



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**  
**CRMNO No. 634 of 2022**  
**Reserved on: 04.12.2023**  
**Date of Decision: 03.01.2024.**

---

Anju Bala

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

---

*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

***Whether approved for reporting?***

For the Petitioner : Mr. Dinesh Kumar Sharma and Mr. Vipin Pandit, Advocates.

For the Respondent : Mr Prashant Sen, Deputy Advocate General.

---

**Rakesh Kainthla, Judge.**

Informant- respondent No. 2 made a complaint that her grandson (victim) is residing with her. On 26.3.2019, at about 10 a.m. he disclosed to the informant that he had gone to Baddi in March, 2018 with the present petitioner. She pressed his private parts and the neck. She also threatened the victim to kill him in case he disclosed the incident to anyone. The police of

Whether reporters of Local Papers may be allowed to see the judgment? yes

Police Station Baddi registered FIR No. 14 of 2019, dated 26.3.2019 and conducted the investigation. The statement of the victim was recorded and the challan was prepared and presented before the Court.

2. The learned trial Court framed the charges against the petitioner for the commission of an offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). The petitioner filed the present petition for quashing of the order framing the charge sheet. It has been asserted that the charges are the result of surmises and conjunctures. The material collected by the prosecution does not disclose the commission of cognizable offence. In order to charge a person, an act must be done with the sexual intent. A person cannot be held guilty in the absence of sexual intent. There is a sole testimony of the victim and no other evidence to corroborate the same. The culpable mental state is to be proved beyond reasonable doubt before the liability can be fastened upon a person. Therefore, it was prayed that the order framing charges be set aside.

3. I have heard Mr. Vipin Pandit and Mr. Dinesh Kumar Sharma learned counsel for the petitioner and Mr. Prashant Sen, learned Deputy Advocate General, for the respondent-State

4. Mr Vipin Pandit, learned counsel for the petitioner submitted that the learned Trial Court erred in framing the charge against the petitioner for the commission of an offence punishable under Section under Section 8 of the POCSO Act. There is no evidence of any sexual intent. The allegation even accepted to be correct does not constitute the commission of any offence, therefore, he prayed that the present petition be allowed and the charges framed by the learned Trial Court be set aside.

5. Mr Prashant Sen, learned Deputy Advocate General submitted that there is a presumption of sexual intent in Section 30 of the POCSO Act and the burden lies upon the accused to rebut this presumption. Learned Special Judge has rightly framed the charge taking into consideration the presumption. Hence, he prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions at the bar and have gone through the record carefully.

7. It was laid down by the Hon'ble Supreme Court in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294*** that the Court has to look into the material placed before it at the time of framing of charge. It was observed:

**“7.** It is trite law that the application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on the basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that the accused has committed the offence which is triable, then necessarily charge has to be framed.

**8.** At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

**9.** If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

**10.** It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709** advertent to the earlier propositions of law laid down on this subject has held:

**“29.** We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of

consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, the probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini-trial at this stage.”

**11.** The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

**12.** The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to

its earlier decisions in the **State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659** and the **State of MP vs Mohan Lal Soni, (2000) 6 SCC 338** has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

8. It was laid down by the Supreme Court in **Attorney General v. Satish, (2022) 5 SCC 545: 2021 SCC OnLine SC 1076** that where a person touches a child, there is a presumption under Section 30 that it was with sexual intent and the burden lies upon the accused or to prove otherwise. It was observed:

**39.** It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub-section (2) of

Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe a fact. Thus, on the conjoint reading of Sections 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, “sexual intent” would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of “culpable mental state” on the part of the accused.

**40.** This takes the Court to the next argument of Mr Luthra that there being an ambiguity, due to the lack of definition of the expressions “sexual intent”, “any other act”, “touching” and “physical contact”, used in Section 7, coupled with the presumptions under Sections 29 and 30 of the Act, the reverse burden of proof on the accused would make it difficult for him to prove his innocence and, therefore, the POCSO Act must be strictly interpreted. In the opinion of the Court, there cannot be any disagreement with the said submission of Mr Luthra. In fact, it has been laid down by this Court in a catena of decisions that the penal statute enacting an offence or imposing a penalty has to be strictly construed. A beneficial reference of the decisions in **Sakshi v. Union of India** [**Sakshi v. Union of India, (2004) 5 SCC 518: 2004 SCC (Cri) 1645**], in **R. Kalyani v. Janak C. Mehta** [**R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516 : (2009) 1 SCC (Cri) 567**] and in **State of Punjab v. Gurmit Singh** [**State of Punjab v. Gurmit Singh, (2014) 9 SCC 632 : (2014) 5 SCC (Cri) 249**] be made in this regard. However, it is equally settled legal position that the clauses of a statute should be construed with reference to the context vis-à-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject matter. The Court cannot be oblivious to the



fact that the impact of traumatic sexual assault committed on children of tender age could endure during their whole life, and may also have an adverse effect on their mental state. The suffering of the victims in certain cases may be immeasurable. Therefore, considering the objects of the POCSO Act, its provisions, more particularly pertaining to sexual assault, sexual harassment, etc. have to be construed vis-à-vis the other provisions, so as to make the objects of the Act more meaningful and effective.”

9. In the present case, the victim specifically stated that the petitioner pressed his private parts and the neck. No explanation has been provided by the petitioner for doing so. Therefore, at this stage, a prima facie conclusion can be drawn that it was with sexual intent because of the presumption under Section 30.

10. Therefore, the learned Trial Court had rightly framed the charge against the petitioner for the commission of an offence punishable under Section 8 of the Protection of Children from Sexual Offence Act, 2012.

11. It was laid down by the Hon'ble Supreme Court in ***Dilipsinh (supra)*** that the revisional court does not sit in appeal over the order sought to be revised and only examines the legality or regularity of the procedure. It was observed:

**13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and

regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in **Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460** where the scope of Section 397 has been considered and succinctly explained as under:

**“12.** Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex-facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is

High

a much-advanced stage in the proceedings under the CrPC.”

**14.** This Court in the aforesaid judgment has also laid down principles to be considered for the exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr. P.C. is sought for as under:

**“27.** Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for the proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

**27.1.** Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

**27.2.** The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

**27.3.** The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

**27.9.** Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

**27.13.** Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit the continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to deciding admissibility and reliability of the documents or records but is an opinion formed prima facie."

**15.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge."

The material on record shows the commission of offence punishable under Section 8 of the POCSO Act.

12. There is no infirmity in the order passed by the learned Trial Court and no interference is required with the same. Hence, the present petition fails and the same is dismissed.

13. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

**(Rakesh Kainthla)**  
**Judge**

3<sup>rd</sup> January, 2024  
**(veena)**

High Court of H.P.