



Judgment

431 revn55.23

1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.55 OF 2023

1. Saket Ashok Jindal,
aged about 22 years, occupation
student, r/o Sarasar Colony, near
Swaminarayan Mandir, plot
No.32, district Nagpur.

2. Gautam Rakesh Sachdev,
aged about: 21 years,
occupation – student,
r/o Dayanand Nagar, gali No.2,
Jaripatka, district Nagpur.

..... **Applicants.**

:: VERSUS ::

1. The State of Maharashtra,
through Police Station
Officer, Police Station Sitabuldi,
district Nagpur.

2. Pranati Sudhakar Lanjewar,
aged about: 35 years,
occupation – service,
r/o Cyber Police Station, Nagpur
City, Sitabuldi, Nagpur.

..... **Non-applicants.**

Shri S.V.Sirpurkar, Counsel for the Applicants.

**Shri Amit Madiwale, Additional Public Prosecutor for the
Respondents/State.**

.....2/-

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 03/07/2025

PRONOUNCED ON : 15/07/2025

JUDGMENT

1. Heard learned counsel Shri S.V.Sirpurkar for the applicants and learned Additional Public Prosecutor Shri Amit Madiwale for the State.

2. By this revision, the applicants have challenged order dated 30.11.2022 passed below Exhs.17 and 18 moved under Section 227 of the CrPC for discharge by learned Extra Joint Additional Sessions Judge (Special Judge, POCSO Court), Nagpur in Special Criminal (Child) Case No.305/2021.

3. The offence is registered vide Crime No.507/2020 with the non-applicant/police station under Sections 67B of the Information Technology Act, 2000 and 15(1)(3) of

3

the Protection of Children from Sexual Offences Act, 2012.

4. Informant, serving as Police Sub Inspector, Cyber Police Station, Nagpur, lodged a report against a child in conflict with law alleging that the applicants have circulated obscene video to exploit children and thereby committed the offence as the aforesaid. During investigation, involvement of the applicants in receiving and circulating the video revealed and, therefore, they were arraigned as accused. After completion of the investigation, the investigating officer has submitted chargesheet against the applicants.

5. The applicants preferred applications below Exhs.17 and 18 under Section 227 of the CrPC for discharge. It is contended in the applications that NGO working for The National Centre for Missing and

4

Exploited Children keeps watch on children's pornography and involvement and exploitation of children in sexual act. If such contents are found in an electronic media, the said NGO makes report to the National Crime Record Bureau (NCRB), the Ministry of Home Affairs, New Delhi. The said Authority of the Government of India obtains details of objectionable contents, finds out location and police station and forwards the same to the concerned with Cyber Cell Tipline Report. Accordingly, the Nagpur Police received Cyber Tipline Report No.63885792. During the investigation, the involvement of other child in conflict with law revealed. During the investigation, the applicants were also arrested on the basis of statements of co-accused persons. It is contended that in fact except the statements of co-accused persons, there is no material to connect the applicants with the alleged offence.

5

Neither their mobile phones are seized nor there is any material to show that they have either received or circulated the said obscene videos. Thus, there is no *prima facie* case against them to frame the charge.

6. The said applications were strongly opposed by the State on the ground that the confessional statements of co-accused persons show involvement of the applicants. Hence, at this stage, sufficient material is there to connect the applicants with the alleged offence.

7. Considering material on record, learned Judge below rejected the said applications.

Hence, the present revision.

8. Learned counsel for the applicants submitted that as far as confessional statements of co-accused persons are concerned, the same are not admissible and hit by

6

Section 30 of the Indian Evidence Act. During the investigation, neither mobile phones of the applicants were seized nor the evidence is collected to show that they have either received or circulated the said obscene video. Thus, there is no *prima facie* material to connect the applicants with the alleged offence.

9. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that the provisions of Section 15 of the POCSO Act are in the nature and form of an inchoate offence which penalizes mere storage or possession of any pornography material involving a child when stored with a specific intent prescribed thereunder without requiring any actual transmission or dissemination. Hence, at this stage, there is a sufficient material to connect the applicants with the crime and, therefore, the applications

7

for discharge were rightly rejected by learned Judge below and, therefore, the revision deserves to be dismissed.

10. Before entering into the merits of the case, it would be appropriate to refer the scope of exercising of powers under Section 227 of the CrPC.

11. The Hon'ble Apex Court, in the case of **P.Vijayan vs. State of Kerala and anr, reported in (2010)2 SCC 398** made in-depth consideration regarding scope of powers under Section 227 of the CrPC and held as under:

“10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:

8

227. Discharge. — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

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. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post

9

office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the

10

police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

6. While considering the scope of Section 227, Cr.P.C. in **Sajjan Kumar v. Central Bureau of Investigation**, reported in (2010)9 SCC 368 this Court laid down certain guiding principles for discharge as under: -

“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

11

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

12

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.

13

(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

14

stage, he is not to see whether the trial will end in conviction or acquittal.”

12. Thus, the position of law is well settled that while exercising powers under Section 227 of the CrPC, the Judge concerned has to consider only record of the case and documents produced along with the same. If on such consideration the court forms an opinion that there is no sufficient ground to proceed against the accused concerned, he shall be discharged after recording the reasons therefor. It is also evident from the well settled legal position on the aforesaid question that while exercising the said power, the Court could sift the materials produced along with the final report only for the purpose of considering the question whether there is ground to proceed against the accused concerned.

15

13. In the light of the above well settled position, if facts of the present matter are considered, it would reveal that on the basis of report received from the Tipline, the Cyber Police at Nagpur registered the crime against the child in conflict with law and it revealed that the said child in conflict with law circulated one video through their Instagram account. Her mobile phone was seized by the investigating agency. Similarly, the mobile phones of Manisha Rajkotiya, Sunil Rughwani, and the other child in conflict with law were seized.

14. As far as present applicants are concerned, the investigation papers nowhere show that their mobile phones are seized and verified and any incriminating videos were seen on their mobile phones. Except the statements of Himanshu Manoj Dipani and Laksh Krishnani and Kalash Rajkotiya, stating that the said

16

video was sent to them by applicant No.1, there is absolutely no material to connect the applicants with the alleged offence. Admittedly, the statements of the co-accused are not admissible. In view of Section 30 of the Evidence Act, the confession of co-accused has to be inadmissible evidence. The confession before police officer by co-accused not supported by any other material or evidence being only evidence against the applicants would not be a sufficient evidence.

15. As observed earlier, except the statements of co-accused persons, there is no material to connect the applicants with the alleged offence. Neither their mobile phones are seized nor there is any material to show that they have either received or circulated the said obscene video. Even, no report or data is collected by the

17

investigating agency to show that they were involved in circulating the said obscene video.

16. The legal provision is clear that confession of co-accused person cannot be treated as substantive evidence.

17. The Hon'ble Apex Court, in the case of **Dipakbhai Jagdishchandra Patel vs. State of Gujarat and anr, reported in (2019)16 SCC 547** observed that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-

18

accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

18. On weighing and sifting the evidence on record, it is clear that except the statements of the co-accused, there is no sufficient material against the applicants to attract the offence against them.

19. In this view of the matter, I proceed to pass following order:

ORDER

(1) The Criminal Revision Application is **allowed**.

(2) The order dated 30.11.2022 passed below Exhs.17 and 18 moved under Section 227 of the CrPC for

19

discharge by learned Extra Joint Additional Sessions Judge (Special Judge, POCSO Court), Nagpur in Special Criminal (Child) Case No.305/2021 is hereby quashed and set aside.

(3) The applicants are hereby discharged of offences under Sections 67B of the Information Technology Act, 2020 and 15(1)(3) of the Protection of Children from Sexual Offences Act, 2012.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!