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Crl.R.C No.1288 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2025

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C No.1288 of 2025

Dr.(Mrs.)Subashini

... Petitioner

-VS-

State Represented by
The Inspector of Police
Thavalakuppam Police Station,
Puducherry.

... Respondent

PRAYER: This Criminal Revision Petition is filed under Section 438 read with 442 of BNSS Act, to set aside the order passed in Crl.M.P.No.470 of 2024 in Spl.S.C.No.38 of 2024 dated 04.03.2025 on the file of the Special Court (POCSO) at Puducherry.

For Petitioner : Mr.V.Kamala Kumar

For Respondent : Mr.A.Alexander
Government Advocate
(Crl. Side)
Pondicherry



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ORDER

This criminal revision has been filed as against the order passed in Crl.M.P No.470 of 2024 in Spl.S.C No.38 of 2024 dated 04.03.2025 by the Special Court, (POCSO), Puducherry, thereby dismissed the discharge petition.

2. The case of the prosecution is that the first accused Ezhilraj who was working as a painter in the neighbour's house of the minor victim girl Sowmiya, lured her under the pretext of love and on 27.01.2024, he had kidnapped the minor victim girl and tied a "thaali" to her in a temple. Thereafter, he had penetrative sexual assault with the minor victim girl several times and as a consequence, she got pregnant. Thereafter, she went to the Rajarajeswari Clinic at Abishekapakkam, Puducherry, wherein the 2nd accused was working as a doctor. After knowing that the victim is a minor and is pregnant, the 2nd accused referred the victim to take a scan at Sree Shanthi Scan. Accordingly, on 09.03.2024, the minor victim girl went to Sree Shanthi Scan and took scan by saying that she has completed 18



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years. Thereafter, she continued her regular check up with the 2nd accused. Once again, the minor victim girl went to the 3rd accused hospital, namely, ESV Maternity Hospital and continued her check up. Initially, the FIR was registered as against the first accused in Crime No.72 of 2024 for the offences punishable under Sections 5(1) and (j) (ii) of POCSO Act, 2012 read with Section 6 of POCSO Act, Section 9 of Prohibition of Child Marriage Act 2006 and Section 366 of IPC. During the investigation, the 2nd and 3rd accused were implicated as accused for the reason that they have treated the minor victim girl, even after knowing that the victim girl was aged about only 17 years. After completion of investigation, the respondent police filed a final report and the same was taken cognizance by the trial Court in Special C.C No.38 of 2024 for the offences punishable under Section 5(1) and (j) (ii) of POCSO Act read with Section 6 of POCSO Act, Section 9 of Prohibition of Child Marriage Act and Section 366 IPC against the first accused and the 2nd and 3rd accused are charged for the offence under Section 21 of POCSO Act. Therefore, the petitioner filed a petition to discharge her from all the charges on the ground that



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she did not know the age of the victim girl and she stated that her age is 18 years old. The scan report also revealed that the victim girl was aged about 18 years at the time of medical check up. However, the trial Court had dismissed the discharge petition. Hence, the present revision is filed.

3. The learned counsel for the petitioner would submit that there are totally three accused, in which the petitioner is arrayed as 2nd accused. The petitioner is a doctor and working in the Government Hospital, Puducherry. The first accused took the victim before the petitioner for treatment, since she got pregnant. Immediately, the petitioner advised the victim to take a scan and hence, she went to the private scan centre and took a scan report. Thereafter, she went to gynecologist for further treatment. Therefore, the petitioner had nothing to do with the crime as alleged by the prosecution. While pending investigation, the petitioner has been implicated as an accused alleging that the petitioner has failed to provide any information to the concerned authorities, despite having the knowledge that the victim was a minor and she was subjected to penetrative



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sexual assault under the POCSO Act. There is absolutely no material to show that the petitioner had the knowledge of the victim girl and failed to report before the authorities concerned. Even then, the trial Court without considering the facts and circumstances of the case, had mechanically dismissed the discharge petition.

4. Per contra, the learned Government Advocate (Crl.Side), Pondicherry, appearing for the respondent submitted that the petitioner is arrayed as 2nd accused and after knowing that the victim is a minor girl and the 1st accused had committed the offence under POCSO Act, against the minor victim girl, she continued to give treatment to the victim girl, that too, without informing the same to the concerned authorities. The offence under Section 21 of POCSO Act is clearly attracted as against the petitioner and the respondent had rightly filed the charge sheet.

5. Heard the learned counsel on either side and perused the materials available on record.



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6. There are totally three accused, in which the petitioner is arrayed as 2nd accused. Even according to the case of the prosecution, the petitioner is in no way connected to the first accused. She is running a clinic in the name of Rajarajeswari Clinic at Abishekapakkam, Puducherry. Since the victim reported that she got pregnant and as such, she was advised to go for a scan. Further, the petitioner did not follow the prescribed format for the scan referral. Accordingly, the victim girl was brought to the Sree Shanthi Scans on 09.03.2024, by the first accused. In the scan centre, the victim stated that she is 18 years old and the scan report also reveals that she has completed 18 years. Thereafter, she continued her regular medical check up with the petitioner and thereafter, continued the treatment with the 3rd accused as referred by the petitioner herein, in the hospital called ESV Maternity Hospital, since the petitioner is not a gynecologist. The charges made against the petitioner and the 3rd accused are as follows:

Subsequently, during the month of March 2024, the victim minor girl Sowmiya went to Rajarajeswari Clinic at



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Abishekapakkam, Puducherry, wherein the Accused No.2, Dr.Subashini, after knowing that she is a minor and pregnant, referred her to take scan at Sree Shanthi Scan. On 09.03.2024, the victim minor girl Sowmiya went to Sree Shanthi Scans and took scan by saying she has completed 18 years and she continued her regular check up with the Accused No.2. Dr.Subashini. As the Accused No.2 Dr.Subashini referred the victim minor girl Sowmiya to go to ESV Maternity Hospital, wherein on 15.05.2024, the Accused No.3 Dr.Saravana Priya knowing that she is a minor, aged 17 years, subjected her to Medical Check-up, thereby the Accused No.2, Dr.Subashini and Accused No.3 Dr.Saravana Priya having knowledge that the offence has been committed under the POCSO Act, failed to report the commission of offence to the local police and hence rendered themselves liable to be punished U/s.21 of POCSO Act, 2012.

7. Further, on perusal of the statement recorded from the witnesses revealed that no one had spoken that the petitioner and the 3rd accused had knowledge that the victim was a minor at



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the time of her check up and that she was subjected to POCSO offences by the first accused. Further, the prosecution had also failed to produce any material on record to show that the petitioner herself had voluntarily treated the victim, even after knowing the age of the minor victim girl as 17 years and she was already subjected to POCSO offences by the first accused. It is relevant to extract the provision under **Section 21 of POCSO Act** as under:

"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.



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

Thus, it is clear that any person who fail to report a commission of an offence under Section 19 or Section 20 or who fails to record such an offence under sub clause 2 (19) shall be punished under Section 21 of POCSO Act.

8. It is relevant to rely upon the judgment of the Hon'ble Supreme Court in the case of Dr.Sr. Tessy Jose & Ors v. The State of Kerala, reported in (2018) 8 SCC page 292, in which it was held as follows:

"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 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



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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 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 AS Krishnan and Others v. State of Kerala 1 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."

9. In the case on hand, even according to the case of the prosecution, the victim girl was brought by the first accused to the petitioner's hospital, where the petitioner found that victim girl was pregnant. Therefore, the petitioner advised the victim girl to take a scan. After seeing the scan report which stated that the age of the victim was mentioned as 18 years old, the petitioner instructed her to consult a gynecologist. Accordingly, the victim girl was brought before the 3rd accused to continue her routine medical check up. Further, it is not the case of the



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prosecution that the petitioner or the 3rd accused, with the help of the first accused, committed the offences under Section POCSO Act against the minor victim girl. Even according to the case of the prosecution, the first accused and the victim eloped to Kaali Kovil, Karikkan Nagar, where the first accused tied "thaali" to her . Thereafter, they stayed in a rented house situated at No.57, Middle Street, Poornangkuppam, Puducherry, wherein the first accused subjected the victim to penetrative sexual assault several times. Therefore, the victim girl got pregnant. In order to check up her pregnancy, she was brought before the petitioner herein. Therefore, the petitioner or the 3rd accused are not said to be involved in the offence committed by the first accused and no charges have been made against them. In view of the above, the order passed by the trial Court dismissing the discharge petition cannot be sustainable and the same is liable to be set aside.

10. Accordingly, the order passed in Crl.M.P.No.470 of 2024 in Spl.S.C.No.38 of 2024 dated 04.03.2025 by the Sessions Judge, Special Court (POCSO) at Puducherry is, hereby set

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aside and the petitioner is discharged from all the charges.

Though the 3rd accused did not file any application for discharging her from all the charges, she is also entitled for the relief of discharge since she is also standing on the same footing of the petitioner herein. Accordingly, the 3rd accused is also discharged from all the charges in Spl.S.C.No.38 of 2024 on the file of the Special Court (POCSO) at Puducherry. Further, the trial Court is directed to proceed with the trial against the first accused.

11. In the result, this Criminal Revision Case is allowed.

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Index:Yes/No
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To

- 1.The Sessions Judge, Special Court (POCSO) at Puducherry.
- 2.The Inspector of Police
Thavalakuppam Police Station,
Puducherry.
- 3.The Public Prosecutor,
Puducherry.



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G.K.ILANTHIRAIYAN,J

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