



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 02ND DAY OF FEBRUARY, 2024

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BEFORE

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CRIMINAL REVISION PETITION NO. 100169 OF 2020

BETWEEN:

DR. LATA KRISHNARADDI MANKALI

...PETITIONER

(BY SRI. K.L. PATIL., ADVOCATE)

AND:

THE STATE OF KARNATAKA,
THROUGH ANKOLA POLICE STATION,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD BENCH,
DHARWAD.

...RESPONDENT

(BY SRI. M.B. GUNDAWADE., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W 401 OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED: 04.08.2020 PASSED BY ADDL. DISTRICT AND SESSIONS JUDGE- FTSC-1UK KARWAR IN ANKOLA P.S CRIME NO. 153/2019 WHICH IS NUMBERED AS SPECIAL CASE NO 53/2019, REGISTERED FOR OFFENCES PUNISHABLE U/S/3(2)(V) OF SC/ST ACT.313 OF IPC. SEC. 3(1)(W) OF THE SC/ST AMENDEMENT BILL 2015, SEC. 19 AND 21 OF THE POCSO ACT AND SECTION 3 OF MEDICAL TERMINATION OF PREGNANCY ACT, 1971.





THIS CRL.RP COMING ON FOR HEARING, AFTER HAVING HEARD THE MATTER, RESERVED FOR JUDGMENT, THIS DAY THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner-accused No.2 has filed this petition being aggrieved by the orders passed by the Addl. District and Sessions Judge-FTSC - I , U.K., Karwar (Special Court for trial cases filed under POCSO Act) in Special Case No.53/2019 dated 4.8.2020 in so far as it relates to framing of charge against her under Section 19 and 21 of the POCSO Act.

2. The parties are referred to as per their ranking before the trial Court for the sake of convenience.

3. Brief facts as set out before the trial Court are stated hereunder:

A complaint came to be filed by a victim-girl on 4.7.2019 alleging that, she is a minor girl aged 17 years four months. She is a student. She is the resident of the address stated in the complaint. Her date of birth is 1.2.2000. She belongs to Scheduled Caste. It is alleged in



the complaint that, accused no.1 is working as a waiter in a Hotel and he is resident of Thambettu Machettu Village in Kundapura Taluk. Victim girl came to know accused no.1 in the month of October 2018 through face book. Thus, accused no.1 is her face book friend. They both had a mobile and Both exchanged their mobile numbers. because of persistent force by the accused no.1 to provide her mobile number. He made the victim girl to love him. He also assured to marry her. He pestered her to marry him and by pestering her, he took the victim girl in the month of January 2019 to her relative's house from KSRTC Bus Stand, Ankola. He took her to Thambettu Village in Kundapura Taluk and introduced to one Sujan Ram Poojary, his friends and sister Jalaja Poojary. For 20-25 days, he resided in the house of Jalaja Poojary. Though accused no.1 knew that, victim girl belongs to the scheduled caste, he promised her that he would marry her and against her consent and will, he had a physical sexual intercourse with her. Thus, accused no.1. committed sexual assault on the victim girl. In the month of February



2019, accused no.1 brought the complainant to Ankola Town and left her there. The victim girl came to know that she has become pregnant. Accused no.1 forced her to abort the foetus and otherwise, he is going to commit suicide. By force, the victim girl was taken to Kamala Hospital and Medical Research Centre, Ankola and consulted accused no.2 Gynecologist. The victim girl informed that she is not married. Though she was not consented to abort the foetus but, by force there was a abortion against the provisions of Medical Termination of Pregnancy Act, 1971 (in short `the Act') of this victim girl. Thereafter, she lodged a complaint. Based upon that, a crime was registered by Ankola Police Station in Crime No.153/2019 on 13.6.2019 and the criminal law was set in motion.

4. The learned trial Court, on hearing both the side, passed an order in Special Case No.53/2019 dated 4.8.2020 allowing the application of accused No.2 i.e present petitioner filed under Section 239 of Cr.PC. read



with 227 of Cr.PC. The said application came to be allowed in-part, thereby, the trial Court has discharged accused no.2 for the offences punishable under Section 313 of IPC and Section 3 of Medical Termination of Pregnancy Act, 1971 and Sec.3(1)(w) SC and ST Amendment Act, 2015 and Sec.3(2)(V) of SC and ST Act, 1989. It was ordered by the trial Court to frame the charges against accused no.2 i.e., petitioner herein for the offence punishable under Section 19 and 21 of POCSO Act. Being aggrieved by the said order of framing the charges against the petitioner for the aforesaid offences, this revision petition is filed by the petitioner seeking her discharge of the said offences also.

5. The learned counsel for the petitioner-accused no.2 with all vehemence, in addition to the facts of the case submits that, the trial Court proceeded to frame charges against this petitioner for the offences under Sections 19 and 21 of the POCSO Act. This order of the trial Court is totally contrary to the facts and material



placed on record. It is his submission that, the victim herself with her mother went to the hospital, filled the details in the admission forms and requested to terminate her pregnancy. It is his submission that, entirely based upon the information furnished by the victim girl, to save the life of the victim, the accused no.2 conducted the medical termination of pregnancy of the victim girl. The petitioner/accused no.2 had no knowledge about the alleged rape committed by the accused no.1 on the victim girl. The said facts were not disclosed to accused no.2 by any of the persons in general and particularly the victim girl and her mother. The accused no.2 has been falsely implicated in this case. The trial Court ought to have discharged accused no.2 for the offences under Section 19 and 21 of the POCSO Act as the petitioner/accused no.2 had no knowledge about the same.

6. In support of his submission, the learned counsel for the petitioner/accused no.2 relied upon various documents produced along with the petition such as copies



of the statement of victim girl and her mother charge sheet, etc,. According to his submission, as no offences have been committed by the petitioner (accused no.2), the accused no.2 is entitled for discharge from the aforesaid offences under section 19 and 21 of POCSO Act. His submission is that impugned order is wholly arbitrary. He prays to allow the petition and discharge accused no.2.

7. As against this submission, the State Public Prosecutor Sri M.B. Gundwade submits that, the trial Court has considered the submission of both the side and based upon the material placed on record, has discharged the accused from the aforesaid offences except the offences under Section 19 and 21 of the POCSO Act. He admits that, being aggrieved by the discharge of the accused no.2 for the other offences, there is no revision or appeal is preferred by the State. He further submits that, as the material placed on record by the prosecution do establish the knowledge of the petitioner about the commission of the offences against the victim girl, has not intimated the



said fact to the Police station which amounts to violation of the provisions of the POCSO Act. It is his submission that, in view of the facts and circumstances of the case, the impugned order does not require any interference by this Court. It is submitted by the learned Addl. SPP to dismiss the petition.

8. I have given my anxious consideration to the arguments of both the side and meticulously perused the records.

The points that would arise for my consideration are,

"1. Whether the learned trial Court has committed an illegality and perversity in ordering to frame charges against accused no.2. petitioner for the offences under Section 19 and 21 of the POCSO Act.

2. If so, whether such an order passed by the trial Court require interference by this Court?



9. Before adverting to the other aspects of the case, let us examine the admitted facts between both the side. The present petitioner being arrayed as accused no.2 in Special Case No.53/19 at the relevant time was working as a Chief Medical Officer, KLE Society's Dr.Kamala Hospital. She is a gynecologist. She is CMO entrusted with the duty to look after the women who are pregnant as per the submission of the counsel for the petitioner. It is also the fact admitted by both the side that, the petitioner is working in KLE Hospital, Ankola which is situated in Ankola Town since 1997. It is the case of the prosecution that, though the accused no.2 had the knowledge about the commission of offence of rape against the victim girl, but, without informing the said fact to the nearest police station, the accused no.2 conducted the medical termination of pregnancy on the person of victim girl. Therefore, there is violation of the POCSO Act.

10. It is evident from the record that, accused no.1 and complainant are lovers. It is alleged in the complaint



as well in her statement under Sec.164 of Cr.PC that, accused no.1 promised to marry the victim girl. On that guise, he pestered the victim girl to come along with, he took her to Kundapura and resided in the house of his sister for about 20 to 25 days. During that period, though, she resisted for sexual intercourse, he forced to have sexual intercourse with her. Thereafter, he brought her back to Ankola. At that time, she suspected pregnancy and informed her mother. Her mother and herself went to Govt. Hospital, Ankola. She got registered as out-patient wherein she mentioned her age as 18 years. When she got confirmed about pregnancy, they returned. It is her allegation that, though accused no.2 had knowledge of conducting the termination of pregnancy on victim girl who was subject to rape, she has not informed the said fact to the concerned.

11. For the disposal of this revision petition, the provisions of Section 19 and 21 of the POCSO Act are to



be incorporated in this order. The said provisions read as under:

Section 19 Reporting of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,--

(a) the Special Juvenile Police Unit

(b) the local police.

(2) Every report given under sub-section (1) shall be--

(a) ascribed an entry number and recorded in writing;

(b) be read over to the informant;

(c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a



simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the



information in good faith for the purpose of sub-section (1).

Section 21: Punishment for failure to report or record a case:

(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

12. On reading the aforesaid provisions of law, it is very much clear that, a person who had an apprehension that an offence under the said Act is likely to be committed or had the knowledge that such an offence had been committed, he or she shall provide such information



to the Special Juvenile Police Unit or the local police as provided under the POCSO Act. It is alleged by the prosecution that, though accused no.2/petitioner had the knowledge, but, it was not intimated to the relevant authorities therefore, thereby accused no.2 had committed under Section 19 and 21 of the POCSO Act.

13. On going through the record placed by the prosecution, as well on hearing the arguments of both the side, it reveals that when complainant approached the Government Hospital and the Kamala Hospital and Medical Research Centre, Ankola, she stated her age as 18 years. The OPD chit produced by the petitioner being the true copy issued by the Deputy Superintendent of Police, Karwar Sub-Division, Karwar shows that her age is mentioned as 18 years. Even acknowledgement is also produced which shows that age of the victim girl is shown as 18 years. As per the records collected by the IO, Kamala Hospital is an authorized hospital to terminate the pregnancy. The certificate of approval is produced by the



IO shows that, the said Kamala Hospital and Medical Research Centre is authorized to terminate the pregnancy under the Medical Termination of Pregnancy Act, 1971. Further, the OPD Register is also placed on record by the petitioner/ accused no.2 wherein the age of the victim girl is stated as 18 years. These documents are not denied by the prosecution. When she gave her statement under Section 164 of Cr.PC before the JMFC Ankola on 17.09.2019, she has stated her age as 17 years 4 months. It was informed to the Doctor at Kamala Hospital that accused No.1 is the husband of victim girl. According to her statement, it is in the month of June 2019, when she went to Ankola police Station, accused no.1 was called by the police. There the Accused No.1 promised to take her after 5 months. Even police also have directed him to take the victim girl with him after 5 months. Accused No.1 has agreed for the same. At that time, in the month of June 2019, no complaint was received by the Ankola Police Station. It is her allegation that, accused no.1 took her to the Kamala Hospital, Ankola on 04.06.2019 and there the



OPD chit was prepared showing her age as 18 years. It is her allegation that it was written by accused No.1. Dr. Lata K. Mankali accused no.2-petitioner herein has diagnosed that victim girl is pregnant at that time. After diagnosing the pregnancy of the victim girl, she asked her whether she was going to terminate her pregnancy. The accused No.1 told that, if victim girl did not undergo the termination of the pregnancy he is going to die. On that day, it is accused no. 2 who conducted the termination of pregnancy on the person of the victim girl. Thereafter accused no. 1 used to talk with her on telephone for every 3 to 4 days. Thereafter, he refused to marry her. He was telling that he has another girl to marry. That means the whole allegation of the victim girl is that, an the guise of promising to marry victim girl, accused no.1 has committed the sexual assault on her. Though he promised to marry her, but, did not marry her. That made victim girl to file complaint.



14. Now the question arises that, the entire case as set out by the prosecution against the petitioner/ accused no.2 is based upon the statement of the victim girl and the statement of her mother who brought this victim girl to the hospital. There it was mentioned that her age was shown as 18 years. On that basis, the petitioner medically examined the victim girl and diagnosed that the victim girl was pregnant. It is argued by the learned Addl. SPP for the State that, as the victim girl was minor, accused no.2 should have taken due care in finding as to how the victim girl became pregnant.

15. It is argued by the counsel for the State as the victim girl was a minor therefore, accused no.2 should have taken due care in finding as to how the victim became pregnant. Fastening the criminal liability on the basis above allegations is too far fetched. Provisions of Section 19 and 21 as stated above put an obligation on the person to inform the relevant authorities inter alia when she or he has knowledge of an offence under the Act



has been committed. The expression used is "knowledge" which means that some information received by such a person gives him/her knowledge about the commission of the crime. There is no obligation on this person to investigate and gather knowledge. If at all, the petitioner was not careful enough to find the cause of pregnancy as the victim is only 18 years of age at the time of delivering, but, that would not be translated into criminal liability.

16. In view of the clear provisions of the POCSO Act, it is the duty of the prosecution to prove that the petitioner had a knowledge about this empirical knowledge of a commission of rape on the victim girl by the accused no. 1.

17. It is relevant to refer to a decision of Hon'ble Apex Court in the case of ***Dr. Sr. Tessa Jose and others v. State of Kerala***¹ wherein it has held as under in para nos. 9 to 14.

¹ AIR 2018 SC 4654



The observations of principles made in the said paragraphs as under:

9. *The entire case set up against the appellants is on the basis that when the victim was brought to the hospital her age was recorded as 18 years. On that basis appellants could have gathered that at the time of conception she was less than 18 years and was, thus, a minor and, therefore, the appellants should have taken due care in finding as to how the victim became pregnant. Fastening the criminal liability on the basis of the aforesaid allegation is too far fetched. The provisions of Section 19(1), reproduced above, put a legal obligation on a person to inform the relevant information to the relevant authorities, inter alia, when he/she has knowledge that an offence under the Act had been committed. The expression used is "knowledge" which means that some information received by such a person gives him/ her knowledge about the commission of the crime. There is no obligation on this person to investigate and gather knowledge. If at all, the appellants were not careful enough to find the cause of pregnancy as the victim was only 18 years of age at the time of delivery. But that would not be translated into criminality.*

10. *The term "knowledge" has been interpreted by this Court in AS Krishnan and Others v. State of Kerala to mean an awareness on the part of the person concerned indicating his state of mind. Further, a person can be supposed to know only where there is a direct appeal to his senses. We have gone through the medical*



records of the victim which were referred by Mr. Basant R., Senior Advocate for the appellants. The medical records, which are relied upon by the prosecution, only show that the victim was admitted in the hospital at 9.15 am and she immediately went into labour and at 9.25am she gave birth to a baby. Therefore, appellant No. 1 attended to the victim for the first time between 9.15 am and 9.25 am on 7th February, 2017. The medical records of the victim state that she was 18 years old as on 7th February, 2017. Appellant No. 1 did not know that the victim was a minor when she had sexual intercourse.

11. Appellant No. 2 had not even examined the victim and was not in contact with the victim. As per the medical records relied upon by the prosecution, the baby was attended to by appellant No. 2 at 5.30 pm on 7th February, 2017. He advised that the baby be given to the mother. Therefore, appellant No. 2 had no occasion to examine/treat the in victim.

12. Appellant No. 3 had not come in contact with the victim or the baby at all. Being the administrator of the hospital it was not possible for her to be aware of the details of each patient. Considering that the victim was brought to the said hospital for the first time on 7th February, 2017, it would not be possible for appellant No. 3 to be aware of the circumstances surrounding the admission of the victim.

13. The knowledge requirement foisted on the appellants cannot be that they ought to have deduced from circumstances that an offence has been committed.



14. Accordingly, we are of the view that there is no evidence to implicate the appellants. Evidence should be such which should at least indicate grave suspicion. Mere likelihood of suspicion cannot be the reason to charge a person for an offence. Accordingly, these appeals are allowed and the proceedings against the appellants in the aforesaid of Sessions Case No. 460 of 2017 are hereby quashed.

18. In the present case, the facts on record put-forth by the prosecution establishes that, this victim girl as well as mother who filled her admission form in the Kamala Hospital have shown her age as 18 years. Even the accused no.1 accompanied them. There it was disclosed that the accused no.1 is the husband of the victim girl. They requested accused no.2 to terminate the pregnancy. Based upon the information being furnished by the victim girl and her mother, this accused no.2 undertook to terminate the pregnancy of the victim girl. Thereafter they went to the police station and lodged a complaint. Even during the course of recording of statement under Sec. 164 Cr.PC by the victim girl, she has categorically stated that accused no.1 promised to marry her. He pestered her



to accompany him. He took her and had sexual intercourse with her. Thereafter, he brought her back to her place. She suspected that, there were symptoms of pregnancy. She informed the same to her mother and went to the hospital. Initially in the Govt. Hospital also, she has disclosed her age has 18 years so also before the Kamala Hospital. The very term '*knowledge*' mentioned in Sec.19 of the POCSO Act mandates to show that, this accused no.2 had knowledge about all these factual events that have taken place about the victim girl. But now the IO has charge sheeted accused no. 2 for the offences under Sections 19 and 21 of the POCSO Act. The main ingredient of the term '*knowledge*' is missing in this case. Not even single evidence is brought on record by the prosecution that the petitioner/accused no.2 had knowledge about the events that have taken place with regard to the victim girl. So the anthropology of knowledge studies how knowledge is acquired, stored, retrieved and communicated in different culture. It is a social knowledge which the petitioner had to attribute. It reveals, that the victim girl



informed about the commission of sexual assault. definitely, the experienced Gynecologist if had knowledge about the offences on the victim girl, she would have informed the same to the nearest Police Station as required under the provisions of the Sec.19 of POCSO Act. So relevant authorities would have been informed by the petitioner. As accused no. 2 had no knowledge about the same and has believed the version of the victim girl, her mother and accused no. 1 who accompanied the victim girl. In the hospital victim girl has disclosed her age as 18 years. To that effect documents are produced by the petitioner/accused no. 2.

19. In the considered opinion of this Court, there is no proper evidence brought on record by the prosecution to show that this petitioner/ accused no.2 is involved in the commission of the crime in the manner alleged by the prosecution. So to say, I am of the opinion that there is no evidence implicating accused no.2 for the offence under Sections 19 and 21 of the POCSO Act. Based upon is grave



suspicion story of the prosecution, cannot be believed. Therefore, the petition filed by the petitioner deserves to be allowed.

Accordingly the aforesaid points are answered in favour of the petitioner/accused no.2 and against the prosecution.

Resultantly I pass the following:

ORDER

(i) The petition filed by the petitioner is allowed.

(ii) The orders dated 04.08.2020 in Special Case No.53/2019 passed by Addl. District and Session Judge, FTSC-1, Uttar Kannada, at Karwar,(the Special Court for trial of cases filed under POCSO Act), in so far as it relates to framing of charge against the petitioner for the offences under Sections 19 and 21 of POCSO Act, is here by set aside.



(iii) Consequentially, the petitioner/accused No.2 is discharged of the offences under Sections 19 and 21 of the POCSO Act.

(iv) Send back the trial Court records along with a copy of this order to the trial Court forthwith.

**Sd/-
JUDGE**

Sk/-