



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Revision Petition No. 1419/2022
CNR: RJHC010795422022 | URN: CRLR / 3380U / 2022

Bajrang Kumar S/o Bhoj Raj Jat, Aged About 25 Years, R/o Chak
1 Bm Tehsil Khajuwala Dist. Bikaner

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Nanuram S/o Shri Madanlal Bawari, Aged About 20 Years,
R/o Chak 1 Bm Ps Khajuwala Dist. Bikaner

-----Respondents

For Petitioner(s) : Mr. P.K. Rawla
For Respondent(s) : Mr. N.S. Chandawat, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

28/09/2026

FACTUAL BACKGROUND AND CHALLENGE

1. The instant criminal revision petition under Sections 397/401 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), has been preferred on behalf of the petitioner assailing the order dated 18.10.2022 passed by the learned Special Judge, POCSO Court, Bikaner, District Bikaner, in Sessions Case No.52/2021, whereby the application preferred by the petitioner under Section 91 Cr.P.C. came to be dismissed.

2. Briefly stated, the facts of the case are that an FIR No.101/2021 came to be registered at Police Station Khajuwala, District Bikaner, for the offences under Sections 450, 342 and



376-D Indian Penal Code, 1860 (hereinafter to be referred as "IPC"), Sections 5(G)/6 of the Prevention of Children from Sexual Offences Act, 2012 (in short "POSCO Act") and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short SC/ST Act), pursuant to which the petitioner was arrested and charge-sheeted for the offences noted therein.

2.1 During trial, the prosecutrix, while recording her statement on 22.09.2022, disclosed that she had studied from Class I to VI at Kanya Pathshala, Nuva, Tehsil Ratangarh, District Churu, and that her marksheets and other educational documents were in her possession. The petitioner accordingly moved an application under Section 91 Cr.P.C. seeking production of the said documents for determination of her age, which came to be dismissed by the learned trial Court vide order dated 18.10.2022, giving rise to the present revision petition.

RIVAL SUBMISSIONS

3. Learned counsel for the petitioner submitted that the said documents were material for determination of the prosecutrix's age and, therefore, ought to have been summoned under Section 91 Cr.P.C.; however, the learned trial Court, without properly appreciating the material on record, dismissed the application vide order dated 18.10.2022.

4. Learned Public Prosecutor has opposed the submissions advanced by learned counsel for the appellants and supported the



order impugned passed by the learned Court below. Despite service to the complainant, none appeared on behalf of the complainant.

5. Heard learned counsel for the petitioner and learned Public Prosecutor as well as perused the material available on record.

AGE AS A FOUNDATIONAL FACT IN A POCSO PROSECUTION

6. After perusing the material available on record, particularly the order impugned, this Court finds that the question which arises for consideration is not merely whether the documents sought by the petitioner are relevant in an abstract sense, but whether the determination of the age of the prosecutrix has a bearing upon the very nature and legal consequences of the allegations levelled against the petitioner. In the facts of the present case, the answer, in the considered opinion of this Court, has to be in the affirmative. The question of age, in a prosecution arising out of an offence under Section 376 IPC, cannot be treated as an incidental circumstance, particularly when the prosecution has simultaneously invoked the provisions of the POCSO Act. The age of the prosecutrix, therefore, assumes a significance which goes beyond a mere question of fact and touches upon the legal character of the alleged occurrence itself.

6.1. The relevance of age becomes still more pronounced where the prosecution seeks to attract the provisions of the POCSO Act. The applicability of the said enactment is founded upon the victim being a "*child*" within the meaning of the statute, namely, a



person who has not completed eighteen years of age. Thus, the determination as to whether the prosecutrix was below or above eighteen years of age on the date of the alleged occurrence is not a peripheral or collateral exercise; rather, it constitutes a foundational inquiry having a direct bearing upon the applicability of the special statutory regime invoked by the prosecution. If the prosecutrix falls within the statutory definition of a child, the consequences flowing from the provisions of the POCSO Act necessarily follow; whereas, if she had attained the age of majority, the very basis for invoking the provisions of the POCSO Act would require examination in that light.

6.2. Likewise, in a prosecution under Section 376 IPC, the question of age cannot be divorced from the question of consent. The legal significance attached to the consent of the prosecutrix varies depending upon the age which she had attained at the relevant point of time. Consequently, where the prosecution itself relies upon circumstances which render the age of the prosecutrix material, the defence cannot be precluded from placing before the Court such relevant material as may assist in arriving at a proper determination of that foundational fact. The determination of age, therefore, is not an exercise undertaken merely for completing the record; it may have a direct bearing upon the legal consequences which are to follow from the proved facts.

6.3. It is, therefore, not possible to accept an approach whereby the question of age is relegated to a subsidiary consideration,



notwithstanding the fact that the prosecution has invoked the provisions of the POCSO Act. The Court, while adjudicating upon the application seeking production of material relevant to the determination of age, is required to keep in view the consequence which such determination may have upon the prosecution itself. At this stage, the Court is not required to conclusively determine the age of the prosecutrix or pronounce upon the evidentiary worth of the documents sought to be produced. The consideration is confined to whether the material sought has a reasonable and discernible nexus with a fact which is material to the adjudication of the case.

6.4. In the considered opinion of this Court, once the question of age is shown to have a direct bearing upon the applicability of the POCSO Act and upon the legal significance of the allegation of consent in the context of Section 376 IPC, any material which may reasonably assist the Court in determining such age cannot be shut out at the threshold merely by treating the issue as inconsequential. The foundational nature of the question warrants that the relevant material be brought before the Court and its evidentiary worth thereafter be assessed in accordance with law.

PARAMETERS GOVERNING EXERCISE OF POWER UNDER SECTION 91 Cr.P.C

7. Now coming to the scope of Section 91 Cr.P.C., the expression "necessary or desirable" employed in the provision casts an obligation upon the Court to examine, in the backdrop of



the facts and circumstances of the case, whether the document sought to be produced has a reasonable nexus with the inquiry or trial and whether its production at the stage when the application is moved would facilitate a just and effective adjudication of the controversy. The provision is undoubtedly not intended to be invoked as a means to embark upon a roving or fishing inquiry, nor can it be permitted to become an instrument for collecting material merely in the hope that something favourable to either side may subsequently emerge. The Court is, therefore, required to exercise the power with due circumspection and upon a judicial assessment of the relevance of the material sought to be brought on record.

7.1 At the same time, the power under Section 91 Cr.P.C. cannot be construed in a manner so restrictive as to defeat the very purpose for which the provision has been enacted. The Court, at the stage of considering an application for production of a document, is not required to undertake a meticulous examination of the ultimate evidentiary worth of the document or to conclusively determine what the document would establish, particularly when the document has not yet seen the light of the day before the Court. The relevant consideration is whether, on the basis of the material already available, the document sought bears a reasonable and discernible connection with a fact which is material to the inquiry or trial.



7.2 There is a distinction between a document which is sought merely with a view to fishing out some material having no apparent connection with the controversy and a document which has been specifically identified and which, on the face of the record, may have a bearing upon a material issue arising for determination. In the former situation, the Court would certainly be justified in declining the prayer; however, in the latter, the production of such material cannot be refused merely because its ultimate evidentiary value is yet to be ascertained. Relevance and proof operate at different stages. The former is to be considered while deciding whether the document ought to be brought before the Court, whereas the latter is to be assessed after the document is produced and subjected to the process of law.

7.3 The expression "necessary or desirable" also indicates that the Court is required to adopt a practical and justice-oriented approach rather than a purely technical one. If the document sought is capable of throwing light upon a fact which has a direct bearing upon the determination of the controversy, its production may legitimately be considered desirable even though it may not, by itself, conclusively determine the issue. The Court is not required, at that stage, to presume the contents of the document or to prejudge the result which may follow from its production.

7.4 Thus, while Section 91 Cr.P.C. does not confer upon the parties an unrestricted right to summon every document which they may consider remotely useful, neither does it permit the



Court to shut out relevant material merely on an assumption regarding its contents or its probable evidentiary value. The guiding consideration remains whether the document sought has a rational and discernible nexus with the subject-matter of the inquiry or trial and whether its production would assist the Court in arriving at a just determination of the matter. Where such nexus is demonstrable from the material on record, the prayer for production deserves to be examined in that perspective and not defeated at the threshold by a speculative assessment of the document's contents.

RELEVANCE OF EARLIER EDUCATIONAL DOCUMENTS

8. In the present case, the prosecution has relied upon the educational record of the prosecutrix pertaining to a higher class for establishing her age. During her deposition, however, the prosecutrix herself disclosed that she had studied from Class I to VI at a Government Girls School at Nuwa, Tehsil Ratangarh, District Churu, and specifically stated that the marksheets and other educational documents pertaining to her schooling were in her possession. The defence, therefore, sought production of those documents by moving an application under Section 91 Cr.P.C., contending that the earlier educational record may have a material bearing upon the determination of her actual age. Such a request could not have been brushed aside merely on the premise that the prosecutrix had studied at a school in District Churu or that the documents are related to Classes I to VI. The significance



of the documents lay not in the place or class of schooling, but in the possibility that they may contain an entry relating to her date of birth which could have a direct bearing upon the foundational question involved in the prosecution.

EVIDENTIARY ASSESSMENT CANNOT PRECEDE PRODUCTION OF DOCUMENT

8.1 The reasoning adopted by the learned Court below, does not appear to withstand judicial scrutiny. The learned Court has proceeded on an assumption that the documents relating to the prosecutrix's schooling from Class I to VI could, at best, comprise marksheets, books, notebooks or similar academic material and, therefore, could not have any bearing upon the determination of her age. Such an approach, in the considered opinion of this Court, overlooks the very basis on which the application came to be moved. The defence was not asserting that the prosecutrix must necessarily be in possession of her original admission application or any particular document; rather, the request was to summon the relevant educational record from the institution where she admittedly studied, so that the material forming part of the school record could be brought before the Court and its evidentiary worth assessed in accordance with law. The observation that the prosecutrix had not specifically stated during cross-examination that she possessed a birth certificate issued by the said school also could not, by itself, furnish a legitimate ground for declining the prayer, particularly when the existence of



her earlier educational record had surfaced during her testimony. The learned Court below, instead of examining whether the documents sought were necessary or desirable for a just adjudication of the controversy, appears to have ventured into an assessment of their probable contents and evidentiary value even before their production. Such an approach amounts to placing the evidentiary burden upon the defence at the stage of seeking production of the document itself and, therefore, cannot be countenanced. The question whether the record ultimately establishes or supports the plea of the defence is to be determined upon its production and proof; its relevance cannot be negated merely on conjecture as to what the record may or may not contain.

RIGHT OF THE DEFENCE TO TEST THE FOUNDATIONAL ISSUE

9. If the material produced during trial gives rise to a legitimate question as to whether the prosecutrix was below eighteen years of age on the date of the alleged occurrence, the defence is entitled to test the prosecution case on that foundational aspect. Conversely, if the earlier educational record establishes that she had attained majority, the same would necessarily have its own legal consequences, including in relation to the question of consent in a prosecution under Section 376 IPC. Thus, age constitutes a pivotal circumstance having a bearing upon the legal character of the alleged occurrence itself. The distinction is of some significance. The defence was not seeking to embark upon a



roving inquiry or to collect material having no apparent connection with the prosecution case. Rather, the documents sought were specifically identified by the prosecutrix herself and were capable of throwing light upon a foundational question arising in the trial, namely, her age on the date of the alleged occurrence. In a prosecution involving the provisions of the POCSO Act, the question of age assumes foundational significance, as the applicability of the statute itself is contingent upon the victim being a child within the meaning of the Act.

9.1 It cannot be presumed, much less speculated, at this stage that the entries relating to the date of birth contained in the records of the Primary School and Upper Primary School would necessarily be identical to the date of birth subsequently relied upon by the prosecution, or that there would be no variation or discrepancy therein. Such an assumption, at this stage, would amount to pre-judging the very material which the defence seeks to bring on record.

9.2 Assuming, for a moment, that there is any variation in the date of birth recorded in the aforesaid educational documents, the same may have a direct and significant bearing upon the case of the prosecution, particularly where the age of the prosecutrix is itself a material fact having a bearing upon the applicability of the provisions of the POCSO Act. The production of such documents would, therefore, assist the Court in appreciating the evidence on



record and in determining, at the appropriate stage, as to which of the competing materials deserves to be relied upon.

9.3 It is also of some significance that, if such documents were deliberately withheld or not brought on record despite their existence, and the defence seeks their production for the purpose of testing the correctness of the material relied upon by the prosecution, a legitimate inference, at least at the tentative stage, cannot altogether be ruled out that the documents may contain an entry different from that sought to be projected by the prosecution. Had the documents contained nothing adverse to the prosecution case, there was seemingly no occasion for their production to be opposed. Needless to say, this observation is only tentative and shall not be construed as a finding regarding the contents or evidentiary value of the documents.

9.4 In such circumstances, the Court cannot shut out material which may have a substantial bearing upon a material fact in issue, particularly when the defence seeks its production with a view to effectively meet the case set up by the prosecution. The right of an accused to have a fair and reasonable opportunity to defend his case is not merely a statutory entitlement but also forms an integral facet of the constitutional guarantee of a fair trial. Where the document sought is capable of materially assisting the defence and its production is otherwise warranted in the facts and circumstances of the case, such an opportunity ought not to



be denied on the basis of conjecture or assumption regarding what the document may or may not contain.

9.5 The application under Section 91 Cr.P.C. seeking production of the earlier educational records could not have been dismissed by adopting a narrow or mechanical approach. The documents sought were not extraneous to the controversy; rather, they related to a fact which was capable of materially influencing the determination of the age of the prosecutrix and, consequently, the applicability of the statutory provisions invoked against the petitioner. The defence ought not to be deprived of an opportunity to place such relevant material on record merely because its ultimate evidentiary value is yet to be determined.

CONCLUSION AND RESULT

10. Consequently, the instant revision petition is allowed. The impugned order dated 18.10.2022 passed by the learned Special Judge, POCSO Court, Bikaner, District Bikaner, is hereby set aside. The application preferred by the petitioner under Section 91 Cr.P.C. stands allowed to the extent that the concerned educational institution shall be called upon to produce the relevant educational record of the prosecutrix pertaining to her schooling from Class I to Class VI, including such admission register, school record, date-of-birth entry, marksheets or other contemporaneous educational documents as may be maintained by the institution and as are relevant for determination of her age.



10.1 It is, however, made clear that the production of the aforesaid documents shall not, by itself, be construed as an expression of opinion by this Court regarding the correctness, authenticity or evidentiary value of any particular entry contained therein. The relevance and evidentiary worth of the documents, including any material relating to the date of birth of the prosecutrix, shall be examined by the learned trial Court in accordance with law, after affording due opportunity to the parties concerned.

11. Stay petition and all pending applications, if any, also stand disposed of.

(FARJAND ALI),J

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