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CRA-8247-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

CRIMINAL APPEAL No. 8247 of 2024

CNR No.: MPHC020239732024

*THE STATE OF MADHYA PRADESH**Versus**IQBAL*

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Appearance:

Shri Kushal Goyal - learned Dy. A.G. for the appellant/State.

Shri Asif Ahmed Khan - Advocate for the respondent.

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HEARD ON : 09.09.2026

PRONOUNCED ON : 29.09.2026
.....

J U D G M E N T

With the consent of the parties, heard the matter finally.

2. The present appeal is preferred by the appellant/State under Section 14-A(1) of the Scheduled Castes and Scheduled Tribes Act (Prevention of Atrocities), Act, 1989 (hereinafter referred to as "SC & ST Act") being aggrieved by the order dated 23.09.2016 passed in Special Case No. 1200106/2016 (M.P. of State Vs. Iqbal) by the Special Judge, SC & ST (Prevention of Atrocities) Act, District - Dhar, whereby learned Judge has discharged the respondent from the charges under Section 363 of the Indian Penal Code, 1860 (in short "IPC") and Section 7/8 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "POCSO Act") and



Section 3(ii-v) of SC & ST Act (Amended Act, 2016).

3. The brief facts of the case are that the complainant Nirmalabai lodged an FIR to the effect that on 25.09.2015 at about 04:00 pm, her daughter/prosecutrix aged about 17 years and 05 months, was sleeping at home, however, when the complainant woke up, she saw that her daughter was not at home, she thought either her daughter went somewhere being annoyed by her mother or someone kidnapped her. To this effect, an FIR bearing Crime No. 232/2015 was registered against an known person for the offence under Section 363 of IPC. Further, on 26.09.2015, the police recovered the prosecutrix and by preparing a recovery memo, she was handed over to her father/Ramprasad Dhanak.

4. During the investigation, statements of complainant/mother of the prosecutrix, Ms. Sona, sister of prosecutrix, Dinesh and Ramprasad, father of the prosecutrix were recorded under Section 161 of Cr.P.C and Sections 7/8 of POCSO Act and Section 3(ii-v) were aggravated in the crime. The accused was arrested on 02.07.2016. Relevant article or documents viz. Caste Certificate, 10th Mark-sheet, Scholar register of the prosecutrix and caste certificate of the accused were seized.

5. Upon completion of the investigation, a charge sheet was submitted before the JMFC, Sardarpur, District Dhar and the trial was committed to the Court of Sessions. The respondent was arraigned as an accused for the offences under Section 363 of IPC and Section 7/8 of the POCSO Act, 2012 and Section 3(ii-v) of SC & ST Act. Thereafter, vide order dated 23.09.2016, learned Sessions Judge has discharged the respondent/accused from the



charges mentioned above. Against which, present appeal has been filed.

6. Learned Govt. Advocate for the appellant / State has submitted that the trial Court has not appreciated the evidence available on record. The age of the prosecutrix has also not been examined according to the documents. According to the mark-sheet of the prosecutrix, the date of birth of the prosecutrix is 23.04.1998 which shows that at the time of incident, prosecutrix was less than 18 years. He has also submitted that in the statement of the prosecutrix recorded under Section 164 of Cr.P.C., she herself stated that respondent came to her house on the day of "Eid" and she went with him on bike. She also stated that family members of the respondent tortured her stating that they will ruin her. He has further submitted that learned trial Court has committed error in discharging the respondent from the offences levelled against him. On such premises, it is prayed that the appeal be allowed by setting aside the order dated 23.09.2016.

7. *Per contra*, learned counsel for the respondent has opposed the prayer and supported the impugned order by contending that there is no material evidence available on record to bring home the offences under Section 363 of IPC and Section 7/8 of the POCSO Act, 2012 and Section 3(ii-v) of SC & ST Act. against the respondent/accused. Therefore, the present appeal deserves to be rejected.

8. Here, the question arises before this Court for consideration is as to whether the learned Sessions Court has committed error in discharging the respondent from the offence levelled against him or the impugned judgment



has been passed is sustainable in the eyes of law or not ?

9. It is a prevailing practise in considering the matter of framing charges against an accused person(s), that the Court 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 it was conducting a trial and also it is to be ascertained that the evidence collected by the prosecution is sufficient to presume that the respondent/accused has committed the offence. Even a strong suspicion would suffice.

10. On this aspect, the law laid down by Hon'ble Supreme Court in the case of *Shashikant Sharma v. State of Uttar Pradesh, 2023 Live Law (SC) 1037*, is relevant wherein it has been held as under :-

"At the outset, it may be emphasised that in the written submissions filed on behalf of the State, the pertinent plea raised by the learned counsel for the appellants that necessary *ingredients of the offence punishable under Section 3(2)(v) of the SC/ST Act are not made out from the admitted allegations of the prosecution, has not been specifically controverted. There cannot be any quarrel with the principles laid down in the judgments cited by the State counsel in the written submissions that at the stage of framing of charges, the Court is not required to undertake a meticulous evaluation of evidence and even grave suspicion is sufficient to frame charge.* Nevertheless, there is also a long line of precedents that from the admitted evidence of the prosecution as reflected in the documents filed by the Investigating Officer in the report under Section 173 CrPC, if the necessary ingredients of an offence are not made out then the Court is not obligated to frame charge for such offence against the accused. Reference in this regard may be made to the judgment rendered by this Court in



the case of Suresh @ Pappu Bhudharmal Kalani Vs.
State of Maharashtra reported in AIR 2001 SC 1375."

11. In the said case, Hon'ble Supreme Court has discussed that *at the time of framing of charges, if, from the admitted evidence of the prosecution as reflected in the documents by the Investigating Officer in the report under Section 173 of Cr.P.C., the necessary ingredients of an offence are not made out, then the Court is not obligated to frame charge for such offence against the accused.*

12. In the case at hand, the statement of the prosecutrix was recorded on 26.09.2016 and in her statement, she stated that she is the student of B.Sc. (Ist year). Her sister is studying in Indore and her father is working as a Driver. On 25.09.2015, no one was in the house. she also deposed that one Iqbal, her college friend to whom she usually talks inspite of denying by her parents and because of that, she, being annoyed, went near Labariya Dam and after realizing mistake, she returned at about 8:00 pm. She also stated that neither someone kidnapped her nor committed wrong with her. Her parents took her to the police station Rajgarh on 26.09.2016.

13. Likewise, the statement of the prosecutrix was recorded under Section 164 of Cr.P.C. in which there is a change in the story of the prosecutrix, inasmuch as in it, the prosecutrix averred that on the occasion of "Eid", she did not remember the date, around 4:00 p.m., when she was at home, Iqbal Khan came to pick me up at the market. Thereafter, he took her on his bike to Labaria Dam where, he told me to wait while he went home. After sometime, when she realized that she was doing something wrong, she returned home. Even before the incident, Iqbal Khan's family had tortured



her saying that not to harass their son, but in reality, it was Iqbal who was after me, not me. She also deposed in her statement that family members of Iqbal said that if "I harassed him, they would ruin me and my family". His mother told me to take one lakh rupees and let her son go. Thereafter, the day before the incident, Iqbal came to my house and told me that he would be back at 04:00 o'clock, so she should come alone. He said they would go together. Accused Iqbal did not take me by force. She went willingly and report was lodged by her mother, which in sum and substance, is the same, as what has been stated in her statement earlier.

14. Subsequently, to reach into the conclusion, the statement of prosecutrix's mother is required to be ruminated, wherein she has stated that on the date of incident, her elder daughter and she were sleeping, the prosecutrix went somewhere being annoyed by her mother or someone kidnapped her. Likewise, the statement of elder daughter of complainant, has also supported the statement of complainant to some extent. In supplementary statements, the prosecutrix, her mother as well as her father have also narrated the same story.

15. In view of the aforesaid discussion, at the stage of framing of charge, the Court is required to examine the material collected during investigation only to ascertain whether a prima facie case is made out against the accused. The Court is not required to conduct a detailed appreciation of evidence at this stage. However, where the material on record does not disclose the basic ingredients of the alleged offence, continuation of the proceedings against the accused would not be justified and the accused is



liable to be discharged.

16. In the present case, the record shows that even prior to the alleged incident, a missing person report had been lodged by the mother of the prosecutrix on 25.09.2015. The prosecutrix was thereafter traced and brought back to her home by the police. This circumstance assumes significance while considering the material collected during investigation.

17. The Investigating Officer recorded the statements of several witnesses under Section 161 of the Cr.P.C. However, none of them had personal or direct knowledge of the alleged occurrence. The mother of the prosecutrix, who is the complainant in this case, also does not claim to have witnessed the alleged incident. Further, the prosecutrix was not subjected to any medical examination during investigation. Thus, the material collected by the Investigating Officer does not provide substantive support to the allegations so as to establish the essential ingredients of the alleged offence even *prima facie*.

18. The another question which arises for determination is whether, on the basis of aforesaid material on record, it can be presumed that the respondent/accused has committed the offence of kidnapping and rape upon the prosecutrix. It is to be borne in mind that at the time of framing of charges, the court has to accept the material assembled by the Investigating Agency during investigation of the case at its face value and its probative value cannot be gone into. The court has only to derive satisfaction about the commission of offence by the accused.

19. From the statement of the prosecutrix, it is discernible that she had



left home completely uninfluenced by any promise and inducement emanating from the respondent. It is also reflected when the statement of prosecutrix is read in conjunction with the statements of her family members, it comes to the fore that the prosecutrix was neither taken nor enticed by the respondent to go with him. Therefore, offence under Section 363 of IPC is not made out against the respondent even if whole of the material collected by the Investigating Agency is taken to be true at its face value.

20. So far as the evidence relating to rape/penetrative sexual assault upon the prosecutrix is concerned, the prosecutrix has not stated anything about this aspect of the matter. The Investigating Agency has not collected any scientific evidence to show that the respondent has committed the sexual assault upon the prosecutrix and in the absence of any oral testimony on the part of the prosecutrix to this effect, the offence of rape/penetrative sexual assault is also not made out against the respondent.

21. Turning to the next issue for determination regarding the offence under Section 3(ii-v) of the SC & ST Act, the scope of this provision requires an allegation that the accused who is not a member of a Scheduled Caste or a Scheduled Tribe committed an offence under the IPC punishable by imprisonment for a term of ten years or more against a person or property belonging to a member of a Scheduled Caste or a Scheduled Tribe, with the knowledge that such person belongs to that community.

22. In the instant case, there is no such allegation that the offence under IPC punishable with imprisonment of 10 years or more was committed by an accused of upper caste upon a person belonging to the Scheduled



Caste /Scheduled Tribe community with the knowledge that such person belongs to the said community. Thus, there is merit in the submissions of the counsel for the respondent that *prima facie* ingredients of the offence punishable under Section 3(ii-v) of the SC/ST Act are not made out from the admitted allegations, to which, it can be said that charge framed against the accused appellant is groundless.

23. Based on the aforementioned, there is absolutely no evidence on record to show that the respondent has either kidnapped the prosecutrix or he has committed sexual assault upon her. Therefore, even if the material collected by the Investigating Agency during the investigation of the case remains unrebutted, the same is not sufficient to presume that the respondent/accused has committed any offence nor does it raise any grave suspicion about the involvement of the respondent in the alleged occurrence. The allegations made in the charge sheet against the respondent in the instant case are not supported by the material collected by the Investigating Agency during investigation of the case. Thus, it was not open to the learned Special Judge to frame charges against the respondent/accused. The learned Special Judge, without shifting the material collected by the Investigating Agency for the limited purpose of framing opinion as to whether *prima facie* offence is committed by the respondent/accused, has proceeded to frame charges against the respondent.

24. In conspectus of the aforesaid deliberation in entirety, the present appeal deserves to be and is hereby dismissed by affirming the impugned order dated 23.09.2016 passed by the learned Special Judge, SC/ST



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(Prevention of Atrocities Act) Act, District Dhar whereby the respondent has been discharged from the charges of Section 363 of IPC, Section 7/8 of POCSO Act & Section 3(ii-v) of SC/ST Act passed in Special Case No. 1200106/2016.

25. Resultantly, present Criminal Appeal sans merit and is hereby dismissed.

26. A copy of this order be sent to the learned Special court for information.

Pending IAs, if any, shall stand disposed of.

(ALOK AWASTHI)
JUDGE

Vindesh