



2025:DHC:1378



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 24.02.2025*+ **CRL.REV.P. 1098/2024 & CRL.M.A. 26461/2024**

MRP (IDENTITY WITHHELD)Petitioner

Through: Ms. Amrita Jaiswal, Advocate

versus

STATE (NCT OF DELHI)Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with W/SI
SunilComplainant in person
alongwith Counsel
(appearance not given)**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****Index to the Judgment**

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SWARANA KANTA SHARMA, J (ORAL)

1. The petitioner, by way of this revision petition preferred under



Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter '*BNSS*'] has sought setting aside of the order on charge dated 30.07.2024 [hereafter '*the impugned order*'], and the consequent order framing charge, passed by the learned Additional Sessions Judge (SC-POCSO) (South-East), Saket, New Delhi [hereafter '*the Trial Court*'].

2. By way of the impugned order, charges for offence under Section 354 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 10 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'] have been framed against the petitioner, in case arising out of FIR No. 159/2024, registered at Police Station Okhla Industrial Area, Delhi.

FACTUAL BACKGROUND

3. The brief facts, as discernible from the chargesheet, are that on 01.03.2024, the in-charge of Udyan Ghar for Girls had visited the police station alongwith the victim and one order of Child Welfare Committee (CWC) whereby the concerned SHO was asked to investigate the matter since the victim had reported that her paternal uncle (petitioner herein) had inappropriately touched her. Accordingly, the statement of the victim was recorded by the investigating officer (IO) in a question-answer format. The victim had informed the I.O. that she used to study in a school in Himachal Pradesh since August, 2022, and on 03.12.2023, she had returned to



Udyan Home for Girls during the winter vacation. By the order of CWC, she was sent to her home in Okhla on 19.02.2024. It was alleged that during her stay in the home, the petitioner herein had touched and pressed her lips. It was further alleged that when nobody used to be present at the home, the petitioner used to come and sleep next to the victim, due to which she used to feel uncomfortable.

4. On the statement of victim, the present FIR for offences under Section 354 of IPC and Section 10 of POCSO Act was registered. Thereafter, the victim was medically examined, and her statement was also recorded under Section 164 of the Cr.P.C. The petitioner herein was interrogated in the present case. After completion of investigation, chargesheet was filed against the petitioner herein.

5. By way of the impugned order, the learned Trial Court was pleased to frame charges against the petitioner for offence under Section 354 of IPC and Section 10 of POCSO Act.

6. Aggrieved by the impugned order, the petitioner has filed the present petition.

RIVAL CONTENTIONS

7. The learned counsel appearing for the petitioner assails the impugned order dated 30.07.2024, firstly, on the ground that the allegations, as levelled by the victim 'M', who was aged about 12 years, are merely of touching and pressing her lips and sleeping/lying down next to her. She states that the fact that the victim has alleged



that her paternal uncle i.e. the petitioner had pressed and touched her lips, in itself, will not constitute an offence under Section 354 of IPC. It is further contended that the mere act of touching and pressing her lips and sleeping next to her, without any sexual intent, would not amount to outraging her modesty, and definitely not fall under the offence of aggravated sexual assault under Section 10 of POCSO Act. The learned counsel for the petitioner also points out certain contradictions in the statements of the victim and submits that admittedly, even as per the allegations, the alleged incident had taken place in presence of other family members of the victim, which makes the story of the victim doubtful. She further argues that the learned Trial Court has assigned no reasons in the impugned order for reaching the satisfaction as to how the charge for alleged offence was made out against the petitioner. Therefore, the learned counsel for the petitioner prays that the impugned order be set aside and the petitioner be discharged.

8. The learned APP for the State, on the other hand, argues that the victim in this case was minor at the time of incident. He draws this Court's attention to the statement of the victim dated 01.03.2024 recorded before the police. He also argues that the victim has supported the case of prosecution in her statement under Section 164 of the Cr.P.C. which was recorded on 02.03.2024. The learned APP for the State also submits that the records would reveal that the accused also used to come and sleep or lie down next to the victim,



and she has clearly mentioned that she used to feel uncomfortable due to such acts. It is contended that the allegations against the petitioner are serious in nature; therefore, it is prayed that the present petition be dismissed.

9. This Court has **heard** arguments addressed by the learned counsel for the petitioner as well as learned APP for the State, and has perused the material placed on record.

ANALYSIS & FINDINGS

10. In the present case, the petitioner has been charged for offences under Section 354 of IPC and Section 10 of POCSO Act. Therefore, it shall be first apposite to examine these statutory provisions.

Charge qua offence under Section 354 of IPC

11. Section 354 of IPC is set out below:

“354. Assault or criminal force to woman with intent to outrage her modesty.— Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”

12. A plain reading of Section 354 of IPC makes it clear that the essential ingredients of the offence include (i) the victim being a woman, (ii) an act of assault or application of criminal force, and (iii) the presence of intent to outrage or knowledge that such an act is likely to outrage her modesty [Ref: ***Raju Pandurang Mahale v. State***



of Maharashtra: (2004) 4 SCC 371].

13. To better understand the scope of this provision, it is necessary to examine the definitions of ‘Criminal Force’ and ‘Assault, provided under Sections 350 and 351 of the IPC. The same read as under:

“350. Criminal force.— Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”

“351. Assault.— Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation.—*Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.”

14. From the above definitions, it is evident that ‘criminal force’ involves an intentional act of force applied without consent, causing injury, fear, or annoyance, while ‘assault’ involves the mere apprehension of such force through gestures or actions. Importantly, under Section 354 of IPC, either of the elements – actual application of force and mere apprehension – can constitute an offence if they are accompanied by the intent to outrage modesty.

15. In *Rupan Deol Bajaj v. Kanwar Pal Singh Gill: (1995) 6 SCC 194*, the Hon’ble Supreme Court held that the ultimate test for



ascertaining whether modesty of a woman has been outraged is – is the action of the offender such, as could be perceived as one which is capable of shocking the sense of decency of a woman. Each case, however, has to be assessed in light of its specific facts.

16. In the present case, the allegations against the petitioner are deeply concerning, particularly given the vulnerability of the victim, who was merely 12 years old at the time of the incident and is now 13 years old. Unfortunately, the victim child was also abandoned by her mother when she was only four years old. Her father is an accused, in a case wherein the elder sister of the victim herein, had allegedly complained of sexual assault against her father, and he is facing trial for offence punishable under Section 376 of the IPC.

17. The petitioner, a 35-year-old man and the paternal uncle of the victim, is alleged to have engaged in inappropriate conduct during the victim's four-day visit to her grandmother's house. Specifically, it is alleged that the petitioner had touched and pressed the victim's lips on one occasion. On multiple occasions, he had also allegedly come and slept or lied down next to the victim, and had placed his face very close to the victim's face, when no one else was present in the house, which had made the victim feel distinctly uncomfortable.

18. It is settled law that at the stage of framing of charges, the Court is not required to assess the evidence with the same rigor as at the stage of trial. The standard to be applied is whether, on the face of the material on record, there exists a *prima facie* case warranting



trial. Thus, the Court must only determine whether the allegations, if taken at face value, disclose the commission of an offence. Any detailed scrutiny of contradictions or minor inconsistencies in evidence is a matter for trial.

19. In this context, a bare perusal of the allegations reveals that the essential ingredients of an offence under Section 354 of the IPC are squarely met. As noted in preceding discussion, this provision criminalizes the use of criminal force or assault against a woman with the intent to outrage her modesty or with the knowledge that such an act is likely to do so. The Hon'ble Supreme Court has repeatedly held that modesty, in the context of Section 354 of IPC, must be interpreted in light of the dignity and bodily autonomy of a woman, including a minor girl. The act of touching and pressing the lips of a girl child, especially in the absence of any plausible justification, falls well within the ambit of criminal force as defined under Section 350 of IPC. The provision clearly states that any intentional use of force without consent, which causes or is likely to cause fear, injury, or annoyance, constitutes 'criminal force.' In the present case, the victim, a minor girl, has specifically alleged that the petitioner's conduct had made her feel uncomfortable and uneasy. Furthermore, the repeated act of lying down next to the victim, and keeping his face extremely close to the face of the victim, when she was alone further intrudes upon her personal space, creating a situation where she experienced fear or apprehension. Such conduct, in itself,



satisfies the threshold of ‘assault’ as defined under Section 351 of IPC.

20. The impact of such an act must also be considered in light of the victim’s circumstances. The victim, having been abandoned by her mother at a young age, was residing under the care of the CWC in an NGO and had come to visit her family during a vacation. In such a scenario, where a child seeks familial warmth and security, any act of inappropriate contact by a family member in a position of trust is far more than just discomfoting – it is a clear violation of her dignity, bodily autonomy, and modesty. Even a minimal physical contact, when done with the intent to or with the knowledge that it is likely to outrage modesty, is sufficient to invoke the provision of Section 354 of IPC.

21. Since the victim had specifically mentioned in her statements that the petitioner herein used to lie down next to her when no one used to be around, the contention of the learned counsel for the petitioner that the victim’s grandmother used to be present in the house at the relevant time, is unmerited.

22. In this Court’s view, given the nature of the allegations in this case, there exists a clear *prima facie* case under Section 354 of IPC. Therefore, the learned Trial Court rightly came to the conclusion that charge under Section 354 of IPC was made out against the petitioner.



Charge qua offence under Section 10 of POCSO Act

23. Next, since charge has also been framed against the petitioner under Section 10 of POCSO Act, it is necessary to examine the statutory framework governing this offence. The provision reads as under:

“10. Punishment for aggravated sexual assault.— Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”

24. To understand the scope of this offence, reference must be made to the definition of ‘sexual assault’ under Section 7 of POCSO Act. The same is set out below:

“7. Sexual assault.— Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

25. As evident from a plain reading of the above provision, the *sine qua non* for attracting the offence of sexual assault, is committing the acts, as described in Section 7, with the ‘sexual intent’.

26. It is material to note that the essential ingredients of Section 354 of IPC and Section 10 of POCSO Act are different. While the former deals with the offence of ‘assault of use of criminal force’ to



‘outrage the modesty’, the latter deals with committing any act, including touching vagina, penis, anus or breast of the child, with “sexual intent which involves physical contact”. The presence of ‘sexual intent’ is the determining factor in distinguishing an act of mere physical force from an act that constitutes sexual assault under the POCSO Act.

27. In light of the aforesaid, it becomes important to assess whether the allegations against the petitioner, at a *prima facie* stage, satisfy the ingredients of Section 10 of POCSO Act.

28. In the present case, though the victim has alleged that the petitioner had touched and pressed her lips and had slept/lie next to her, which had made her feel uncomfortable, there is no specific assertion or indication in any of her statements that the petitioner’s acts were driven by sexual intent. The victim has not alleged any act of an overtly sexual nature, nor has she suggested in any of her recorded statements – whether before the learned Magistrate, the police or CWC – that she was subjected to sexual assault or that there was even an attempt to commit such an offence. In this Court’s opinion, the absence of even the slightest indication of a sexually motivated advance in the statements of the victim negates the foundational requirement of ‘sexual intent’, which is an essential element of an offence under Section 10 of POCSO Act. The act of touching and pressing lips or lying down next to the victim, though may result in violation of a woman’s dignity and lead to outraging of



her modesty, but absent any overt or inferred sexual intent, the said acts would fall short of meeting the legal threshold required to sustain a charge under Section 10 of POCSO Act.

29. Therefore, in this Court's considered opinion, no offence under Section 10 of POCSO Act is made out against the petitioner based on the material placed on record and the nature of allegations leveled by the victim.

Non-Speaking and Unreasoned Order on Charge

30. Notably, the learned Trial Court in the impugned order, which is entirely non-speaking, has concluded that a *prima facie* offence under Section 10 of POCSO Act is made out against the petitioner. However, the impugned order fails to assign any reason or explanation as to how this conclusion was reached by the learned Judge. For reference, the **impugned order is set out below:**

“ Arguments on the point of charge heard. Record perused.

After hearing the detailed arguments on point of charge and after careful perusal of the record, there is sufficient material on the record regarding prima facie commission of offences punishable u/s 10 of POCSO Act and U/s 354 IPC against accused.

The formal charges have been framed against the accused separately. The accused has pleaded non-guilty and he has claimed trial...”

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.

33. This Bench in case of ***Alok Kumar v. Harsh Mander and Another***: 2023 SCC OnLine Del 4213 had observed as under, with respect to the importance of passing reasoned order:

“75. The importance of passing a reasoned order cannot be undermined when the order in question is challengeable in the higher Court and can be called into question by a petition seeking judicial review by way of a revision or appeal. When faced with an order which is passed without reasons, the higher Courts cannot decipher whether or not the concerned Judge has reached the decision after application of judicial mind or not. The application of judicial mind can be adjudged only by appreciating the reasons given to support the order in question. Whether the order in question lacks application of judicial mind, non- appreciation of relevant provisions of law or



incorrect application of law and judicial precedents, can also be judged only through the reasons given in the order. The higher Courts also will not know as to whether relevant or irrelevant considerations became the basis of passing the order in absence of sufficient reasons. Similarly, whether the discretion of the Court was exercised judicially or not, or was based on relevant or irrelevant considerations, will be revealed by the reasons discussed in the impugned order. Since the decision and discretion exercised by a criminal Court affects significantly an individual against whom such direction is being issued, procedural and judicial fairness will require reasons to be given for the same.

* * *

84. The reasons in an order give reassurance in an open public justice system that the discretion vested in the Court has been judiciously exercised and is supported by judicial precedents and guidelines laid down apropos the issue in question. **Reasons cannot be cryptic or based on extraneous considerations** or on irrelevant grounds or against the doctrine of natural justice. **Neither can they be in the form of performatory orders passed casually in similar kinds of cases** or applications without having regard to the individualism and peculiarity of a case.”

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 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.

Decision

38. Accordingly, the present petition is partially allowed and



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partially rejected. The charge for offence under Section 354 of IPC is sustained, however, the petitioner is discharged for offence under Section 10 of POCSO Act. The impugned order is modified to this extent.

39. In view of above, the present petition is disposed of. Pending application, if any, also stands disposed of.

40. A copy of this order be forwarded to the concerned Trial Court for information.

41. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J
FEBRUARY 24, 2025/ns

[Click here to check corrigendum, if any](#)