



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 420/2024

Khyali Ram S/o Shri Satpal, Aged About 21 Years, R/o Chak 4
Khm Ps Rawla Tehsil Gharsana District Anupgarh

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Mahendra Kumar S/o Shri Krishan Lal, R/o Chak 26 Apd
30 Apd Anupgarh District Sriganganagar

-----Respondents

For Petitioner(s) : Mr. Jaidev Singh Bhati
For Respondent(s) : Mr. Pawan Kumar Bhati, PP
Mr. Trilok Joshi

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

REPORTABLE

06/05/2025

The instant criminal revision petition has been filed by the petitioner under Section 397/401 Cr.P.C. against the order dated 09.02.2024 passed by the learned Special Judge, POCSO Act Cases, Bikaner in Sessions Case No.7/2024 whereby the learned trial court framed the charges against the petitioner for offence under Sections 354D of IPC and Sections 11(iii),(iv)/12 of POCSO Act.

Brief facts of the case are that the complainant/respondent No.2 submitted a written report at concerned Police Station regarding abduction of his minor daughter from the home by some unknown persons. On the said complaint, Police registered FIR No.0214/2023 for offence under Section 363 IPC and started investigation. After investigation, police filed charge-sheet against



the present petitioner for offence under Section 354-D IPC and Section 11(iii)(iv)/12 of POCSO Act before the competent court and after arguments, charges were framed against the petitioner for aforesaid offence. Hence, this revision petition.

Learned counsel for the petitioner submits that the victim 'G' in her statement recorded under Section 164 Cr.P.C. has specifically deposed that she left home out of her own free will and roamed for about two months at so many places. Importantly, she explicitly states that during this time, no wrongdoing was committed against her by anyone, including the present petitioner, and that she did not meet or have any interaction with him. Furthermore, her sole allegation pertains to the petitioner showing her adult videos, which, in isolation, does not constitute a criminal offence unless it is proven that such conduct was accompanied by coercion, exploitation, or other unlawful acts. Counsel submits that in view of above, no offence as framed by the trial court is made out against the petitioner. Thus, the impugned order of framing charge being illegal and perverse, deserves to be quashed and set aside.

Learned Public Prosecutor and learned counsel for the respondent No.2 have vehemently opposed the prayer made by the counsel for the petitioner and submitted that at the time of framing charge, meticulous examination of evidence is not necessary. The impugned order of framing charge is perfectly justified and requires no interference from this Court.

Heard the learned counsel for the parties and perused the impugned order of framing charge passed by the trial court.



The victim 'G' in her statement recorded under Section 164 Cr.P.C. has specifically averred that she voluntarily left home and roamed alone for about two months without the petitioner or being harmed by anyone. She only claimed that the petitioner showed her adult videos.

To appreciate the arguments raised by the learned counsel for the parties, a perusal of relevant connected provisions of the Indian Penal Code and the Protection of Children from Sexual Offences Act would be required. The same are extracted herein-below:

"354D. Stalking.--(1) Any man who--

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

11. Sexual harassment.-- A person is said to commit sexual harassment upon a child when such person with sexual intent,--

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital



or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.--Any question which involves "[sexual intent" shall be a question of fact."

The allegations leveled against the petitioner pertain to offences under Section 354-D of the Indian Penal Code and Section 11(iv) of the Protection of Children from Sexual Offences Act (POCSO), which criminalize acts of stalking—specifically, repeatedly or persistently following, watching, or contacting a child, either directly or through electronic, digital, or other means. However, such conduct does not constitute a criminal offence unless the victim's statement explicitly substantiates the fact of stalking.

From a legal standpoint, the framing of a charge must be grounded in *prima-facie* evidence that reasonably indicates the commission of the alleged offence by the accused. In the present case, the victim's statement recorded under Section 164 of Cr.P.C. notably asserts that she left her residence voluntarily and did not encounter or communicate with the petitioner. This statement, therefore, fails to substantiate the essential elements of stalking as defined under Section 354D IPC and Section 11(iv) of POCSO Act. Without credible evidence supporting the occurrence of repeated following, watching, or contacting, the foundational basis for framing a charge becomes fundamentally weak.

Legal jurisprudence affirms that the process of charge framing should be predicated on credible and sufficient evidence, rather than mere allegations bereft of factual support. The



principle of "presumption of innocence until proven guilty" underscores that criminal proceedings must not be initiated lightly or without substantive evidentiary basis. Initiating such proceedings without credible proof risks an abuse of the judicial process and contravenes the fundamental principles of justice.

In light of these considerations, the order to frame charges under Section 354D IPC and Section 11(iv) of POCSO Act appears to be unwarranted and legally unsustainable. The decision to proceed further on the basis of the impugned order lacks both factual and legal justification. Consequently, it is justifiable to quash and set aside the order of framing charges, as such an order is both illegal and perverse, lacking the requisite evidentiary foundation to justify continuation of criminal proceedings against the petitioner.

So far as offence under Section 11(iii) of POCSO Act is concerned, which stipulates that any person who shows any object to a child in any form or media for pornographic purposes commits an offence. In the present case in hand, the victim has specifically alleged that the petitioner showed her adult videos.

A comprehensive reading of Sections 11 and 30 of the POCSO Act reveals that in prosecutions for sexual harassment, where the establishment of sexual intent is an essential element, the Special Court is mandated to presume the existence of such intent once the prosecution has proved the commission of the act constituting sexual harassment, excluding the element of sexual intent. It is pertinent to note that the burden then shifts to the accused to establish, beyond reasonable doubt, the absence of sexual intent with respect to the alleged act. The standard of proof



required for the accused to negate the presumption of sexual intent is beyond reasonable doubt, and mere proof on a balance of probabilities is insufficient.

In light of these provisions, the Court is of the opinion that the framing of charges under Section 11(iii) of the POCSO Act is appropriate and does not warrant interference. The evidence and allegations, especially the victim's assertion regarding the showing of adult videos, substantiate the *prima-facie* case under this section.

Furthermore, an examination of Section 354A of the Indian Penal Code (IPC) becomes relevant. The same is extracted herein-below:

"354A. Sexual harassment and punishment for sexual harassment.-- (1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) **showing pornography against the will of a woman; or**
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment."

Subsection (iii) of Section 354A IPC explicitly states that showing any object to a child in any form or media for pornographic purposes constitutes an offence. This provision aligns with the nature of the act alleged and provides a clear statutory basis for prosecuting such conduct.

The decision to frame charges under Section 354A IPC is grounded in the explicit language of the statute, which criminalizes the act of showing any object to a child for



pornographic purposes. Since the facts and victim's allegations substantiate that such conduct occurred, and given the presumption provisions under the POCSO Act regarding sexual intent, it is both legally sound and necessary to invoke Section 354A IPC. This ensures that the accused is held accountable under the relevant penal provisions, facilitating the effective enforcement of laws aimed at protecting children from sexual exploitation and obscenity.

Considering the above, this Court finds it appropriate to frame a charge under Section 354A of the IPC, in addition to the existing charge under Section 11(iii) of POCSO Act, to comprehensively address the alleged conduct. The inclusion of Section 354A IPC is justified to effectively uphold the protection of children against pornography-related offences and to ensure that the legal proceedings address all facets of the alleged misconduct.

Accordingly, the revision petition is partly allowed. The impugned order dated 09.02.2024 passed by the learned trial court to the extent of framing charge for offence under Section 354D of IPC and Section 11(iv)/12 of the POCSO Act against the petitioner is hereby set aside and the petitioner is discharged from the said offences. However, charge framed for offence under Section 11(iii)/12 of POCSO Act is not interfered with. Additionally, the Trial Court is directed to frame charge under Section 354A(iii) of IPC against the petitioner.

Stay application is also decided.

(MANOJ KUMAR GARG),J

74-MS/-