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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 1180/2024, CRL.M.A. 29129/2024**

ARADHANA

.....Petitioner

Through: Counsel (appearance not given).

versus

THE STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Tarang Srivastva, APP for the
State with SI Amar Singh, I.O. with
SI Fukeria, Kishangarh.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

26.09.2024

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CRL.M.A. 29129/2024

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.REV.P. 1180/2024

By way of the present petition filed under sections 397 and 401 read with section 482 Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner impugns order dated 26.07.2024, whereby the learned Additional Sessions Judge, Patiala House District Courts, New Delhi has framed charges against the petitioner under sections 12/21 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and under sections 328/509/34 of the Indian Penal Code, 1860 ('IPC').

2. Though the present petition has been filed under the provisions of the Cr.P.C., in the opinion of this court, on a plain but meaningful reading of section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), proceedings are to be "*disposed of, continued, held or made*"



in accordance with the Cr.P.C. *only* in cases where *such proceedings*, viz. “*any appeal, application, trial, inquiry or investigation*”, were already *pending* immediately before the date on which the BNSS came into force, *i.e.* 01.07.2024. It appears therefore, that while inserting the repeal and savings provision in section 531 of the BNSS, the intention of Parliament was to not disrupt on-going proceedings; and to therefore not change the governing law during the pendency of such proceedings.

3. Since the present petition is a fresh proceeding and has been *filed after 01.07.2024*, in the opinion of this court, the present petition ought to have been filed under the BNSS. Be that as it may, in order to obviate any unnecessary delay, the present petition is treated as one under sections 438 and 442 read with section 528 of the BNSS.
4. Briefly, the present petition is a second round of challenge by way of a revision petition, whereby the petitioner has impugned an order framing charge, inasmuch as the petitioner had impugned an order whereby charges were framed against her by the learned Sessions Judge *vide* order dated 15.03.2024 under sections 328/509/34 IPC read with sections 12 and 21 POCSO Act, which order was set-aside by a Co-ordinate Bench of this court *vide* judgment dated 06.05.2024 passed in CRL.REV.P. No. 596/2024. By judgment dated 06.05.2024, the Co-ordinate Bench had said that the order framing charges passed by the learned Sessions Judge contained no discussion, even in brief, as to what was the material on record based on which the learned Sessions Judge had concluded that charges were made-out against the petitioner.
5. The Co-ordinate Bench had therefore remanded the matter back to the learned Sessions Judge for re-consideration on point of framing of



charge. Pursuant thereto, the learned Sessions Judge has now passed order dated 26.07.2024, which is impugned by way of the present revision petition.

6. Learned counsel appearing for the petitioner submits, that there is no material available on record based on which charges could have been framed against the petitioner.
7. In support of his submissions, counsel has taken the court through the contents of chargesheet dated 24.09.2020 filed in the matter, to argue that nothing has come-forth in the course of investigation to make-out a case against the petitioner under section 21 of the POCSO Act or under sections 328/34 of the IPC.
8. Issue Notice.
9. Mr. Tarang Srivastava, learned APP appears for the State on advance copy; and accepts notice.
10. The court has heard learned counsel for the petitioner, as well as learned APP at the stage of issuance of notice itself.
11. Learned APP has taken the court through the statement of the minor victim 'A' recorded under section 164 Cr.P.C. on 30.07.2020, as extracted in the chargesheet; and also the statement of the victim's cousin brother recorded under section 161 Cr.P.C. on 30.08.2020.
12. Learned APP argues, that on a bare reading of the section 164 Cr.P.C. statement, it is evident that the victim had informed the petitioner of the sexual overtures and actions committed by co-accused Gaurav Singh Parmar against the victim at the coaching institute that the victim was attending.



13. Learned APP submits that the petitioner was also a teacher at the same institute, by reason of which the victim had also confided in the petitioner, expressing to her the offensive actions committed by co-accused Gaurav Singh Parmar upon her. Attention is also drawn to the fact that in her statement recorded under section 164 of the Cr.P.C., the victim has detailed-out the actions of co-accused Gaurav Singh Parmar and has said that since she was not able to share her concerns at home, she had informed the petitioner about it. However, instead of reporting the matter to the concerned authorities, the petitioner instead tried to persuade the victim not to make an issue of the alleged offensive actions of the co-accused; and also told the victim that the co-accused would help her find appropriate placement in a college and would also help in her educational career otherwise.
14. Accordingly, learned APP submits that a case is clearly made-out against the petitioner, *inter-alia* on the basis of the section 164 Cr.P.C. statement of the victim, for a charge to be framed under section 21 of the POCSO Act.
15. Learned APP further points-out, that in the statement of the victim's cousin brother recorded under section 161 Cr.P.C, he has said that since the victim was not coming-out of the coaching institute, while he was waiting outside for her, he went in and found the victim with Gaurav Singh Parmar and the petitioner in the office of Gaurav Singh Parmar; and also found that the petitioner was in a stupefied state, whereupon he walked her out of the institute and took her home.



16. Learned APP accordingly submits, that *prima-facie* there is also material on record to support the framing of a charge under sections 328/34 IPC.
17. In rejoinder, learned counsel for the petitioner submits that as the record would show, upon learning of the victim's grievance, the petitioner had informed the administrative in-charge of the coaching institution, one Mr. Sumit, about the actions of Gaurav Singh Parmar against the victim; and that that was sufficient compliance with the requirements of section 21 of the POCSO Act. Learned counsel further argues, that there is nothing to show that the victim had consumed any stupefying or intoxicating substance, and that therefore, no case is made-out for framing of a charge under section 328 IPC.
18. Upon an overall consideration of the facts and circumstances of the case, this court is of the view that there is sufficient material on record filed along with the chargesheet *inter-alia* the statement of the victim recorded under section 164 Cr.P.C., as well as the statement of her cousin brother recorded under section 161 Cr.P.C. - that warrant the framing of charges against the petitioner under section 21 of the POCSO Act and sections 328/34 of the IPC. Whether or not the material on record will pass muster during the course of trial is not something that can be pre-judged, at this stage.
19. It is settled law that at the stage of framing charge, the trial court is only required to see if there is *sufficient material* on record, which *if proved* in the course of trial, would bring home the guilt of an accused; and it is not for the trial court to undertake a detailed evaluation or assessment about the veracity of such material at the stage of framing



charge. The above position of law has been enunciated by the Supreme Court in *Sajjan Kumar vs. CBI*,¹ the relevant portion of which judgement is extracted below :

“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

¹ (2010) 9 SCC 368



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)

20. It may be observed that since the matter had been remanded to the learned Sessions Judge in the last round, in passing the impugned order dated 26.07.2024, the learned Sessions Judge has given reasons for concluding that there is sufficient material on record to warrant the framing of charges against the petitioner under section 21 of the POCSO Act and sections 328/34 of the IPC.
21. In the above view of the matter, this court is unable to see anything remiss in the correctness, legality or propriety of the impugned order, by which charges have been directed to be framed against the petitioner.
22. This court is accordingly not persuaded to entertain the present petition in its revisional jurisdiction.



23. The petition is accordingly dismissed at the stage of issuance of notice itself.
24. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 26, 2024/ss