

POCSO Act | 13 Y/O Boy's Assertion That Accused Did 'Gandi Harkat' Is Sufficient To Issue Process U/S 204 CrPC: Allahabad HC

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HIGH COURT OF JUDICATURE AT ALLAHABAD
SAURABH SHYAM SHAMSHERY; J.
APPLICATION U/S 482 No. 9242 of 2022; 04.11.2022
Arti Devi versus State of U.P. and Another

Counsel for Applicant :- Vivek Kumar Singh Counsel for Opposite Party :- G.A.

1. Sri Vivek Kumar Singh, learned counsel for applicant, in support of prayer made in present application that impugned summoning order dated 29.09.2021 passed by Additional Sessions Judge/Special Judge (POCSO Act), Jaunpur be set aside, has submitted that an application was filed under Section 156(3) Cr.P.C. by the complainant which was considered as a complaint case by an order dated 20.03.2018. Thereafter, the statement of complainant (father of victim) was recorded under Section 200 Cr.P.C. and the statements of witnesses including victim, a minor boy aged about 8 years at the time of alleged occurrence, were recorded and after consideration thereupon, the impugned summoning order was passed.
2. Learned counsel has submitted that on the basis of above material, prima facie case is not made out against applicant. The impugned order is bereft of requisite opinion that there were sufficient ground to proceed against the applicants.
3. Learned counsel further submitted that the nature of allegations are improbable so much as the applicant being a lady could not make such act as well as the victim has not narrated any act of sexual assault whereas the complainant (father of victim) has narrated version as told by the victim which appears to be exaggerated. Therefore, the summoning order as well as further proceedings may kindly be quashed.
4. None appears on behalf of opposite party No.2 despite service of notice.
5. Learned A.G.A. Sri Munne Lal has assisted the Court and supported the impugned order so much as the statement of victim as mentioned the word “गन्दी हरकत हरकत ” which may fall under the definition of Section 7 (Sexual Assault) of the POCSO Act.
6. Before advertng to the submissions of learned counsel for parties, it would be relevant to quote Section 7 and 8 of POCSO Act :-
“Section 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.”
“Section 8 : Punishment for sexual assault
Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.”
7. At the stage of scrutinizing the summoning order passed under Section 204 Cr.P.C., the Court has to consider whether there is an opinion that there are sufficient ground to proceed against applicants and for this purpose, following paragraph of the judgment passed by Supreme Court in the case of **Lalankumar Singh v. State of Maharashtra, 2022 SCC OnLine SC 1383** being reiterated is quoted hereinafter :-

“38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of **Sunil Bharti Mittal v. Central Bureau of Investigation, (2015) 4 SCC 609**, which reads thus:

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

8. I have perused the complaint, statement of complainant as well as statement of victim which were recorded after almost 3-4 years of the incident. The complainant has stated in his statement the version as told by the victim wherein he has described the sexual assault. However, the victim in his statement has not narrated such sexual assault in detail except he has used word “गन्दी हरकत हरकत”.

9. For the purpose, considering the statement of 13 year old boy that the applicant has committed an act being “गन्दी हरकत हरकत” would be prima facie sufficient ground to summon the applicant for the offence under Section 7 and 8 of POCSO Act as even touch to a private part of a child with sexual intent may fall under ‘sexual assault’ under Section 7 of POCSO Act. The question of presence of ‘sexual intent’ will be subject matter of trial. The learned Magistrate in the impugned summoning order has also taken note of both the submissions and summoned the applicant for the aforesaid offence.

10. Therefore, in my view, the impugned summoning order has requisite opinion that there are sufficient ground to proceed against applicant and it satisfies the test of **Lalankumar Singh** (supra).

11. In view of above, I do not find any reason to cause interference in the impugned order.

12. Accordingly, application stands dismissed.