of the survivor, i.e., Master “MS”. It is a matter of record that the aforesaid Ms. G.K. is not being arrayed as a respondent in the present petition.

18. Reliance placed by learned counsel for the petitioner on the judgment of Hon’ble Supreme Court in **State of Maharashtra (supra)** is misplaced as the facts in the said case was that the respondent therein was arrayed as accused for failure to report the commission of offence under POCSO Act in compliance of the legal obligation under Section 19(1) of the said Act. It was not the case of the respondent therein that complaint was filed belatedly. It may be noted that the case of the respondent therein is similar to the petitioners themselves that despite the information being given to them, no complaint was filed by them under Section 19(1) of the Act.

19. Similarly, in **Kamal Prasad Patade (supra)**, the Learned Single Judge of High Court of Chhattisgarh quashed the proceedings against the petitioner therein on the ground that on 21.08.2015 at 08:00 AM, the alleged crime was reported to him and before he could collect the material at school, the matter was reported to police at 10:30 AM on the said date, and the FIR was registered.

20. Further in **Balin Chetia (supra)**, the Learned Single Judge of Hon’ble High Court of Gauhati was dealing with an appeal, the facts of which are not applicable in the present petition.

21. Finally, reliance was placed in **Surjeet Khanna (supra)**, where the facts of the aforementioned case are similar to the present case; however, it was held in the said judgement that the petition challenging the filing of an application under Section 319 of the Cr.P.C. was premature and therefore, the same was dismissed.



22. In the present case as noted above, respondent no. 2 had filed a complaint on the basis of which the present FIR had been registered, chargesheet was filed and the prosecution evidence stands complete. The delay in making the complaint by respondent no. 2 can be used as a defence by the petitioner during the course of the trial. It was pointed out by learned APP for the State, assisted by the learned counsel for the complainant that sufficient explanations have been given by respondent no. 2 and the survivor during their testimony to explain the delay.

23. This Court is not entering into the issue whether the said explanation was satisfactory or not, as the same is to be determined by the Learned Trial Court if such defense is taken by the petitioner during the course of the trial. For the purpose of this petition, it is suffice to say that the complaint filed by respondent no. 2 will not bring the case of the latter under Section 21 of the Act, which provides for punishment for “failure to report”. In the present case, respondent no. 2 has reported the case to the concerned authorities, in pursuance of which, the present FIR was registered.

24. The Hon’ble Supreme Court in **State of Gujarat vs. Sandip Omprakash Gupta 2022 SCC Online SC 1727** has observed and held as under:

“52. It is a sound rule of construction that the substantive law should be construed strictly so as to give effect and protection to the substantive rights unless the statute otherwise intends. Strict construction is one which limits the application of the statute by the words used. According to Sutherland, ‘strict construction refuses to extend the import of words used in a statute so as to embrace cases or acts which the words do not clearly describe’.

53. The rule as stated by Mahajan C.J. in *Tolaram Relumal v. State of Bombay* reported in AIR 1954 SC 496, is that “if two possible and reasonable constructions can be put upon a penal provision, the court must



lean towards that construction which exempts the subject from penalty rather than the one which imposes a penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature....” In State of Jharkhand v. Ambay Cements reported in (2005) 1 SCC 368, this Court held that it is a settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. The basic rule of strict construction of a penal statute is that a person cannot be penalised without a clear letter of the law. Presumptions or assumptions have no role in the interpretation of penal statutes. They are to be construed strictly in accordance with the provisions of law. Nothing can be implied. In such cases, the courts are not so much concerned with what might possibly have been intended. Instead, they are concerned with what has actually been said.”

25. In view of the above, the present petition is dismissed and disposed of accordingly.

26. Pending application(s), if any, also stand disposed of.

**AMIT SHARMA
JUDGE**

MAY 07, 2024/nk/bsr