



2025:DHC:2927



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 21.04.2025*+ **CRL.REV.P. 473/2024 & CRL.M.A. 10755/2024**

VINOD KUMARPetitioner

Through: Mr. Sanjay Gupta and Mr.
Shubhangam Thakur,
Advocates

versus

STATE & ANR.Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.+ **CRL.REV.P. 474/2024 & CRL.M.A. 10757/2024**

UMA AND ORSPetitioner

Through: Mr. Sanjay Gupta and Mr.
Shubhangam Thakur,
Advocates

versus

STATE OF NCT OF DELHI AND ANR.Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of these revision petitions, the petitioners seek setting aside of the order dated 16.03.2024 [hereafter '*impugned order*']



2025:DHC:2927



passed by the learned Additional Sessions Judge (Special FTSC) (POCSO)-01, South West Dwarka, New Delhi [hereafter '*Trial Court*'] in case arising out of FIR No. 402/2023, registered at Police Station Dabri, Delhi, by way of which charges were framed against the petitioners.

2. Briefly stated, the facts of the present case are that the FIR in this case was registered on 10.06.2023, on the complaint of Ms. 'H' (victim's mother), wherein she had alleged that the accused persons had molested her four-years-old son (the victim), and had touched his private parts and also used abusive words in front of him, on 08.01.2023 at about 2:45 PM. It was also alleged that the accused persons had been torturing and blackmailing them for leaving the house. On these allegations, the present FIR was registered against Vinod Kumar, Shashank, Uma, Kanishka, Nisha and Jyoti, for commission of offences under Sections 323/506/34 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 10/12 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

3. During the course of investigation, statements of the victim's mother and grandmother were recorded under Section 161 of Cr.P.C. On 17.06.2023, the victim's statement was recorded under Section 164 of Cr.P.C. before the learned Magistrate, wherein he disclosed that he had been hit on the posterior region of his body and left cheek by his paternal uncle (*tau*) and aunt (*tai*), and that they had also beaten his mother and grandmother. However, the victim was unable



2025:DHC:2927



to answer as to why he had been beaten.

4. During investigation, it was also discovered that there was a property dispute between the parties, and that six FIRs had already been registered at P.S. Dabri, in 2022 and 2023, at the instance of the accused persons and the complainant herein. On 22.06.2023, all the accused persons had been granted bail *vide* order dated 23.06.2023 and they had joined the investigation.

5. After completion of investigation, chargesheet was filed on 01.08.2023, against Vinod for commission of offences punishable under Sections 323/506/4 of IPC and Section 10 of POCSO Act, and Uma for offence under Sections 323/34 of IPC and Section 17 of POCSO Act. The other accused persons, i.e. Shashank, Kanishka, Nisha and Jyoti were kept in column 12 as there were no specific allegations against them.

6. The learned Trial Court, *vide* impugned order dated 16.03.2024 was pleased to frame charges for commission of offence under Section 12 of POCSO Act against the accused Shashank, Nisha and Jyoti; under Sections 18/6 of POCSO Act against the accused Vinod; and under Section 323 of IPC and Section 12 of POCSO Act against the accused Uma Devi. The relevant portion of the impugned order is set out below:

“...Considering all the facts and circumstances of the case and keeping in mind the nature of allegations in the complaint as well as statement of child victim u/s. 164 CLP.C. and statement of other witnesses recorded u/s 161 CLP. C, prima facie, case u/s. 18 r/w section 6 of POCSO Act is made out against



2025:DHC:2927



accused Vinod. There are also allegations of causing simple hurt on the person of child victim aged about 4 years and thus case u/s 323 IPC is made out against accused Uma Devi. Further, there are allegations of using abusive language against the child victim by the accused persons namely accused Jyoti, Shashank, Nisha, Vinod and Uma and therefore charge u/s 12 of POCSO Act is also made out against them. Accordingly, accused Vinod is charged for the offence punishable u/s.18 r/w section 6 of POCSO Act further accused Uma Devi is charged for the offence punishable u/s 323 IPC and accused persons namely Jyoti, Shashank, Nisha and Uma are charged for the offence punishable u/s.12 of POCSO Act, which has been read over and explained to them in vernacular to which they pleaded not and Claimed trial.

7. All the five accused persons have assailed the impugned order on charge by way of the present revision petitions.

8. The learned counsel appearing for the petitioners argues that the impugned order is contrary to law and that the learned Trial Court has failed to appreciate that the statement of the child victim recorded under Section 164 of Cr.P.C. contains no allegation of sexual assault or use of abusive language against the petitioners herein. It is contended that the learned Trial Court has failed to consider the General Diary entries which point out that a domestic quarrel had taken place between the parties. It is further submitted that the property dispute between the petitioner Vinod and the complainant's husband and mother-in-law often resulted in frequent quarrels over trivial issues, and even the chargesheet takes note of the six pending FIRs between the parties. It is also argued that there is an unexplained delay of approximately five months in lodging the present FIR, and further that the statements of the victim's mother



2025:DHC:2927



and grandmother recorded by the police are undated, and thus, cannot be relied upon. Further, there exist material contradictions in the original hand written complaint given by the victim's mother, and the statement of the two witnesses recorded by the police. It is also argued that the necessary ingredients of the alleged offence are missing in the present case, and the impugned order is totally silent on these aspects. Therefore, it is prayed that impugned order be set aside and petitioners be discharged in the present case.

9. The learned APP for the State, on the other hand, argues that the allegations against the accused persons are serious in nature, and at the stage of charge, only a *prima facie* case is to be seen. He however fairly submits that the chargesheet was filed, for commission of offences under the relevant Sections of POCSO Act, other than the ones *qua* which charge has been framed by the learned Trial Court.

10. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

11. In the present case, the statement of the child victim recorded under Section 164 of Cr.P.C. by the learned Magistrate discloses that the victim was hit on his posterior (buttocks) and slapped on the cheek by his paternal uncle Vinod and aunt Uma. He has made no mention of any kind of sexual assault or any other inappropriate act committed by the accused, nor has he implicated the other family members in any offence. Thus, the victim in his statement under



2025:DHC:2927



Section 164 of Cr.P.C. had identified only two persons i.e. Vinod and Uma, against whom any specific acts of violence were attributed.

12. After completing the investigation, police had placed four accused persons – Shashank, Kanishka, Nisha, and Jyoti – in Column 12 of the chargesheet, which indicates that no material or evidence was found against them to justify their prosecution. However, the learned Trial Court, after hearing arguments, proceeded to frame charge under Section 12 of POCSO Act against three out of these four persons, i.e. Shashank, Nisha, and Jyoti.

13. Insofar as the chargesheeted accused are concerned, the investigating agency had filed the chargesheet against Vinod Kumar for offence under Sections 323/506 of IPC and Section 10 of the POCSO Act, the latter dealing with aggravated sexual assault, which apparently was in respect of hitting on the posterior of the victim child. However, the learned Trial Court framed charges against him under Sections 18 read with Section 6 of POCSO Act, i.e. for attempt to commit aggravated penetrative sexual assault.

14. Similarly, with respect to accused Uma Devi, the police had chargesheeted her for offences under Section 323/34 of IPC and Section 17 of the POCSO Act, the latter pertaining to abetment of offence under POCSO Act. However, the learned Trial Court framed charges against her under Section 323 of IPC and Section 12 of POCSO Act, the latter pertaining to sexual harassment.

15. At this stage, it is also pertinent to refer to the relevant



2025:DHC:2927



provisions of the POCSO Act. Section 10 of the POCSO Act criminalizes aggravated sexual assault committed under specified circumstances, while Section 17 deals with the abetment of any offence under the Act. The punishment prescribed under Section 10 is a minimum of five years' imprisonment, which may extend to seven years. In contrast, Section 6 read with Section 18 of the POCSO Act pertains to an attempt to commit aggravated penetrative sexual assault – a considerably more serious offence than sexual assault. The punishment under Section 6 is a minimum of twenty years' imprisonment, which may extend to imprisonment for life or even the death penalty. As per Section 18, the punishment for attempting such an offence would be half of the punishment prescribed for the completed offence.

16. A bare perusal of the impugned order makes it evident that there is no reason recorded as to why and how the charge was being framed under the above-said provisions of POCSO Act, more so, since the learned Trial Court as per law was also disagreeing with the finding of the investigation by the police mentioned in the chargesheet. In this Court's opinion, though, a court of law ought not to conduct a mini-trial at the stage of charge, and only see whether a *prima facie* case is made out against an accused – yet the order on charge must reflect application of judicial mind. It must disclose, even if briefly, the material that led the Court to arrive at the conclusion that a particular offence is *prima facie* made out against the accused. This becomes even more necessary when the charges



2025:DHC:2927



framed are graver than those contemplated in the police report, or when persons not chargesheeted are summoned to face trial. It goes without saying that giving reasons in a judicial order not only helps the accused understand the basis of the decision, but also assists appellate or revisional courts in assessing its correctness.

17. This Bench, in case of *MRP (Identity Withheld) v. State (NCT of Delhi)*: 2025 SCC OnLine Del 1404, had observed the importance of recording reasons, even if brief, while passing order on charge, especially in case of heinous offences. The relevant observations are as under:

“31. More concerning is the fact that, despite recording in the order that detailed arguments were heard on the point of charge under Section 10 of POCSO Act and Section 354 of IPC, the learned Trial Court has not mentioned even a single argument in the impugned order. Consequently, no reasoning emerges from the order to justify the framing of charges.

32. The importance of passing reasoned orders has been emphasized time and again by the courts in our country. It is a settled principle of law that **courts must assign reasons, even if brief**, while arriving at a conclusion, particularly when the consequences of an order have a significant impact on an individual's liberty. The requirement of recording reasons is not a mere formality but the very soul of a judicial decision. It ensures that judicial orders are not passed arbitrarily or mechanically, but rather reflect an application of mind to the facts of a given case as well as the principles of laws applicable therein.

34. Further, an accused who is being put to trial for offence under Section 10 of POCSO Act, which prescribes a minimum sentence of five years upon conviction, and which may extend up to seven years, should be made aware about the basis on which the Court has formed its *prima facie* opinion that charges should be framed. There is no gainsaying that reasons



in a judicial order provides clarity not just to the accused, but also to the appellate or revisional courts, which may later be called upon to examine the correctness of the order. The absence of any reasons in an order on charge would undoubtedly affect the ability of higher courts to understand as to what weighed in the mind of a judge, whose order is under challenge, while arriving at a particular decision, such as framing charges against an accused in the present case.

35. Before parting with this case, this Court notes that large number of orders on charge are being received, which are passed by the Sessions Courts, which are cryptic, non-speaking, proforma orders in every case, whether relating to sexual assault or otherwise. The practice by some Sessions Courts of passing four line orders on charge - devoid of facts, arguments and analysis thereof and the reason to reach a conclusion as to why charge under a particular section is being ordered to be framed - is not appreciable. More concerning is also the fact that though arguments are addressed by both the sides extensively and the Trial Court itself mentions in the order that arguments were heard at length, the reasons are completely missing. Arguments are addressed by the counsels to support their cases at the particular stage(s) of trial and according to the stage of trial, the trial Court is expected to deal with the arguments and pass a reasoned order thereon, accepting or rejecting their contentions. The arguments however cannot be simply washed away as if not advanced by the counsel concerned. The Sessions triable cases are serious in nature and attract stringent punishment; therefore, passing an order on charge after hearing detailed arguments, which records nothing, conveys nothing, accepts or rejects no contention, and only records that in the Court's view, a particular offence is made out prima facie, is not the intent of the ratio of numerous judgments of the Hon'ble Apex Court and the High Courts.

36. Though no detailed reasons are required to be recorded in an order on charge, there is a difference between there being no reasons recorded while passing an order on charge and non-requirement of recording detailed reasons while passing order on charge. Minimum reasons are expected to be recorded in an order on charge, especially in heinous offences, which would reflect application of mind and appreciation of material placed on record. In the present case, had some material on record and



2025:DHC:2927



argument of the counsel for the accused been appreciated or dealt with, the learned Trial Court would have realized that there were not an iota of evidence or material on record suggesting aggravated sexual assault.

37. Therefore, when a person is at risk of incarceration for a significant period, judicial orders should not be passed in a mechanical manner. The Trial Courts are expected, at the very least, to provide some reasoning, even if not elaborate, to demonstrate application of mind to the facts and arguments placed before them. The impugned order in this case, being entirely bereft of any reasoning or reference to arguments advanced, was bound to fail when examined by any appellate or revisional Court.”

18. In view of the fact that the impugned order on charge is unreasoned, and it is not apparent as to what weighed in the mind of the learned Trial Court while framing charges, this Court is of the opinion that the matter requires reconsideration.

19. Accordingly, the case is remanded back to the learned Trial Court for a fresh decision on the point of charge. The learned Trial Court shall hear arguments from both sides and pass an order on charge afresh, which shall reflect the reasons for the decision taken.

20. These petitions along with pending applications, are disposed of, in above terms.

21. Copy of this judgment be forwarded to the learned Trial Court for necessary information.

22. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 21, 2025/zp