

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 16545 of 2024**

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THAKOR VIPULJI GAMAJI & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

KEVAL H MAHARAJA(9062) for the Applicant(s) No. 1,2,3,4

MR. HARDIK DAVE, PP WITH MR. MANAN MAHETA, APP for the
Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 24/12/2024****ORAL ORDER**

1. The present petition is filed for the following prayers:

“A. Be pleased to allow this Petition;

B.Be pleased to quash and set aside the all proceedings arising out of the FIR registered in C.R. No. 11 of 2016 with B-Division Police Station, District Mahesana, dated 14.01.2016, offence punishable under Sections 354, 504, 427, 114 of the Indian Penal Code, and along with the subsequently added Sections 11 and 12 of the POCSO Act. CC-No-9810/2015

C. Quash and set aside the order passed under Exhibit 99, dated 19.07.2024, by the learned 2nd Judicial Magistrate First Class, Mahesana, which amended the charges to include Sections 11 and 12 of the POCSO Act In the interest of Justice.



D. Pending the admission and final hearing of this petition, this Hon'ble Court may kindly be pleased to stay all the proceeding arising out from the FIR registered in. C.R. No. 11 of 2016 with B-Division Police Station, District Mahesana, dated 14.01.2016, offence punishable under Sections 354, 504, 427, 114 of the Indian Penal Code, and along with the subsequently added Sections 11 and 12 of the POCSO Act. CC. No 98/0/2015

E. to pass such other and further relief/s that may be deemed fit and proper in the facts and circumstances of the case;-”

2. Heard learned advocate Mr. Keval H. Maharaja for the petitioners and learned Public Prosecutor, Mr. Hardik Dave with learned APP, Mr. Manan Maheta for the respondent – State.

3. On 18.12.2024, this Court has passed the following order:

“1. Heard learned advocate Mr. Keval Maharaja for the petitioners and learned advocate Mr. Manan Maheta for the respondent – State.

2. Learned advocate for the petitioners has drawn attention of this Court that the Exh.99 application is given after a period of 8 years to add the sections under the provisions of Protection of Children from Sexual Offences Act (POCSO), which ought to have been done, if at all required, at the time



of registering of the FIR or at the time of filing of charge-sheet, but not at such a belated stage. He has further submitted that such application is allowed by the concerned trial Court, which caused great prejudice to the rights of the present petitioners.

3. *In view of the above, learned APP, Mr. Manan Maheta shall take specific instructions and shall also call for necessary explanation from the concerned Investigating Officer (I.O.) with regard to the lapses, if any.*

4. *Learned trial Court shall also send its clarification with regard to why the proceedings are continued for 8 years and thereafter, the application at Exh.99 required to be filed and came to be considered at such a belated stage as well as why such material aspect has not been considered on earlier occasion by the learned trial Court and also by the prosecution.*

5. *In view of the above, the matter is adjourned to 24.12.2024.*

6. *Let the necessary detailed report shall be placed by the concerned trial Court on or before the next date of hearing. Registry shall inform the concerned trial Court immediately for necessary compliance of this order.”*

4. Pursuant to the order passed by this Court, copy of report dated 23.12.2024 is received from Mr. S.R.Prajapati, Assistant Government Pleader, Mahesana, which reads as



under:

"માનનીય સાહેબશ્રી,

સવિનય સાથે ઉપરોક્ત વિષય અનુસંધાને - આપ મે.સાહેબશ્રીને નમ્ર વિનંતી સાથે જણાવવાનું કે,

(૧) અમો એ.પી.પી. ની નિમણૂક તા. ૮/૩/૨૦૧૯ ના રોજ મહેસાણા ખાતે ગુજરાત સરકારશ્રી દ્વારા કરવામાં આવેલ ત્યારથી અમો મહેસાણાની અલગ અલગ અદાલતમાં એપીપી તરીકે ફરજ બજાવીએ છીએ અને અમારી ફરજ દરમિયાન ઘણા કેસો અમારી કોર્ટમાંથી દરાન્કર થઈ અન્ય કોર્ટમાં નામ. સેશન્સ કોર્ટ તેમજ નામ. ચીફ જ્યુડી.મેજી. સાહેબશ્રીના હુકમથી દરાન્કર થાય છે અને તેવી રીતે અન્ય કોર્ટમાંથી ઘણા કેસો અમારી કોર્ટમાં દરાન્કર થઈને આવે છે.

(૨) સદરહુ ફિરમીનલ કેસ નં. ૯૮૧૦/૨૦૧૬માં અમોએ તા.૧૮/૧૧/૨૦૨૧ થી સાક્ષીઓની જુબાની લેવાની શરૂઆત કરેલ ત્યારબાદ સદરહુ કેસમાં વધુ દલીલો ના તબક્કે અમારા ધ્યાન ઉપર આવેલ કે, ફરીયાદીએ તા. ૨૧/૪/૨૦૧૮ ના રોજ પોતાની સોગંદ ઉપર જુબાની આપેલ છે જેમાં ઉ.વ.૧૭ દર્શાવેલ છે તથા ફરીયાદીએ પોતાની સરતપાસમાં બનાવ સમયે પોતાની ઉંમર ૧૫ વર્ષની હતી તેવું સોગંદ ઉપર જણાવેલ છે અને કેસનું રેકર્ડ વંચાણે લેતાં સદર કેસમાં શરૂઆતથી પોકસો એક્ટ મુજબની કાર્યવાહી થયેલ ન હોઈ, જેથી તા.૧૯/૦૭/૨૦૨૪ ના રોજ અમોએ પોકસો એક્ટ મુજબની કાર્યવાહી કરવા માટે આંક-૯૯ થી નામ. કોર્ટેને અરજી આપતા નામ. કોર્ટે દ્વારા તા. ૨/૯/૨૪ ના રોજ અમો એપીપીની આંક-૯૯ મુજબની અરજી મંજૂર કરેલ છે.



ઉપરોક્ત ખુલાસો નામ.હાઈકોર્ટના હુકમ મુજબ સબમીટ કરેલ છે
જે વંચાણે લેવા મે.સાહેબશ્રીને વિનંતી છે.

આપનો વિશ્વાસુ.

મદદનીશ સરકારી વકીલ
મહેસાણા.”

5. The copy of the report dated 24.12.2024 which is given to the Public Prosecutor by Mr. M.G.Makwana, Police Sub-inspector, B-Division Police Station, Mahesana City, reads as under:

પ્રતિ
સરકારી વકીલશ્રી,
ફોજદારી ક્ષેત્રીય શાખા
ગુજરાત હાઇકોર્ટ અમદાવાદ

વિષય:-CR. MA/16545/2024 ના કામે અહેવાલ મોકલી આપવા બાબતે.
(ફ.ગુ.ર.નં-૧૧/૨૦૧૬ ઇ.પી.કો.કલમ-૩૫૪,૫૦૪,૪૨૭,૧૧૪ મુજબ)
જય ભારત સહ એમ.જી.મકવાણા પો.સબ.ઇન્સ નોકરી મહેસાણા શહેર બી.ડી.પો.સ્ટે નાઓનો
વિનંતી રીપોર્ટ કે

ઉપરોક્ત વિષય અન્વયે મહેસાણા શહેર બી.ડી.પો.સ્ટે ફ.ગુ.ર.નં-૧૧/૨૦૧૬ ઇ.પી.કો.કલમ-૩૫૪, ૫૦૪, ૪૨૭, ૧૧૪ મુજબનો ગુનો તા-૧૪/૦૧/૨૦૧૬ ના કલક-૨૨/૧૫ વાગે ગુનો રજૂ થયેલ છે જે ગુનાની તપાસ પો.પો.સ.ઇ એસ કે. દેસાઈ નાઓએ કરેલ જેમાં આ કામે હકીકત એવી છે કે ફરીયાદી મનીષાબેન ડો/ઓ શકરાજી વરવાજી ઠાકોર ઉ.વ.આશરે ૧૫ રહે-મહેસાણા ટી.બી.રોડ છાપરામાં તા-જી-મહેસાણાવાળીઓ પોતાના પિતાજીને ગલ્લા ઉપર ટીફીન આપવા જતા હતા તે વખતે આ કામના તહોદાર-નં-(૧) ઠાકોર વિપુલજી ગમાજી (૨) ઠાકોર ભરતજી કાન્તીજી (૩) ઠાકોર વનરાજીજી નંદજી (૪) ઠાકોર કરણજી નંદજી તમામ રહે- મહેસાણા ટી.બી.રોડ ખોડીયારનગર તા-જી-મહેસાણાવાળા જે પૈકી તહો-નં-(૧) નાએ ફરીયાદી બેનનો હાથ પકડી બીભસ્ત માંગણી કરતાં ફરીયાદીએ ના પાડતાં તહોદાર-(૨) ઉશ્કેરાઇ જઇ ફરીયાદીબેન ને ધકકો મારી નીચે પાડી દેતાં ફરીયાદીબેને બુમાબુમ કરતાં સાહેદ-(૧) ઠાકોર શકરાજી વરવાજી (૨)જીતુજી શકરાજી ઠાકોર (૩) ઠાકોર સજનબેન વા/ઓફ શકરાજી વરવાજી (૪) ઠાકોર દીપકજી શકરાજી રહે-મહેસાણા ટી.બી.રોડ છાપરા તા-જી-મહેસાણાવાળાઓ સ્કોર્પિયો ગાડીમાં આવી ફરીયાદી બેનને છોડાવવા જતાં અન્ય તહો-નં-૩.૪ આવી જઈ ગાળીબોલી ગાડીના ડાય તોડી નાંખી નુકશાન કરી ગુનો કરવામાં એકબીજાને મદદગારી કરી ગુનો કર્યા વિગેરે બાબત.

સદર ગુનાના કામે તા-૧૫/૦૧/૨૦૧૬ના કલક-૧૨/૦૦ થી ૧૨/૧૫ વાગે ગુનાવાળી જગ્યાનું વિગતવાર પંચનામું કરવામાં આવેલ બાદ તા-૧૫/૦૧/૨૦૧૬ના કલક-૧૬/૦૦ થી કલક-૧૬/૩૦ વાગે સ્કોર્પિયો ગાડીને કરેલ નુકશાન અંગેનું વિગતવારનું પંચનામું કરવામાં આવેલ

બાદ આ કામે સાહેદોના વિગતવારના નિવેદનો લેવામાં આવેલ

બાદ આ કામના તહોદાર-(૧) ઠાકોર વિપુલજી ગમાજી (૨) ઠાકોર ભરતજી કાન્તીજી (૩) ઠાકોર કરણજી નંદજી તમામ રહે-મહેસાણા ટી.બી.રોડ ખોડીયારનગર તા-જી-મહેસાણાવાળાઓને તા-૦૨/૫/૨૦૧૬ના કલક-૦૮/૧૫ વાગે અટક કરવામાં આવેલ જેની જાણ તેમના સંબંધી દરબાર લાલભા કીર્તીસિંહ રહે-મહેસાણા ટી.બી.રોડ ખોડીયારનગર તા-જી-મહેસાણાવાળાઓને જાણ કરવામાં આવેલ

બાદ આ કામના અટક કરેલ તહોદારોના વિગતવારના નિવેદનો લીધેલ હતા અને તહોદારોને મુદત અંદર જામીન ઉપર મુકત કરેલ હતા

બાદ આ કામના તહોદાર ઠાકોર વનરાજીજી નંદજી રહે- મહેસાણા ટી.બી.રોડ ખોડીયારનગર તા-જી-મહેસાણાવાળાઓને તા-૦૫/૬/૨૦૧૬ના કલક-૧૬/૧૫ વાગે અટક કરવામાં આવેલ જેની અટક કર્યા અંગેની જાણ તેમના સંબંધી ઠાકોર મનુજી ભીખાજી રહે-દહાણા તા-માંડલ જી-અમદાવાદવાળાઓને જાણ કરવામાં આવેલ બાદ આ કામના અટક કરેલ તહોદારનું વિગતવારના નિવેદન લેવામાં આવેલ છે અને તહોદારના યોગ્ય જામીન આવતાં મુદત અંદર જામીન ઉપર મુકત કરેલ હતા



ત્યારબાદ સદર ગુનાની તપાસ એ.એસ.આઇ નારણભાઈ માવજીભાઈ બ.નં-૨૫૪૮ નાઓએ કરેલ છે જેઓએ તા-૨૦/૦૯/૨૦૧૬ ના રોજ ચાજણીટ કરેલ છે જેનો સી.સી.નં-૯૮૧૦/૨૦૧૬ નો છે. જે કેસ હાલમાં નામદાર મહેસાણા કોર્ટમાં ચાલુમાં છે.

આ કામના આરોપી ઠાકોર વિપુલજી ગમાજી રહે-મહેસાણાવાળાએ નામદાર ગુજરાત હાઈકોર્ટ માં CR. MA/16545/2024 થી કવોર્સીંગ માટે અરજી કરેલ છે

આ કામે મદદનીશ સરકારી વકીલ શ્રી એસ.આર.પ્રજાપતિ નાઓએ નામદાર મહેસાણા કોર્ટને તા.૧૯/૦૭/૨૦૨૪ ના રોજ પોક્સો એક્ટ મુજબની કાર્યવાહી કરવા માટે આંક નં-૯૯ થી અરજી આપતાં નામદાર મહેસાણા કોર્ટ દ્વારા તા.૦૨/૦૯/૨૦૨૪ ના રોજ અરજી મંજૂર થયેલ છે જે બાબતેનો રીપોર્ટ આ સાથે સામેલ છે જે આપ સાહેબને વિદિત થાય.તા.૨૪/૧૨/૨૦૨૪

(એમ.જી.મકવણા)
પોલીસ સબ ઇન્સ્પેક્ટર
મહેસાણા શહેર બી.ડી.વી.પો.સ્ટે

6. The copy of the report dated 21.12.2024 received from the learned Presiding Officer, I/c. 2nd J.M.F.C., Mahesana, reads as under:

“Below Hon'ble High Court of Gujarat R/Special Criminal Application (Quashing) No.16545 of 2024.

O.W.No.5.8./2024.

2nd Judi. Magi. F. C. Court,
Mahesana.

Date: 21/12/2024

To,

The Hon'ble Registrar General Sir,



High Court of Gujarat, At: Sola, Ahmedabad.

Through :-

Hon'ble Principal District & Sessions Judge Saheb, Mahesana.

Respected Sir,

With reference to the subject noted above, I have the honour to state that,

1) Hon'ble High court of Gujarat have called a for clarification of the present trial court with regard to why the proceedings are continued for 8 Years and thereafter application at Exhibit-99 required to be filed and came to be considered at such a belated stage as well as why such material aspect has not been considered on earlier occasion by the learned trial court and also by the prosecution.

2) The Presiding Officer was transferred to Mehsana in Annual General Transfer and resumed the duty as 2nd Additional Civil Judge & JMFC, Mehsana on 23/05/2022. All the files of previous Presiding Officer was allocated to present Presiding Officer.

3) The Criminal Case No.9810/2016 came on Board before Present Presiding Officer on 03/06/2022, and the case was on Warrant of Arrest to Accused No.1 & 3. The proceeding remained same on 18/06/2022, 16/07/2022, 12/08/2022, 09/09/2022, 06/10/2022, 04/11/2022. In the mean time warrant were issued against the concerned accused and also notice to surety were issued through Investigation Officer. The accused



No.1 appeared on 09/11/2022 and the warrant was cancelled. Further the matter was for the warrant of arrest and notice to surety of accused No.3 on 30/11/2022, 05/01/2023, 10/02/2023, 16/03/2023, 07/04/2023, 28/04/2023. The accused No.3 appeared on 26/05/2023 and warrant was cancelled and further witness summons were issued to witnesses shown at serial No.11 to 14 of charge sheet.

4) A total of 8 witnesses were examined before the present Presiding Officer took the charge and proceeded with present matter, in which PW-1 was complainant Manishaben Shakaraji Thakor who was examined on 21/04/2018 in which Mr. F.Y. Achhva was the APP Shri and Hon'ble 7th J.M.F.C. Mehsana was the Presiding Officer. PW-2 was Thakor Shakaraji Varvaji was examined on 08/06/2018 in which Mr. F.Y. Achhva was the APP Shri and Hon'ble 5th J.M.F.C, Mehsana was the Presiding Officer. PW-3 was Thakor Kaluji Laxmanji was examined on 28/08/2019 in which Mr. D.N. Patel was the APP Shri and Hon'ble 8th A.C.J.M Mehsana was the Presiding Officer. PW-4 was Thakor Sajjanben Shakaraji was examined on 14/10/2019 in which Mr. D.N. Patel was the APP Shri and Hon'ble 8th A.C.J.M Mehsana was the Presiding Officer. PW-5 was Thakor Dipakji Shakaraji was examined on 14/10/2019 in which Mr. D.N. Patel was the APP Shri and Hon'ble 8th A.C.J.M Mehsana was the Presiding Officer. PW-6 was Thakor Maheshji Chhaganji was examined on 18/01/2021 in which Mr. Brahmbhatt was the APP Shri and Hon'ble Additional J.M.F.C, Mehsana was the Presiding Officer. PW-7 was Raval Bhavnaaben Rajubhai was examined on 22/02/2021 in which Mr. Brahmbhatt was the APP Shri and Hon'ble Additional J.M.F.C. Mehsana



was the Presiding Officer. PW-8 was Naranbhai Mavajibhai was examined on 18/11/2021 in which Mr. S.R. Prajapati was the APP Shri and Hon'ble 2nd J.M.F.C Mehsana was the Presiding Officer.

5) The present Presiding Officer examined PW-9 Sanjaybhai Kamshibhai Desai on 17/06/2023 and PW-10 Thakor Jituji Sakaraji on 31/08/2023 and Mr. S.R. Prajapati was APP shri. The accused filed their written argument vide Exh.90 and prosecution filed it's written argument vide Exh- 92. Further additional written arguments were submitted by accused vide Exh-95. The matter was proceeding for Oral Arguments.

6) Further the prosecution headed by APP Shri S.R. Prajapati filed application vide Exh-99 to transfer the present case to Hon'ble POCSO court. The present court seeking all pros and cons of the case allowed the application at Exh.99 and made order to commit the case to Hon'ble Sessions Court Mehsana for further proceeding taking into the fact that the complainant and victim Thakor Manishaben Shakaraji was minor while lodging the FIR and date of incidence on 14/01/2016.

7) Neither the present Presiding Officer nor the present APP Shri was proceeding with the matter when FIR was lodged and sent to court or the filing of the charge sheet or framing charge or taking the deposition of the victim and complainant Thakor Manishaben Shakaraji. The present court considering the fact that POCSO Act-2012 has come in force on 14/11/2012 and the incidence of the present offense occurred on 14/01/2016 and at the time of offense the victim and complainant Thakor



Manishaben Shakaraji was minor and was 15 Years old allowed the application by the prosecution vide Exh.99.

8) The present clarification is being submitted on basis of the record of the Case.

Please accept the clarification and kindly be obliged.

Yours faithfully

I/c. 2nd J.M.F.C.,
Mahesana”

7. *Prima facie*, it is very strange and also shameful on the part of the entire law enforcing and law adjudicating machinery that after eight years when the trial is proceeded substantially before the learned Judicial Magistrate First Class (J.M.F.C.) under the provisions of Sections 354, 504, 427 and 114 of the Indian Penal Code, the application at Exh.99 is filed to transfer the case to the POCSO Court as offences are made out under the provisions of the Protection of Children from Sexual Offences Act, as the age of the victim at the time of incident was 15 years.

7.1 This Court has also perused the contours of charge-sheet, the charge-sheet is filed only with regard to the offences under the provisions of IPC as mentioned above. Offences were meted out on 14.01.2016 at Mahesana,



thereafter, the investigation was carried out and the charge-sheet came to be filed by the Investigating Officer and the trial commenced before the concerned Magistrate for framing of the charges and the trial proceeded, evidence was led. It is also relevant to note that the victim has deposed in the year 2018 and at that point of time, the victim has categorically stated that at the time of incident, she was aged 15 years. Even no action is taken by the learned Assistant Public Prosecutor neither cognizance of such fact is taken by the learned Presiding Officer who was conducting the trial. Even the defence has failed to point out the relevant aspects before the concerned Court.

8. It is more important that when the investigation is carried out, this aspect is nowhere referred that at the time of incident the girl was aged 15 years. *Prima facie*, it transpires that the investigating Agency as well as prosecution and to some extent, the Presiding Officer have failed in discharging their duties in appropriate manner. It can be said that there is no proper application of mind at any level, either by the Investigating Agency or by the prosecution, thereby, the precious time of the investigating agency as well as the concerned Court is wasted from 2016 to 2024, that in fact the trial is at the fag end before the learned J.M.F.C. as the written arguments are also submitted



and the oral arguments are going on, at that point of time, such application is made. However, considering the fact that when the fact is pointed out before the concerned trial Court, the trial Court has taken into consideration the said fact and allowed the application at Exh.99.

9. This Court found that there is no error committed by the concerned trial Court while deciding application at Exh.99. Therefore, the prayers sought in the present petition are not required to be considered, at this stage, by keeping all rights and contentions of the petitioners open to agitate at the time of further proceedings before the concerned POCSO Court.

9.1 It is also required to be noted that this is a glaring example that causal approach is adopted by the investigating agency and it has carried out investigation in mechanical manner without properly applying its mind while carrying out investigation and at the time of filing of charge-sheet. Thereafter, neither of the Public Prosecutors who were in-charge of the matter have applied their mind before the trial Court, though such factum was clearly stated in the deposition of the victim in the year 2018 during the course of examination. Furthermore, unfortunately, neither of the Presiding Officer/s of the trial Court have considered this



aspect and therefore, the precious working hours are wasted and now the POCSO Court has to consider the case accordingly by giving proper opportunities to the parties.

10. Let the concerned higher authorities may look into the matter and shall do the needful in the matter with a view to avoid repetition of such incidents and if requires, to do the needful to carry out some exercise to find out any similar incident/s is/are happening anywhere across the State.

11. With the above observations, the present petition stands disposed of.

12. Let the copy of this order shall be forwarded to the learned Director General of Police (D.G.P.) of the State, Home Secretary, Law Secretary and also to the Registrar General of this Hon'ble Court, for necessary consideration.

13. It is expected that the petitioners, as such, are not at fault, and therefore, they can avail appropriate remedy in accordance with law.

SLOCK BAROT

(SANDEEP N. BHATT,J)