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1 THE HIGH COURT OF MADHYA PRADESH
CRR No. 2020/2021
Smt. Mamta Tiwari Vs. State of MP and anr.

Gwalior, Dated: 02.09.2021

Shri Sumit Shrivastava, Counsel for the applicant.

Shri N.K. Gupta, Counsel for the State.

This criminal revision under Sections 397/401 of Cr.P.C. has been filed against the order dated 10.08.2018 passed by the Special Judge (POCSO Act), Gwalior in Special Case No.86/2019, by which the charges under Sections 16 and 17 of Protection of Children from Sexual Offences Act, 2012 (in short “POCSO Act”) have been framed.

2. It is submitted by the counsel for the applicant that the applicant is working as a Counsellor and during her routine inspection of Ashram Shanti Niketan Balika Grih, Birla Nagar, Hazira, Gwalior, the prosecutrix, who is mentally retarded minor and is staying in the Ashram informed that Jain Baba posted in the said Ashram was continuously violating her sexually.

3. During the course of investigation, it was found that the applicant was aware of the physical violation of the minor prosecutrix, who was mentally retarded, and in spite of that, she did not take any action against Jain Baba. When the applicant saw misdeeds of Jain Baba, then instead of taking any action against the co-accused Jain Baba, she simply requested him not to do the said act.

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4. The Trial Court by order dated 10.08.2021 has framed charges under Sections 16 and 17 of POCSO Act.

5. It is submitted that the allegations are false. The witnesses had not spoken against the applicant at the first instance, but only in the supplementary statement, it was alleged that the applicant had seen the misdeeds of co-accused Jain Baba and instead of taking any action against him, he had simply requested Jain Baba not to indulge in the said act. Thus, it is submitted that such allegation is afterthought and cannot be relied upon.

6. Per contra, counsel for the State has supported the impugned order dated 10.08.2018.

7. Heard the learned counsel for the parties.

8. Sections 16 and 17 of POCSO Act read as under:-

“16. Abetment of an offence.- A person abets an offence, who-

First.-Instigates any person to do that offence; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause

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or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.-Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.- Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

17. Punishment for abetment. – Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

9. The allegations are that the applicant was a Counsellor and it was her duty to ensure the security of the girls as well as to counsel them. The allegations are that in spite of getting the knowledge about the misdeeds of co-accused Jain Baba, she did not take any action whereas as per Section 19(1) of the POCSO Act, according to which, her duty was to inform the Special Juvenile Police Unit or the local police. Non-communication of information as required under Section 19(1) of the POCSO Act is a punishable offence,

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which may extend to six months. Further, Section 16 of the POCSO Act defines abetment which provides that either prior to or at the time of commission of act, if somebody does anything to facilitate the commission of that act and thereby facilitates the commission thereof, then it can be said to aid the doing of that act.

10. When the applicant had already seen the co-accused with the prosecutrix and the prosecutrix has specifically alleged that she was being ravished by the co-accused and instead of informing the local police, it is alleged that the applicant had simply requested the co-accused not to indulge himself in such an act, then it would certainly come within the definition of abetment as the act of the applicant amounts to aiding the co-accused for doing the act of rape on the prosecutrix. Further, it is well established principle of law that a roving and detailed enquiry or meticulous appreciation of evidence is not required at the stage of framing of charge. Even the grave suspicion is sufficient to frame charge for trial.

11. The Supreme Court in the case of **Taramani Parakh Vs. State of M.P.** reported in **(2015) 11 SCC 260** has held as under:-

“10. The law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the court does not go into reliability or otherwise of the version or the counter-version. In matrimonial

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cases, the courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue.

11 and 12. XXXXXX

13. In the present case, the complaint is as follows:

“Sir, it is submitted that I was married on 18-11-2009 with Sidharath Parakh s/o Manak Chand Parakh r/o Sarafa Bazar in front of Radha Krishna Market, Gwalior according to the Hindu rites and customs. In the marriage my father had given gold and silver ornaments, cash amount and household goods according to his capacity. After the marriage when I went to my matrimonial home, I was treated nicely by the members of the family. When on the second occasion I went to my matrimonial home, my husband, father-in-law and mother-in-law started harassing me for not bringing the dowry and started saying that I should bring from my father 25-30 tolas of gold and Rs 2,00,000 in cash and only then they would keep me in the house otherwise not. On account of this my husband also used to beat me and my father-in-law and my mother-in-law used to torture me by giving the taunts. In this connection I used to tell my father Kundanmal Oswal, my mother Smt Prem Lata Oswal, uncle Ashok Rai Sharma and uncle Ved Prakash Mishra from time to time. On 2-4-2010 the members of the family of my matrimonial home forcibly sent me to the house of my parents in Ganj Basoda along with my brother Deepak. They snatched my clothes and ornaments and kept with them. Since then till today my husband has been harassing me on the telephone and has not come to take me back. Being compelled, I have been moving this application before you. Sir, it is prayed that action be taken against husband Sidharath Parakh, my father-in-law Manak Chand Parakh

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and my mother-in-law Smt Indira Parakh for torturing me on account of demanding dowry.”

14. From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent 2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.”

Further the Supreme Court in the case of **Dilawar Balu**

Kurane v. State of Maharashtra, reported in **(2002) 2 SCC 135**

has held as under :

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be

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fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see *Union of India v. Prafulla Kumar Samal*).”

Further the Supreme Court in the case of **Mauvin Godinho**

v. State of Goa, reported in **(2018) 3 SCC 358** has held as under :

“**12.** At the outset it would be pertinent to note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges under Section 227 of the Code of Criminal Procedure should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. 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. [Refer *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], *State v. A. Arun Kumar* [*State v. A. Arun Kumar*, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] and *State v. S. Selvi* [*State v. S. Selvi*, (2018) 4 SCC 641 : (2018) 1

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Scale 5].]”

12. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that at present, it cannot be said that there is no sufficient material to frame the charge against the applicant.

13. Accordingly, the revision fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Arun*



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