



**IN THE HIGH COURT OF UTTARAKHAND AT**

**NAINITAL**

**Criminal Misc. Application No.764 of 2020**

Priyansh Atray and Another

.... Applicants

**Versus**

State of Uttarakhand and another

..... Respondents

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Present:-

Mr. Pankaj Kumar Sharma, learned counsel for the applicants.

Mr. Vipul Panuli, learned AGA for the State.

Mr. Narendra Bali, learned counsel for respondent no.2.  
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**Hon'ble Siddhartha Sah, J. (Oral)**

By means of the present criminal miscellaneous application under Section 482 of the Code of Criminal Procedure, the applicants have sought quashing of the summoning order dated 15.01.2020, along with the entire proceedings of Criminal Complaint Case No. 88 of 2019, under Sections 323, 354A, 504, and 506 IPC and Sections 11/12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter referred as POCSO Act), pending before the Addl. Sessions Judge/FTC, Haridwar, District Haridwar.



2. The complaint was filed by respondent no. 2 before the Court of the Special Judge, POCSO/FTC, Haridwar, alleging that on 19.03.2019, while the complainant was about to go to school on her scooty, the applicants came there and started abusing the complainant in filthy language and outraged her modesty. When the complainant protested, the accused persons assaulted her with fists and blows. On hearing the hue and cry of the complainant, her father came to the spot, and the accused also abused him and threatened him with dire consequences.

3. In support of the complaint, statements under Sections 200 and 202 Cr.P.C. were recorded. On the basis of the complaint and the statements recorded under Sections 200 and 202 Cr.P.C., the Addl. Sessions Judge/FTC, Haridwar, summoned the applicants to face trial vide order dated 15.01.2020 in Complaint Case No. 88 of 2019, Kumari Medha Arora Vs. Shivansh and Another.

4. Assailing the aforesaid summoning order and seeking quashing of the entire proceedings of the aforesaid complaint case, learned counsel for the applicants would submit that the applicants have been



falsely implicated in the case and that a perusal of the complaint shows that no specific role has been assigned to the applicants.

5. It is further submitted that there is no independent witness to the alleged incident and that there is an inordinate and unexplained delay in filing the complaint. The complainant is a major girl, but in a very clever manner, the incident has been narrated as having occurred on an earlier date so that colour may be given to the complaint and the ingredients of the POCSO Act may be attracted.

6. It is further submitted that the actual facts of the case are that the family of the applicants is residing as tenants on the first floor of the residential house of the complainant's father, while the family of the complainant is residing on the ground floor. There was some dispute between the father of the applicants and the father of respondent no. 2, and the complainant has adopted pressure tactics. It has been categorically stated in the affidavit filed in support of the application under Section 482 Cr.P.C. that the father of respondent no. 2, Rajesh Arora, with a view to grabbing the money of the applicants, has been torturing and harassing the family



of the applicants. In this regard, the mother of the applicants filed a complaint on 10.03.2019 before the S.S.P., Haridwar, and the S.H.O., Kankhal.

7. It is further submitted on behalf of the applicants that the summoning order has been passed by the trial court in a very cursory manner and the same is based on surmises and conjectures. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the court summoning the accused must reflect that it has applied its mind to the facts of the case and the law applicable thereto.

8. It is further submitted on behalf of the applicants that if the statements recorded under Sections 200 and 202 Cr.P.C. are read along with the complaint, the basic ingredients of Section 354A IPC and Sections 11/12 of the POCSO Act would not be made out. Yet, without considering this aspect, the trial court has summoned the applicants under the aforesaid sections in addition to the other sections of the IPC.

9. Per contra, learned counsel for respondent no. 2 would submit that the witnesses have duly supported the complaint case in their statements recorded under



Section 202 Cr.P.C. The complainant has also recorded her statement under Section 200 Cr.P.C. and has duly proved the complaint case. Based on the complaint allegations and the statements recorded under Sections 200 and 202 Cr.P.C., the trial court has rightly summoned the accused/applicants under Sections 323, 354A, 504, and 506 IPC and Sections 11/12 of the POCSO Act.

10. He would further submit that there is a medical report and the statement of the doctor, recorded as CW2, clearly mentions four injuries on the complainant/victim. As such, the complainant has duly made out a prima facie case and, therefore, no fault can be found with the summoning order. Consequently, the application under Section 482 Cr.P.C. does not deserve any interference.

11. However, upon a query being made to the learned counsel for respondent no. 2 as to how the offence would fall under Section 354A IPC, learned counsel for respondent no. 2 would submit that though there is an allegation regarding outraging the modesty of the complainant in the complaint, the said allegation is



missing from the statements recorded under Sections 200 and 202 Cr.P.C.

12. Similarly, when a query was made to the learned counsel for respondent no. 2 as to how the provisions of Sections 11 and 12 of the POCSO Act would be attracted, learned counsel for respondent no. 2 fairly submitted that though there are certain allegations in the complaint, there are no clear statements regarding the same in the statements recorded under Sections 200 and 202 Cr.P.C. regarding sexual harassment with sexual intent.

13. Learned counsel for the State would submit that in the complaint as well as in the statements, it has been stated that one of the applicants had caught hold of the complainant, abused her, and assaulted her, and as such no interference is called for.

14. Having heard the rival contentions of learned counsel for the parties and having gone through the record, it is evident that in support of the complaint, the complainant/respondent no. 2 and witnesses have duly made statements under Sections 200 and 202 Cr.P.C. respectively. The Medical Officer, who conducted the medical examination of the complainant regarding the



injuries sustained by her in the quarrel, has clearly stated about four injuries sustained by her. Hence, in such an eventuality, the trial court has rightly summoned the accused/applicants under Sections 323, 504, and 506 IPC. To that extent, there is no scope for interference in the exercise of powers under Section 482 Cr.P.C.

15. Hence, though there are certain allegations in the complaint regarding touching the private parts of the complainant, no such statement has been made by the complainant in her statements recorded under Sections 200 or in the statements of witnesses under Section 202 Cr.P.C. Hence, in such an eventuality, the summoning of the applicants under Section 354A IPC and Sections 11/12 of the POCSO Act would not be attracted.

16. For the sake of clarity, Section 354A IPC is extracted hereinbelow:-

**“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.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

17. Also, Sections 11 and 12 of the POCSO Act are extracted hereinbelow:-

**“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.*

**12. Punishment for sexual harassment.—**  
*Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”*

18. On a perusal of the statements made by the complainant and the statements of the witnesses recorded under Section 202 Cr.P.C., it would clearly appear that none of the ingredients mentioned in Section 354A(1) IPC are attracted, even if the statements recorded under Sections 200 and 202 Cr.P.C. are taken at their face value. Similarly, the ingredients of Sections 11 and 12 of the POCSO Act are also missing if the



statements of the complainant/respondent no. 2 are taken at their face value. Hence, in such an eventuality, the trial court has committed an error in summoning the applicants/accused under Section 354A IPC and Sections 11/12 of the POCSO Act.

19. In view of the above and considering the overall facts and circumstances of the case, the present Criminal Miscellaneous Application under Section 482 Cr.P.C. is partly allowed. The summoning order dated 15.01.2020 passed by the Addl. Sessions Judge/FTC, Haridwar, District Haridwar in Criminal Complaint Case No. 88 of 2019, Km. Megha Arora Vs. Shivansh Arora and Anr.' is quashed to the extent of summoning of the applicants under Section 354A IPC and Sections 11/12 of the POCSO Act.

20. The present Criminal Miscellaneous Application under Section 482 Cr.P.C. is disposed of accordingly. It is also made clear that any observations made in this judgment shall have no effect on the trial and the trial court shall decide the case on its own merits and in accordance with law.

**(Siddhartha Sah, J.)**  
18.06.2026