



2023:MLHC:1061

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 79 of 2023

Date of Order: 06.10.2023

Shri Eric Rane & 2 Ors. Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. T.L. Jyrwa, Adv.
For the Respondent(s) : Ms. N.G. Shylla, Sr. GA with
Mr. A.H. Kharwanlang, Addl.Sr.GA.

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT & ORDER

1. Heard Shri T.L. Jyrwa, learned counsel for the petitioner and also heard Mrs. N.G. Shylla, learned Sr. GA appearing for the respondents.

2. This petition under Section 482 Cr.PC has been filed by the three petitioners against the impugned order dated 20.02.2023 passed by the Special (POCSO) Judge, Nongpoh in Criminal Misc. Application No.



3 of 2023 arising out of Special (POCSO) Case No. 20 of 2019 under Section 228A IPC read with Section 23 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and Section 74 of the JJ Act 2015 whereby, petitioners have been arraigned as the co-accused in the instant case.

3. The brief fact of the case is that on 17.04.2019, one Mr. Miguel Queah, who is a child right activist, filed a complaint to the Director General of Police, Meghalaya complaining about the violation of the Right of Confidentiality of child victim of abuse by the newspapers, namely “The Shillong Times” and “The Meghalaya Guardian”. Consequent thereto, the matter was investigated and a chargesheet was filed against 1. Smti Patricia Mukhim, Editor of The Shillong Times, 2. Shri E.M. Jose, News Editor of The Shillong Times and 3. Shri Ratul Baruah, Editor of The Meghalaya Guardian, Shillong. When the matter was pending consideration/framing of charges, on 11.01.2023, an application under Section 319 Cr.PC was filed by the prosecution before the Special (POCSO) Judge, Nongpoh against the petitioners and others seeking their arraignment in Special (POCSO) Case No. 20 of 2019 on the basis of the materials available on record. The said application was registered as Criminal Misc. Application No. 3 of 2023. The learned Trial Court, after hearing the application, by impugned order dated 20.02.2023 arraigned the petitioner herein and others as co-accused in the matter and ordered issuance of summons against them.

The complainant Mr. Miguel Queah was impleaded as respondent No. 2 in the present matter vide order dated 26.07.2023 and a



notice was served upon him. However, the respondent No.2 has not entered appearance before this Court.

4. Before the present application was taken up for hearing on merit, an objection was raised by the learned Sr. GA with regard to the maintainability of this petition under Section 482 Cr.PC on the ground that the impugned order under challenged is assailable under section 397 Cr.PC by way of a regular revision application. To counter the objection raised by the State respondent, the learned counsel for the petitioner placed reliance on a judgment of the Apex Court reported in **(2016) 16 SCC 30, Prahla Chawla v. State of Rajasthan & Ors.** wherein it was held that there cannot be any restriction or embargo in the exercise of inherent power of High Court under Section 482 Cr.PC. Since the petitioners contend that the allegation against them, if accepted as it appears in the charge sheet, would not constitute any offence against them, this Court thinks it appropriate to proceed with the hearing of the matter on merit of the case without dwelling much on the issue of maintainability.

5. Mr. T.L. Jyrwa learned counsel appearing for the petitioners, submits that the petitioner No.1 is a media correspondent involved in gathering news materials for various media houses in the State. The petitioner No. 2 and 3 are social workers and self-employed youth and also the General Secretary and the President respectively of a non-government organisation known as Hynniew Trep National Movement. The learned counsel thus, submits that none of the petitioners are employee of any media house or publication unit. He submits that all the petitioners are similarly situated in so far as the allegation against them in



the case is concerned and challenge to the impugned order is also made by raising common grounds. The learned counsel submits that the petitioners are not questioning the jurisdiction or competency of the Trial Court in arraigning them as co-accused persons at the time of taking cognizance. They are also not questioning the consideration of the application under Section 319 Cr.PC by the Trial Court before consideration/framing of charges by the Trial Court. The learned counsel submits that the legality and correctness of the impugned order has been challenged as there exists no materials against the petitioners in the charge sheet. He contends that if the allegations made in the charge sheet and the materials in support thereto, are accepted at their face value, no ingredients of any offence would be made out against the petitioner. Further, placing reliance on Section 23(3) of the POCSO Act, the learned counsel submits that the petitioners can no way be held liable for commission of any offence on the allegation of disclosure of the details of the victim in the media. He submits that Section 23(3) of the POCSO Act makes it abundantly clear that only the publisher or owner of the media or studio or photographic facilities shall be jointly and severally be held liable for the acts and omissions of his employee. Relying on paragraph 14, 15 & 18 a decision of the Apex Court reported in *(2013) 3 SCC 697, Gambhirsinh R Dekare v. Falgunbhai Chimanbhai Patel & Anr.*, the learned counsel submits it is only the Editor of the newspaper who is responsible for any publication made in the newspaper and he shall only be held responsible in any civil and criminal proceeding. The learned counsel, therefore, contends that it is only the publisher or the owner or the editor who can be held liable under criminal law and no other person



can be held liable for the same. The petitioners are neither the publishers nor the owners of the newspapers in question, but were simply persons who had received the information about the incident and shared the same with the media house through their employee. The petitioners have not published such information/news in the media or in any public platform in order to attract commission of offence under any law.

6. The learned counsel for the petitioners further submits that a bare perusal of the impugned order dated 20.02.2023 and the materials available on record reveal that there exists no prima facie evidence whatsoever that would necessitate charges on the petitioners and to arraign them as co-accuseds in the Spl. (POCSO) Case No. 20 of 2019. Infact, the investigating agency named the petitioners as prosecution witnesses since their complicity in the case was not at all evident in order to book them under the provisions of the POCSO Act along with the named accused in the charge sheet. He further submits that the statement recorded under Section 161 Cr.PC in the above case cannot be relied on for deciding as to whether there exists any prima facie case against the petitioners as the statement under Section 161 Cr.PC is not admissible in law. He supports his argument by relying on para 13.1 of the decision reported in *(2020) 4 SCC 33, Parvat Singh & Ors. v. State of Madhya Pradesh*. The learned counsel further refers to para 16 of the decision reported in *2022 SCC OnLine SC 1634, Ramesh Chandra Gupta v. State of U.P & Ors.* wherein, para 102 of the judgment of *State of Haryana v. Bhajan Lal* was reproduced. The learned counsel refers to categories (1), (3) & (6) of para 102 of the said judgment and submits that



the entirety of the allegation made in the FIR and the charge sheet do not prima facie constitute any offence or make out a case against the petitioners and in view of the specific provisions in the concerned Act providing efficacious redress for the grievance of the aggrieved party, the petitioners cannot be made to face criminal liability. He submits that the concerned Act, in the present context, would mean the POCSO Act. He concludes by submitting that the learned Trial Court has committed a serious error in law by arraigning the petitioners as co-accused by the impugned order and the same requires to be interfered by this High Court.

7. In response, Ms. N.G. Shylla, learned Sr. GA submits that the present criminal petition cannot be entertained in view of the fact that the same has been filed by three petitioners who are not identically placed. The criminal liability is individual liability and filing of joint petition by the accused is not contemplated in criminal law. The learned counsel submits that Section 23(3) of the POCSO Act, does not exclude reporter or contributor of news from the liability of the penal provision of the Act for violating the procedure for media. She further submits that there are enough materials in the charge sheet and statement of the petitioners recorded under Section 161 Cr.PC justifying their arraignment in the case before the Trial Court. She submits that where the offence is broadly satisfied, court should be more inclined to permit continuation of the prosecution rather than its quashing at the initial stage. The learned counsel further submits that the term 'media' used in the enactment is wide enough to take into its grip a reporter or a contributor of news basing on which publication is made. She places reliance on a judgment



reported in *(2023) 7 SCC 711, Supriya Jain v. State of Haryana and Anr.* (para 17 & 18) to assert that quashing of charge is an exception to the rule of continuous prosecution and if the offence is broadly satisfied, the prosecution should not be stalled at the initial stage. The learned counsel further submits that a perusal of the documents supporting the charge sheet in question and the statement made by the petitioners under Section 161 Cr.PC reveals that they were involved in passing the information about the victim to the media. She refers to a decision reported in *(2004) 12 SCC 195, State of Punjab v. Kasturi Lal & Ors.* (para 7) to impress upon the Court about the persons who can be charged. The learned counsel submits that there is nothing wrong in the impugned order passed by the Trial Court and the present application is devoid of any merit.

8. To appreciate the rival submissions, it would be necessary to take notice of the documents and materials attached to the charge sheet in order to determine whether there is any material collected in course of the investigation in the matter and to form an opinion upon consideration thereof as to whether petitioners can be put on trial in pursuant to their arraignment in the matter.

9. The charge sheet and the documents appended to the instant criminal petition reveals that 15(fifteen) witnesses are proposed to be examined by the prosecution in the case. It also transpires that an enquiry was conducted in the matter at the stage of investigation by one Shri B.D.S. Rymbai, MPS, Deputy Superintendent of Police (Hqr.) Ri-Bhoi District, Nongpoh, a report whereof was submitted to the Supdt. of Police



Ri-Bhoi District, Nongpoh on 22.04.2019. A perusal of the report indicates that all the three petitioners before this Court have played some role in passing the information with regard to the incident concerning the victim to the media. The said report has been forwarded to the Trial Court along with the charge sheet and the Dy. Supdt. of Police, who prepared the enquiry report, has also been cited as a prosecution witness in the case.

10. In the present petition before this Court, at paragraph 8, it is stated as hereunder: -

“8...

(a)...The petitioners herein are neither the Publisher nor the Owner of the Newspapers in questioned but were simply persons who had received the information about the incident of a child met with sexual violence and shared the same with the media houses through their employee, and as such they were not the ones who had published such information/news in the media or any public/social media platform in order to attract the commission of the offence under Section 23 of the POCSO Act, 2012 or under Section 228A of the IPC and 74 of the JJ Act, 2015 which are also provisions which renders a person liable for commission of an offence if he publishes the identify of a child/victim of sexual offences...”

11. Since the petitioners have strongly relied on the provisions of Section 23(3) of the POCSO Act to claim immunity from any contemplated penal action against them, it is essential to refer to the entire provision of the said section of law which reads as follows: -

*“23. **Procedure for media,-** (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.*



(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child;

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.”

12. A conjoin reading of all the sub-sections of Section 23 of the POCSO Act makes it unequivocally clear that a prohibition is made by which no person shall make any report or comment on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy. Further, no report in any media shall disclose the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child. The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omission of his employee. Any person who contravenes the provisions regulating procedure for media shall be liable for punishment. Thus, it is clear that Section 23 of the Act extends to the publisher and owner of the media or studio or



photographic facilities but not limited to them only. It is well settled that a provision of a statute should be interpreted to meet the purpose and purport it needs to serve. Therefore, the intention of Section 23 is very clear that the victim child shall not be exposed to any sort of publication by any person.

13. The Apex Court in the matter reported in **(2019) 2 SCC 703, Nipun Saxena & Anr. V. Union of India & Ors.** at para 37, 42, 45 and 50.1 held as under: -

“ 37.Sub-section (1) of Section 23 prohibits any person from filing any report or making any comments on any child in any form, be it written, photographic or graphic without first having complete and authentic information. No person or media can make any comments which may have the effect of lowering the reputation of the child or infringing upon the privacy of the child. Sub-section (2) of Section 23 clearly lays down that no report in any media shall disclose identity of a child including name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to the disclosure of the identity of the child. This clearly shows that the intention of the legislature was that the identity of the child should not be disclosed directly or indirectly. The phrase “any other particulars” will have to be given the widest amplitude and cannot be read only ejusdem generis. The intention of the legislature is that the privacy and reputation of the child is not harmed. Therefore, any information which may lead to the disclosure of the identity of the child cannot be revealed by the media. The media has to be not only circumspect but a duty has been cast upon the media to ensure that



it does nothing and gives no information which could directly or indirectly lead to the identity of the child being disclosed.

42. The name, address, school or other particulars which may lead to the identification of the child in conflict with law cannot be disclosed in the media. No picture of such child can be published. A child who is not in conflict with law but is a victim of an offence especially a sexual offence needs this protection even more.

45. The Calcutta High Court in Bijoy case 2017 SCC OnLine Cal 417: has also given other directions to ensure that the provisions of the law are followed in letter and spirit, and the fundamental rights of a child victim and other basic human rights are protected. We are in agreement with all these directions. Though some of the issues dealt with in these directions do not strictly arise in this case, keeping in view the fact that we are dealing with the rights of children, we are annexing the directions issued by the Calcutta High Court as Annexure-1 to this judgment. We request all the Chairpersons and Members of all the Juvenile Justice Committee of all the High Courts in the country to go through the judgment of the Calcutta High Court and the directions issued therein and they may issue similar directions, keeping in view the particular needs of each High Court/State.

50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.”

14. The relevant part of the Annexure I of the aforesaid judgment reads as follows:-



“53.

ANNEXURE – I

...(5). *The investigating agency shall not disclose the identity of the victim in any media and shall ensure that such identity is not disclosed in any manner whatsoever except the express permission of the Special Court in the interest of justice. Any person including a police officer committing breach of the aforesaid requirement of law shall be prosecuted in terms of Section 23(4) of the said Act.*”

15. The proposition of law laid down in the aforementioned judgment makes it amply clear that Section 23 of the POCSO Act prohibits disclosure of identity of a child in any manner. The intention of the legislature is that the identity of a child should not be disclosed directly or indirectly and the privacy and the reputation of the child should not be harmed. Any particular which may lead to the identification of a child cannot be disclosed in the media. Any person committing breach of the said requirement of law shall be prosecuted in terms of Section 23(4) of the said Act.

16. The decision of *Gambhirsinh R Dekare (supra)* relied on by the learned counsel for the petitioner and sub-section (3) of Section 23 of the POCSO Act do not limit on the application of penal provisions of Section 23 of the Act only to the editor, owner or publisher of the media or studio or photographic facilities, rather the provision makes them jointly and severally liable with all other persons who contravene the provisions of Section 23 of the Act.



17. The case of *Parvat Singh (supra)* cited by the learned counsel for the petitioner, nowhere stipulates that the statement under Section 161 Cr.PC cannot be considered for deciding whether there exists any prima facie case or not; para 13.1 of the said judgment lays down that a statement recorded under Section 161 Cr.PC is inadmissible in evidence and cannot be relied upon or used to convict the accused. The decision, as such, has no application to the case of the petitioners herein.

18. The decision of *Ramesh Chandra Gupta (supra)* cited by the learned counsel for the petitioner, at para 16 wherein the proposition of law laid down in para 102 of *Bhajan Lal's* case was reproduced, the categories (1), (2) and (3) thereof, are also of no help to the petitioner's case as the facts and circumstances of the present matter do not have any bearing with the situations stated therein.

19. The case laws cited on behalf of the State respondents has been given due consideration by this Court. The proposition of law laid down in *State of Punjab (supra)* at para 7, is based on the interpretation of Section 10 of the Essential Commodities Act, 1955 and as such, has no bearing in the present case. The broad principles stated at para 17 and 18 of the case of *Supriya Jain (Supra)* have been taken into consideration while appreciating the facts and circumstances of the present matter.

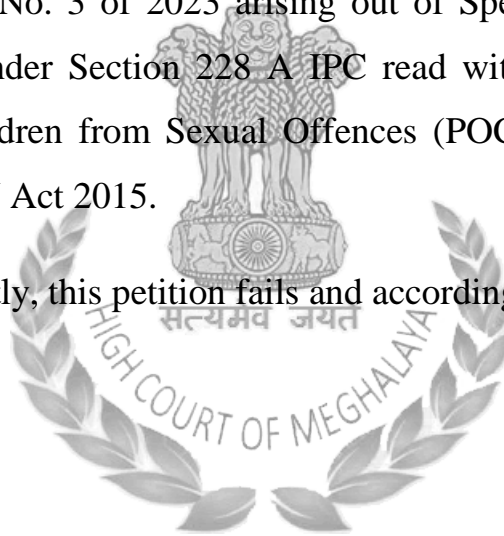
20. The position of law which emerges from the aforesaid discussion, it can be safely held that the petitioners do not have any immunity from being prosecuted under law in the event of contravention of provision of Section 23 of the POCSO Act by them. Apart from what



has been averred by the petitioners in the present revision petition as noted above, the materials accompanying the charge sheet in question and the statements under Section 161 Cr.PC appearing therein make out a case for putting all the petitioners on trial for determining the actual role played by them in the case.

21. The offshoot of the above discussion is that, the petitioners have failed to make out a case for interference with the impugned order dated 20.02.2023 passed by the Special (POCSO) Judge, Nongpoh in CrI. Misc. Application No. 3 of 2023 arising out of Special (POCSO) Case No. 20 of 2019 under Section 228 A IPC read with Section 23 of the Prevention of Children from Sexual Offences (POCSO) Act, 2012 and Section 74 of the JJ Act 2015.

22. Resultantly, this petition fails and accordingly dismissed.



Judge

Meghalaya

06.10.2023

"N.Swer, Stenographer Gr.II"