IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF MARCH, 2024

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4511 OF 2023

C/W

CRIMINAL PETITION No.4513 OF 2023

IN CRIMINAL PETITION No.4511 OF 2023:

BETWEEN:

DR.SHIVAMURTHY MURUGHA SHARANARU
S/O GURUMURTHAIAH
AGED ABOUT 64 YEARS
PEETADHYAKSHARU
SJM MUTT, CHITRADURGA
KARNATAKA – 577 502.

... PETITIONER

(BY SRI C.V.NAGESH, SR.COUNSEL FOR
SRI K.B.K.SWAMY, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY CHITRADURGA RURAL POLICE STATION
CHITRADURGA
PIN – 577 502
(REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . CHANDRAKUMAR C.,
AGED MAJOR
LEGAL AND PROBATION OFFICER
DISTRICT CHILD PROTECTION UNIT
#CA-15-17, ANJANADRI MAIN ROAD
4TH STAGE, 2ND BLOCK, VIJAYANAGARA
MYSURU – 560 032.

... RESPONDENTS

(BY SRI JAGADEESHA B. N., ADDL. SPP FOR R1 &)
SRI B A BELLIAPPA, SPP FOR RESPONDENTS)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO REVERSE AND SET ASIDE THE ORDER DATED 13.04.2023 VIDE ANNEXURE C PASSED BY THE HONBLE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT CHITRADURGA IN SPL.C.(POCSO) NO.181/2022 (CR.NO.387/2022) REGISTERED BY CHITRADURGA RURAL POLICE, CHITRADURGA DIRECTING FRAMING OF CHARGES AGAINST THE PETITIONER FOR THE OFFENCE THAT ARE MADE PENAL U/S.376(2)(n), 376(DA), 376(3), 201, 506 R/W SEC.34 AND 37 OF IPC AND SEC.5(L) AND 6 OF POCSO ACT 2012 SEC.3(1)(w)(i)(ii), 3(2)(v)(v-a) OF SC/ST (POA) ACT AND SEC.3(f), 3(c), 3(5) AND 7 OF RELIGIOUS INSTITUTION (PREVENTION OF MISUSE) ACT, 1988 AND SEC.75 OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015 AND FUTHER BE PLEASED TO QUASH THE CHARGE SHEET AND FURTHER PROCEEDINGS.

IN CRIMINAL PETITION No.4513 OF 2023:

BETWEEN:

DR. SHIVAMURTHY MURUGHA SHARANARU
S/O GURUMURTHAIAH
AGED ABOUT 64 YEARS
PEETADYAKSHARU
SJM MUTT, CHITRADURGA
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SRI B A BELLIAPPA, SPP FOR RESPONDENTS)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 15.04.2023, VIDE ANNEXURE C PASSED BY HONBLE II ADDL. DISTRICT AND SESSIONS JUDGE, AT CHITRADURGA IN SPL.C.(POCSO) NO.182/2022, (CR.NO.387/2022) REGISTERED BY CHITRADURGA RURAL POLICE, CHITRADURGA, DIRECTING FRAMING OF CHARGES AGAINST THE PETITIONER FOR THE OFFENCES THAT ARE MADE PENAL U/S 376(2)(n), 376(DA), 376(3), 201, 506 R/W 34 AND 37 OF IPC, SEC. 5(L) AND 6 OF POCSO ACT, 2012 AND SSEC. 3(f), 3(c), 3(5) AND 7 OF RELIGIOUS INSTITUTION (PREVENTION OF MISUSE) ACT, 1988 AND SEC. 75 OF JUVENILE JUSTICE (CARE

AND PROTECTION OF CHILDREN) ACT, 2015, AND FURTHER BE PLEASED TO QUASH THE CHARGE SHEET AND FURTHER PROCEEDINGS.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner/Accused No.1 is before this Court calling in question orders dated 13-04-2023 (W.P.No.4511 of 2023) and 15-04-2023 (W.P.No.4513 of 2023) passed by the II Additional District and Sessions Judge, Chitradurga in Special Case (POCSO) No.181 of 2022 and 182 of 2022 registered for offences punishable under Sections 376(2)(n), 376DA, 376(3), 201, 506 r/w 34 & 37 of the IPC, Section 5(L) & 6 of the POCSO Act, 2012 ('POCSO Act' for short), Section 3(1)(w)(i)(ii), 3(2)(v)(v-a) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Atrocities Act' for short), Section 3(c), 3(f), 3(5) and 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 ('the 1988 Act' for short) and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('the 2015 Act' for short).

2. *Shorn* of unnecessary details, facts in brief, germane are as follows:-

The petitioner/Accused No.1 is the Pontiff of ***Sri Jagadguru Mururugharajendra Bruhanmutt, Chitradurga*** **('Mutt' for short)**. A crime comes to be registered in Crime No.155 of 2022 based upon a complaint lodged by one Sri Chandrakumar before the Nazarbad Police Station, Mysore. The allegation in the complaint was that two victims, girls aged about 15 and 16 years were inmates in a hostel run by the Mutt. It was alleged that the Pontiff had sexually abused the two victims for the last 3½ years insofar as it concerned a 16 years old girl and 1½ years insofar as 15 years old girl is concerned. The further allegation is that one Paramashivaiah, Rashmi, Junior Pontiff Basavadithya and Advocate Gangadharaiah have all facilitated the commission of offence. Both the victims were produced before the Child Welfare Committee, Mysore by the office bearers of a non-governmental organization ('NGO' for short) called '*Odanadi*'. The complaint further narrates that counseling of both the victims at Odanadi was undertaken, it is then the victims came forward to register the complaint. Since the alleged offence had taken place at Chitradurga, the case was

transferred to the jurisdictional Police at Chitradurga and a fresh crime, in Crime No.387 of 2022 comes to be registered for offences punishable under Sections 5(L), 6 and 17 of the POCSO Act and under Sections 376(2)(n), 376(3), 149 of the IPC. The Police conduct investigation on the basis of the complaint and the allegations in the FIR and filed a charge sheet before the concerned Court. The moment the charge sheet is filed in Special Case (POCSO) No.181 of 2022 and 182 of 2022, the petitioner seeks his discharge from the array of accused by filing an application under Section 226 of the Cr.P.C. The concerned Court, in terms of its order dated 04-03-2023, rejected the application filed by the petitioner and directed framing of charges. The concerned Court, after the rejection of the application seeking discharge, frames charges against the petitioner in terms of the order dated 13-04-2023 in Spl.CC No.181 of 2022 and in Spl.CC No.182 of 2022 on 15-04-2023. The framing of charges is what has driven accused No.1 to this Court in the subject petition calling in question the framing of charges dated 13-04-2023 and 15-04-2023 by the Police in Special Case (Pocso) Nos.181 of 2022 and 182 of 2022.

3. Heard Sri C.V.Nagesh, learned senior counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional Special Public Prosecutor and Sri B.A. Belliappa, learned State Public Prosecutor appearing for respondent No.1.

4. The learned senior counsel Sri C.V. Nagesh representing the petitioner would vehemently contend that the order of framing of charges suffers from blatant non-application of mind, as the allegations that can never be laid against the petitioner have all been framed. The learned senior counsel would submit that the moment the charge sheet was filed, the petitioner sought discharge from the array of accused. The concerned Court does not consider or rather misconstrues the provisions of law and rejects the application for discharge holding that it was not the stage at which the evidence or the submissions can be considered. It is the opinion of the concerned Court that a rowing inquiry was not necessary at that stage. He would submit that it is an error apparent in law as the Apex Court in plethora of cases has held that the concerned Court answering the application for discharge cannot act as a mere post office. He would take this Court through the

charges framed threadbare and seeks to contend the error that the Court has committed, charge by charge. It is his contention that the charge sheet so framed against the petitioner for offences punishable under Section 3(7) and 7 of the 1988 Act is on the face of it is erroneous; offences alleged under Section 3(1)(w)(i)(ii) of the Atrocities Act is imaginary and contrary to facts; offences alleged under Section 75 of the 2015 Act is erroneously laid; offence under Section 5(1) and (6) of the Protection of Children from Sexual Offences Act is loosely laid and; offences alleged under Section 376(2)(n), 376(3), 376(DA), 201 506 r/w 34 and 37 of the IPC do not even get attracted in the case at hand. He also emphasizes the fact that offences under Sections 201 and 506 of the IPC cannot even be thought of being brought in the case at hand. Elaborating his submissions on the illegality in framing the charges, the learned senior counsel would seek to place reliance upon several judgments rendered by the Apex Court or that of the co-ordinate Bench of this Court. The judgments so relied on are – (i) ***CAPTAIN MANJIT SINGH VIRDI v. HUSSAIN MOHAMMED SHATTAF***[1], (ii) ***SANJAY KUMAR RAI v. STATE OF U.P.***[2], (iii)

[1] *(2023) 7 SCC 633*

KANCHAN KUMAR v. STATE OF BIHAR[3], (iv) ***MAHMOOD ALI v. STATE OF U.P.***[4], (v) ***GHCL EMPLOYEES STOCK OPTION TRUST v. INDIA INFOLINE LIMITED***[5], (vi) ***G.A. PURUSHOTHAM v. E.S.I. CORPORATON***[6] and ***DR. SHIVAMURTHY MURUGHA SHARANARU v. STATE OF KARNATAKA***[7]. He would submit that the entire story against the Pontiff is twined to such an extent that it is projected as an offence. By whom is the question? It is the contention of the learned senior counsel that one Basavaraju and his wife Sowmya who have filed 10 cases against the Pontiff and Basavaraju himself wanting to take over the Mutt being the former law maker is behind all this episode. Taking this forward, the learned senior counsel would seek to emphasize that the entire story is narrated in a manner that would paint the Pontiff black, and demean his position, all with an axe to grind by the said Basavaraju.

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[2] *(2021 SCC OnLine SC 367*
[3] *(2022) 9 SCC 577*
[4] *2023 SCC OnLine SC 950*
[5] *(2013) 4 SCC 505*
[6] *ILR 1993 KAR 651*
[7] *W.p.No.2331 of 2023 decided on 22nd May 2023.*

5. Per-contra, the learned Additional State Public Prosecutor Sri B.N.Jagadeesha and Sri B.A.Belliappa, learned State Public Prosecutor would seek to vehemently refute the submission of the learned senior counsel to contend that all the charges framed against the petitioner are appropriately framed, as the evidence of victims or other witnesses would all lead to one unmistakable conclusion that it is a matter of trial for the petitioner to come out clean. After framing of charges this Court in exercise of its jurisdiction under Section 482 of the Cr.P.C., would be slow to interfere unless there are glaring circumstances which would render the trial on the basis of the charges totally contrary to law. It is his submission that the charges cannot be branded as totally contrary to law. Insofar as the manner in which the evidence is sought to be projected before this Court, the learned Additional Special Public Prosecutor would submit that this is not a stage at which this Court should entertain such submissions. The offences alleged are on the face of it grave and on such grave offences, this Court should not interfere.

6. The learned senior counsel in reply would seek to contend that he has not taken this Court through, beyond what is documented in the investigation. He would submit that he is seeking to project recklessness and careless manner in which the concerned Court has framed the charges which ought not to have done. He would submit that he is not seeking quashment of entire proceedings but, the order of framing of charges dated 13-04-2023 and 15-04-2023 as those charges cannot be framed against the petitioner. He would reiterate that the order framing of charges be obliterated and appropriate directions be issued for appropriate framing of charges.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the entire material on record.

8. The afore-narrated facts are not in dispute. The prayer is to reverse and set aside the order dated 13-04-2023. The order dated 15-04-2023 is the order of the learned Sessions Judge framing charges in Special Case (POCSO) No.181 of 2022 and 182 of 2022. Therefore, it becomes necessary to put the clock back to

the date on which the complaint came to be registered, which becomes a crime, in the subject special case.

9. In the late night hours, on 24-07-2022, two victims who would be hereinafter referred to as victim-1 and victim-2, minor girls are said to have fled from the hostel run by the Mutt. They would reach Mysore and board into an autorickshaw standing in the visible place. The driver of the rickshaw without even asking or being asked by the victims takes those two victims to the Nazarbad Police Station. No incident is narrated by the victims to the Station House Officer. However, the Station House Officer or the constabulary that was present in the Nazarbad Police Station called Basavaraju and his wife narrating that there are two minor girls who have been brought to the Police Station by an autorickshaw driver. The statement of autorickshaw driver is not taken. Basavaraju and his wife Sowmya come to the Police Station. Even then no crime is registered. The two victims-1 & 2 are taken by CW-12 S.K. Basavaraju from the Police Station to his house. The victims stayed with Basavaraju from 24-07-2022 to 26-08-2022, close to 32 days. Even then no complaint is registered.

10. On 26-08-2022 the victims were taken to an Non-Governmental Organization ('NGO') by name 'Odanadi'. The NGO takes the victims to Child Welfare Committee for counseling. The NGO obtains the report of the counselor about the narration by the victims and, directs one Chandrakumar to file a complaint before the Nazarbad Police Station, Mysore. Therefore, the crime comes to be registered on 26-08-2022, after about 34 days of the victims allegedly fleeing the hostel. The crime is registered before the Nazarbad Police Station in Crime No.181 of 2022. Since offences had taken place within the jurisdictional limits of Chitradurga, the crime is transferred to the jurisdictional Police Station at Chitradurga. It then becomes a crime in Crime no.387 of 2022 for the offences aforementioned. It is then the investigation would commence against all the accused. Since the entire incident is triggered on the complaint registered by one Chandrakumar, I deem it appropriate to notice the complaint. The complaint reads as follows:

"ಇಂದ

ಚಂದ್ರಕುಮಾರ್ ಸಿ.,
ಕಾನೂನು ಮತ್ತು ಪರಿವೀಕ್ಷಣಾಧಿಕಾರಿ
ಜಿಲ್ಲಾ ಮಕ್ಕಳ ರಕ್ಷಣಾ ಘಟಕ

#CA-15-17, ಅಂಜನಾದ್ರಿ ಮುಖ್ಯರಸ್ತೆ
4ನೇ ಹಂತ, 2ನೇ ಘಟ್ಟ, ವಿಜಯನಗರ
ಮೈಸೂರು – 32
ಮೊ.ಸಂ:8277235934

ಗೆ,

ಠಾಣಾಧಿಕಾರಿಗಳು
ನಜರ್‌ಬಾದ್ ಆರಕ್ಷಕ ಠಾಣೆ
ನಜರ್‌ಬಾದ್, ಮೈಸೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಮಕ್ಕಳ ಕಲ್ಯಾಣ ಸಮಿತಿ ಆದೇಶದಂತೆ ಹಾಗು ಜಿಲ್ಲಾ ಮಕ್ಕಳ ರಕ್ಷಣಾಧಿಕಾರಿಗಳ ನಿರ್ದೇಶನದಂತೆ ನೀಡುತ್ತಿರುವ ದೂರು.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ನಾನು ಜಿಲ್ಲಾ ಮಕ್ಕಳ ರಕ್ಷಣಾ ಘಟಕ, ಮೈಸೂರು ಇಲ್ಲಿ ಕಾನೂನು ಮತ್ತು ಪರೀವೀಕ್ಷಣಾಧಿಕಾರಿಯಾಗಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿದ್ದೇನೆ.

ಒಡನಾಡಿ ಸಂಸ್ಥೆ ಮೈಸೂರುರವರು ಬಾಲಕಿಯರಾದ ಸಂಜನ 16 ವರ್ಷ ಮತ್ತು ದಿವ್ಯಶ್ರೀ 15 ವರ್ಷ ಇವರು ಚಿತ್ರದುರ್ಗದ ಮುರುಘಾಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಪ್ರಿಯದರ್ಶಿನಿ ಶಾಲೆಯಲ್ಲಿ 10ನೇ ತರಗತಿ ವಿದ್ಯಾಭ್ಯಾಸ ಮಾಡುತ್ತಿರುತ್ತಾರೆ. ಹಾಗು ಅಕ್ಕಮಹದೇವಿ ವಸತಿನಿಲಯದಲ್ಲಿ ನಿವಾಸಿಗಳಾಗಿರುತ್ತಾರೆ. ಈ ಸಂಸ್ಥೆಗಳ ಮುಖ್ಯಸ್ಥರಾದ ಹಾಗೂ ಮಠದ ಮುಖ್ಯಸ್ವಾಮೀಜಿಗಳಾದ ಡಾ॥ಶಿವಮೂರ್ತಿ ಮುರುಘಾ ಶರಣರು ಬಾಲಕಿ ಸಂಜನಳನ್ನು ಸುಮಾರು 3 ½ ವರ್ಷಗಳಿಂದ ಹಾಗು ಬಾಲಕಿ ದಿವ್ಯಶ್ರೀಯನ್ನು ಸುಮಾರು 1 ½ ವರ್ಷಗಳಿಂದ ಲೈಂಗಿಕವಾಗಿ ದೌರ್ಜನ್ಯ ಮಾಡುತ್ತಿರುವುದಾಗಿ, ಇವರಿಗೆ ವಾರ್ಡನ್ ರಶ್ಮಿ ಮಠದ ಮರಿಸ್ವಾಮಿಗಳಾದ ಬಸವಾದಿತ್ಯ, ಲಾಯರ್ ಗಂಗಾಧರಯ್ಯ ಲೀಡರ್ ಪರಮಶಿವಯ್ಯ---ರವರುಗಳು ಸಹಾಯ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ಮಕ್ಕಳ ಕಲ್ಯಾಣ ಸಮಿತಿ, ಮೈಸೂರು ರವರ ಮುಂದೆ ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ. ನಂತರ ಮಕ್ಕಳುಗಳು ಸಹಾ ಆಪ್ತ ಸಮಾಲೋಚನೆಯಲ್ಲಿ ಮೇಲೆ ವಿವರಿಸಿದಂತೆ ತಮಗೆ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯವಾಗಿರುವುದಾಗಿ ಹೇಳಿಕೆ ನೀಡಿರುತ್ತಾರೆ ಹಾಗಾಗಿ ತಪ್ಪಿತಸ್ಥರ ವಿರುದ್ಧ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳುವಂತೆ ಜಿಲ್ಲಾ ಮಕ್ಕಳ ರಕ್ಷಣಾಧಿಕಾರಿಯವರಿಗೆ ಆದೇಶಿಸಿರುತ್ತಾರೆ. ನಂತರ ಜಿಲ್ಲಾ ಮಕ್ಕಳ ರಕ್ಷಣಾಧಿಕಾರಿಯವರು ಸಂಬಂಧಪಟ್ಟ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ದೂರನ್ನು ಸಲ್ಲಿಸಿ ನನಗೆ ಈ ದಿನ ರಾತ್ರಿ ಸುಮಾರು 10:00 ಗಂಟೆಯ ವೇಳೆಯಲ್ಲಿ ಸದರಿಯವರ ನಿರ್ದೇಶನದಂತೆ ತಪ್ಪಿತಸ್ಥರಾದ ಡಾ॥ಶಿವಮೂರ್ತಿ ಮುರುಘಾ ಶರಣರು, ವಾರ್ಡನ್ ರಶ್ಮಿ, ಬಸವಾದಿತ್ಯ, ಲಾಯರ್ ಗಂಗಾಧರಯ್ಯ, ಲೀಡರ್ ಪರಮಶಿವಯ್ಯ ರವರ ವಿರುದ್ಧ ದೂರು ದಾಖಲಿಸಿಕೊಂಡು ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ. ಈಗ ಸಮಯ ತಡರಾತ್ರಿಯಾದುದರಿಂದ ಮಕ್ಕಳನ್ನು ಒಡನಾಡಿ ಸಂಸ್ಥೆಯಲ್ಲಿ ತಾತ್ಕಾಲಿಕವಾಗಿ ಪುನರ್ವಸತಿ ಕಲ್ಪಿಸಿ ಮಕ್ಕಳ ಕಲ್ಯಾಣ ಸಮಿತಿಯು ಆದೇಶಿಸಿದ್ದು, ಪ್ರಸ್ತುತ ಬಾಲಕಿಯರು ಒಡನಾಡಿ ಸಂಸ್ಥೆಯಲ್ಲಿರುತ್ತಾರೆ. ಈ ಕೂಡ ಮಕ್ಕಳ ಆಪ್ತ ಸಮಾಲೋಚನೆ ವರದಿ ಮೂಲ ಪ್ರತಿ ಮತ್ತು ಮಕ್ಕಳ ಕಲ್ಯಾಣ ಸಮಿತಿರವರು ನೀಡಿರುವ ಆದೇಶ ಪ್ರತಿಯನ್ನು ತಮ್ಮ ಅವಗಾಹನೆಗಾಗಿ ಲಗತ್ತಿಸಿರುತ್ತೇನೆ.

ವಂದನೆಗಳೊಂದಿಗೆ

ದಿನಾಂಕ:26.8.2022 ಇಂತಿ ತಮ್ಮ ವಿಶ್ವಾಸಿ

ಸ್ಥಳ: ನಜರ್‌ಬಾದ್ *ಸಹಿ/–*
(ಚಂದ್ರಕುಮಾರ್ ಸಿ.)

ದಿನಾಂಕ 26/8/2022 ರಂದು ರಾತ್ರಿ 10.30 ಗಂಟೆ ಸಮಯ ಪಿರ್ಯಾದಿಯವರು ಠಾಣೆಗೆ ಹಾಜರಾಗಿ ನೀಡಿದ ಲಿಖಿತ ದೂರು ಸ್ವೀಕರಿಸಿ ಮೊ.ಸಂ 155/2022 ಕಲಂ 376(2)(n), 376(3) r/w 149 of IPC ಮತ್ತು 5(L), 6 & 17 of POCSO ಆಕ್ಟ್ ರೀತ್ಯಾ"

(Emphasis added)

The gist of the complaint is that the two victims were inmates in the hostel run by the Mutt, in the name of Akkamahadevi Hotel. One Rashmi – A2 was the warden of the hostel. It is alleged that when the victims were brought into the room of the Pontiff, the Pontiff would assault them sexually and for such assault the Advocate and others have cooperated with accused No.1. What kind of assault is not narrated in its entirety? The police conduct investigation. Since it was a matter concerning POCSO and the allegation was concerning Sections 5 and 6 of the POCSO Act, what was necessary to be done was conduct of medical examination of the victims. The victims refused medical examination, as they did not give their consent for medical examination. In these circumstances, the opinion of the doctor was inconclusive. Long thereafter, a second medical report was sought to which the victims gave their consent and the second medical report is indicative of the fact that hymen is intact. The learned senior counsel, would on this medical report,

contends that there has been no sexual assault on the victims; at best it can be a case of Section 354A and never a case of rape. Based upon the aforesaid evidence, charge sheet comes to be filed against the petitioner and others arraigning the petitioner as accused No.1. Column No.17 of the charge sheet reads as follows:

> *"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ವಿವರ (ಅವಶ್ಯಕವಿದ್ದಲ್ಲಿ ಪ್ರತ್ಯೇಕ ಹಾಳೆ ಲಗತ್ತಿಸಿ)*
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> *ಕಲಂ:– 376(2)(ಎನ್), 376(**DA**), 376(3), 201, 202 506 ರೆ.ವಿ.34 & 37 ಐಪಿಸಿ ಮತ್ತು ಕಲಂ: 17, 5(ಎಲ್), 6 ಪೋಕ್ಸೋ ಕಾಯ್ದೆ 2012 ಮತ್ತು ಕಲಂ 3 ಕ್ಲಾಸ್(1) ಸಬ್ ಕ್ಲಾಸ್, **w(1)(2), 3** ಕ್ಲಾಸ್(2) (**v**)**(va)** ಎಸ್.ಸಿ/ಎಸ್.ಟಿ ಪಿ.ಎ ಆಕ್ಟ್ – 1989.* ***Sec:3(f) & Sec 7 of Religious Institution Prevention of Misuse Act 1988 and Sec: 75 of The Juvenile Justice (Care and Protection of Children) Act 2015***
>
> *1ನೇ ಆಪಾದಿತರು ಲಿಂಗಾಯಿತ ಜಂಗಮ ಜನಾಂಗದವರಾಗಿದ್ದು, 1991 ರಿಂದ ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿ ಬಳಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಪೀಠಾಧ್ಯಕ್ಷರಾಗಿರುತ್ತಾರೆ. ಸದರಿ ಆಪಾದಿತರ ಅಡಿಯಲ್ಲಿ 2ನೇ ಆಪಾದಿತರು ಕೆಲಸ ಮಾಡತ್ತಿರುತ್ತಾರೆ. 4ನೇ ಆಪಾದಿತರು 1ನೇ ಆಪಾದಿತರ ಆಪ್ತರಾಗಿದ್ದು, ಮುರುಘ ಮಠಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಎಲ್ಲಾ ವ್ಯವಹಾರಗಳ ಮಾಹಿತಿ ಹೊಂದಿದವರಾಗಿರುತ್ತಾರೆ.*
>
> *1ನೇ ಆಪಾದಿತರು ತಾವು ಪೀಠಾಧ್ಯಕ್ಷರಾಗಿರುವ ಮುರುಘ ಮಠದ ಅಡಿಯಲ್ಲಿ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯವನ್ನು ನಡೆಸಿಕೊಂಡು ಹೋಗುತ್ತಿದ್ದು, ಮಠವು ಸ್ಥಾಪಿಸಿದ ಮತ್ತು ನಡೆಸುತ್ತಿರುವ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ಪ್ರವೇಶ ಪಡೆದು ಶಿಕ್ಷಣ ಪಡೆಯುತ್ತಿರುವ ಬಡ ಕುಟುಂಬದಿಂದ ಬಂದ ಮಕ್ಕಳಲ್ಲಿ ಅಗತ್ಯವಾಗಿರುವವರಿಗೆ ಉಚಿತ ವಸತಿ ನಿಲಯಗಳಲ್ಲಿ ಆಶ್ರಯ ನೀಡುವ ಸೌಲಭ್ಯವನ್ನು ಕೊಡುತ್ತಾ ಬಂದಿರುತ್ತಾರೆ.*
>
> *ನೊಂದ ಬಾಲಕಿ ಸಾಕ್ಷಿ–2 ರವರು ಬಡ ಕುಟುಂಬದಿಂದ ಬಂದ ಪರಿಶಿಷ್ಟ ಜಾತಿ ಆದಿಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ ಬಾಲಕಿಯಾಗಿದ್ದು, ಮುರುಘ ಮಠಕ್ಕೆ ಸೇರಿರುವ ಪ್ರಿಯದರ್ಶಿನಿ ಪ್ರೌಢಶಾಲೆಯಲ್ಲಿ 2018ನೇ ಸಾಲಿನಲ್ಲಿ 7ನೇ ತರಗತಿಗೆ ಪ್ರವೇಶ ಪಡೆದು ಅದೇ ವರ್ಷ ಮಠದ ಆವರಣದಲ್ಲಿರುವ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದುಕೊಂಡಿರುತ್ತಾಳೆ. ಸದರಿ ವಸತಿ ನಿಲಯಕ್ಕೆ 2ನೇ ಆಪಾದಿತಳು ವಾರ್ಡನ್ ಎಂದು ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದು, ಸಾಕ್ಷಿ–2 ರವರನ್ನು ಒಳಗೊಂಡಂತೆ ವಸತಿ ನಿಲಯದಲ್ಲಿರುವ ಎಲ್ಲಾ ಬಾಲಕಿಯರ ಸುರಕ್ಷತೆ ಮತ್ತು ಪೋಷಣೆ ಆರೋಪಿ 1 ಮತ್ತು 2 ರವರುಗಳ ಜವಾಬ್ದಾರರಾಗಿರುತ್ತಾರೆ.*
>
> *ಸದರಿ ವಸತಿ ನಿಲಯದಲ್ಲಿರುವ ಮಕ್ಕಳ ಮತ್ತು ಕುಟುಂಬದವರ ಅನುಕಂಪ, ಗೌರವ ಮತ್ತು ವಿಶ್ವಾಸವನ್ನು ಗಳಿಸಿಕೊಂಡ ಆರೋಪಿತರು ಈ ರೀತಿಯ ಸ್ಥಾನವನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು*

ವಾರ್ಡನ್ ಆಗಿರುವ 2ನೇ ಆರೋಪಿಯ ಮೂಲಕ ಸಾಕ್ಷಿ–2 ರವರನ್ನು 2018 ರಲ್ಲಿ ಒಂದು ಬಾರಿ ಹಾಗೂ 2020 ರಲ್ಲಿ ಇನ್ನೊಂದು ಬಾರಿ 1ನೇ ಆಪಾದಿತರು ಒಬ್ಬರೇ ಇರುತ್ತಿದ್ದ ಮುರುಘ ಮಠದಲ್ಲಿರುವ ಬೆಡ್‌ರೂಂಗೆ ರಾತ್ರಿ ಸಮಯದಲ್ಲಿ ಪುಸಲಾಯಿಸಿ ಕರೆಸಿಕೊಂಡು ಸದರಿ ಸಾಕ್ಷಿದಾರರು ಅಪ್ರಾಪ್ತಳೆಂದು ಹಾಗೂ ಪರಿಶಿಷ್ಟ ಜಾತಿಯ ಆದಿ ಕರ್ನಾಟಕ ಜನಾಂಗದವಳೆಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಆಕೆ ಮನಸ್ಸಿಗೆ ವಿರುದ್ಧವಾಗಿ ಚಾಕ್ಲೆಟ್ ರೂಪದಲ್ಲಿ ಮತ್ತು ಬರುವ ವಸ್ತುವನ್ನು ತಿನ್ನಿಸಿ ಅವಳು ಅರಿವು ಕಳೆದುಕೊಂಡ ನಂತರ ಅವಳ ಮೇಲೆ ಲೈಂಗಿಕ ಬಲಾತ್ಕಾರವೆಸಗಿ ತಮ್ಮ ದೈಹಿಕ ಆಸೆಯನ್ನು ತೀರಿಸಿಕೊಂಡು ಎಚ್ಚರವಾದ ನಂತರ ಈ ವಿಷಯವನ್ನು ಯಾರಿಗೂ ತಿಳಿಸಿದಬಾರದೆಂದು ಬೆದರಿಸಿದ ಅಪರಾಧಗಳನ್ನು ವೆಸಗಿದ್ದು, ಸದರಿ 1ನೇ ಆಪಾದಿತರು ಮುರುಘ ಮಠದ ಪೀಠಾಧ್ಯಕ್ಷರಾಗಿ ತನ್ನ ಪೋಷಣೆಯಲ್ಲಿದ್ದ ಸಾಕ್ಷಿ–2 ರವರನ್ನು ಬೆಡ್‌ರೂಂಗೆ ಕರೆಯಿಸಿಕೊಂಡು ಹಲವಾರು ಬಾರಿ ಲೈಂಗಿಕವಾಗಿ ಬಳಸಿಕೊಂಡು ಧಾರ್ಮಿಕ ಕೇಂದ್ರವನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡಿದ್ದರಿಂದ **ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯದ ಸಾಕ್ಷಿಗಳನ್ನು ನಾಶಪಡಿಸಿ ಅಪರಾಧವೆಸಗಿದ್ದರಿಂದ ಕಲಂ:376(2)(ಎನ್), 376(DA), 376(3), 201, 202 506 ರೆ.ವಿ.34 & 37 ಐಪಿಸಿ ಮತ್ತು ಕಲಂ:17, 5(ಎಲ್), 6 ಪೋಕ್ಸೋ ಕಾಯ್ದೆ 2012 ಮತ್ತು ಕಲಂ 3 ಕ್ಲಾಸ್(1) ಸಬ್ ಕ್ಲಾಸ್, W(1)(2), 3 ಕ್ಲಾಸ್(2) (v)(va) ಎಸ್.ಸಿ./ಎಸ್.ಟಿ. ಪಿ.ಎ ಆಕ್ಟ್ – 1989. Sec.3(f) & Sec 7 of Regligious Institution prevention of Misuse Act 1988 and Sec: 75 of The Juvenile Justice (Care and Protection of Children) Act 2015 ಅಡಿಯಲ್ಲಿ ಆರೋಪಣೆ.**

2ನೇ ಆಪಾದಿತರು 1ನೇ ಆಪಾದಿತರ ಅಧೀನದಲ್ಲಿರುವ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದ ವಾರ್ಡನ್ ಆಗಿ ಸುಮಾರು 06 ವರ್ಷಗಳಿಂದ ಕೆಲಸ ಮಾಡುತ್ತಿರುತ್ತಾರೆ.

ಸದರಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ವಾಸವಾಗಿರುವ ಬಾಲಕಿ ಹಾಗೂ ಹೆಣ್ಣುಮಕ್ಕಳನ್ನು ಪೋಷಣೆ ಮಾಡುವುದು ಇವರ ಕರ್ತವ್ಯವಾಗಿರುತ್ತದೆ.

ಈ ದೋಷಾರೋಪಣೆ ಪಟ್ಟಿಯ ಕ್ರ.ಸಂ. 12 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ 2ನೇ ಆಪಾದಿತರು 2021 ರಲ್ಲಿ ಸದರಿ ವಸತಿ ನಿಲಯಕ್ಕೆ ದಾಖಲುಗೊಂಡ 2ನೇ ಸಾಕ್ಷಿದಾರರನ್ನು 1ನೇ ಆಪಾದಿತರ ಸೂಚನೆ ಮೇರೆಗೆ ಪುಸಲಾಯಿಸಿ ಮಠದಲ್ಲಿರುವ 1ನೇ ಆಪಾದಿತರು ಒಬ್ಬರೇ ಇರುವ ಬೆಡ್‌ರೂಂಗೆ 2021 ರಲ್ಲಿ ಒಂದು ಬಾರಿ, 2022ರಲ್ಲಿ ಇನ್ನೊಂದು ಬಾರಿ 2ನೇ ಸಾಕ್ಷಿದಾರರು ಅಪ್ರಾಪ್ತಳು ಎಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ 1ನೇ ಆಪಾದಿತರು ಅವರ ಅಕ್ರಮ ಲೈಂಗಿಕ ಚಟುವಟಿಕೆಗಳಿಗೆ ಬಳಸಿಕೊಳ್ಳಲು ಪುಸಲಾಯಿಸಿ ರಾತ್ರಿ ಸಮಯದಲ್ಲಿ ಕಳುಹಿಸಿಕೊಟ್ಟಿರುತ್ತಾರೆ. ಇದಲ್ಲದೇ 2ನೇ ಸಾಕ್ಷಿದಾರರು ಅಪ್ರಾಪ್ತಳೆಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ 2021 ರಿಂದ 2022 ರವರೆಗೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದಾಡಿ ಸ್ಕೇಲ್‌ನಿಂದ ಹೊಡೆದು ಮಾನಸಿಕ ಮತ್ತು ದೈಹಿಕವಾಗಿ ಹಲ್ಲೆ ಮಾಡಿ ಅಪರಾಧ ವೆಸಗಿರುತ್ತಾರೆ ಅಂತ ಕಲಂ: **376(DA), 372, 366, 323, 504, 201, 202 ರೆ.ವಿ. 34 ಮತ್ತು 37 ಐಪಿಸಿ ಮತ್ತು ಕಲಂ: 6 ರೆ.ವಿ. 17 ಪೋಕ್ಸೋ ಕಾಯ್ದೆ 2012 ಮತ್ತು ಕಲಂ 3 ಕ್ಲಾಸ್(1) ಸಬ್ ಕ್ಲಾಸ್, W(1)(2), 3 ಕ್ಲಾಸ್(2) (v)(va) ಎಸ್.ಸಿ./ಎಸ್.ಟಿ. ಪಿ.ಎ ಆಕ್ಟ್ – 1989. Sec: 75 & 77 of The Juvenile Justice (Care and Protection of Children) Act 2015 ಅಡಿಯಲ್ಲಿ ಆರೋಪಣೆ.**

ಈ ದೋಷಾರೋಪಣೆ ಪಟ್ಟಿಯ ಕ್ರ.ಸಂ.12 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ 4ನೇ ಆಪಾದಿತರು ಸವರ್ಣೀಯ ಜನಾಂಗದ ಲಿಂಗಾಯಿತ ಜನಾಂಗದವರಾಗಿದ್ದು, ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯಕ್ಕೆ 2ನೇ ಆಪಾದಿತಳು ವಾರ್ಡನ್ ಇರುವ ಬಗ್ಗೆ ಗೊತ್ತಿದ್ದು, ಸದರಿ ವಸತಿ ನಿಲಯದಲ್ಲಿದ್ದ ಅಪ್ರಾಪ್ತೆ ಹಾಗೂ ಪರಿಶಿಷ್ಟ ಜಾತಿಯ ಎ.ಕೆ.ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ 2ನೇ ಸಾಕ್ಷಿದಾರರನ್ನು 1ನೇ ಆಪಾದಿತರ ಅಕ್ರಮ ಲೈಂಗಿಕ ಚಟುವಟಿಕೆ ಹಾಗೂ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯಕ್ಕೆ ಪುಸಲಾಯಿಸಿ 2018 ರಲ್ಲಿ ಒಂದು ಬಾರಿ 2020 ರಲ್ಲಿ ಇನ್ನೊಂದು ಬಾರಿ ಮಠದಲ್ಲಿದ್ದ

*1ನೇ ಆಪಾದಿತರ ಬೆಡ್‌ರೂಂಗೆ ಕಳಹಿಸಿಕೊಟ್ಟು ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯವೆಸಗಲು ಸಹಕರಿಸಿದ ಬಗ್ಗೆ ಗೊತ್ತಿದ್ದರೂ ಸಹ, ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯಕ್ಕೆ ಧಾರ್ಮಿಕ ಕೇಂದ್ರವನ್ನು ದುರ್ಬಳಕೆ ಮಾಡಿಕೊಂಡಿರುವುದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಯಾರಿಗೂ ತಿಳಿಸಿದೇ ಸಾಕ್ಷ್ಯಗಳನ್ನು ನಾಶಪಡಿಸಲು ಪ್ರತ್ಯಕ್ಷ ಮತ್ತು ಪರೋಕ್ಷವಾಗಿ ಅಪರಾಧವೆಸಗಲು ಸಹಕರಿಸಿರುತ್ತಾರೆ ಅಂತ ಕಲಂ: 366, 376**DA,** 372, 201, 202 323, 504 ರೆ.ವಿ. 34 ಮತ್ತು 37 ಐಪಿಸಿ ಮತ್ತು ಕಲಂ: 6 ರೆ.ವಿ. 17, 21 ಪೋಕ್ಸೋ ಕಾಯ್ದೆ 2012 ಮತ್ತು ಕಲಂ 3 ಕ್ಲಾಸ್(1) ಸಬ್ ಕ್ಲಾಸ್, **W(1)(2), 3** ಕ್ಲಾಸ್(2) (**v**)(**va**) ಎಸ್.ಸಿ./ಎಸ್.ಟಿ. ಪಿ.ಎ ಆಕ್ಟ್ – 1989. **Sec: 75 of The Juvenile Justice (Care and Protection of Children) Act 2015** ಅಡಿಯಲ್ಲಿ ಆರೋಪಣೆ."*

(Emphasis added)

After the charge sheet is filed, the petitioner files an application under Section 226 of the Cr.P.C., seeking his discharge from the array of accused. The concerned Court by its order dated 04-03-2023 rejects the application holding as follows:

"…. …. ….

*51. As observed in the decision of **State Bihar Vs. Ramesh Singh reported in 1997 SCC 39 relied upon by the counsel for accused No.1 at the stage of framing of charges the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. But, strong suspicion against the accused, which lead the Court to think that there is ground for presuming that the accused has committed an offence and in such an event it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.** Accordingly, I answer the above point partly in the affirmative and proceed to pass the following:*

ORDER

It is held that, there are sufficient materials to frame charges against the accused No.1 for offences punishable under Section 376(2)(n), 376(DA), 376(3), 202, 506 read with Section 34 and 37 of IPC, Sections 5(1) and 6 of

Protection of Children from Sexual Offences Act, Section 3(1)(w)(i)(ii), 3(2)(v)(v-a) of SC/ST (POA) Act and Sections 3(f) and 7 of Religious Institutions (Prevention of Misuse) Act, 1988 and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015."

On the rejection of the discharge application, the impugned order of framing of charges emerges. Since the fulcrum of the challenge is to framing of charges, I deem it appropriate to notice the charges framed in their entirety against the petitioner. They read as follows:

THE CHARGES FRAMED:

1. *1ನೇ ಆರೋಪಿಯಾದ ನೀವು ಲಿಂಗಾಯಿತ ಜಂಗಮ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು 1991 ರಿಂದ ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ ಹಟ್ಟಿಯ ಬಳಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಪೀಠಾಧ್ಯಕ್ಷರಾಗಿದ್ದು, ಸದರಿ ಮಠದ ಆವರಣದಲ್ಲಿ ಮತ್ತು ಅಧೀನದಲ್ಲಿ ಇರುವ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದುಕೊಂಡಿದ್ದ ಹಾಲಿ 16 ವರ್ಷದ ಆದಿ ಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ – 02 ರವರ ಮೇಲೆ ಆಕೆ 7 ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗಿನಿಂದ ಅನೇಕ ಬಾರಿ ಲೈಂಗಿಕ ಬಲತ್ಕಾರವೆಸಗಿದ್ದು, **ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ 376 (2) (ಎನ್), 376 (3) ಹಾಗೂ ಪೋಕ್ಸೋ ಕಾಯಿದೆ 5(ಎಲ್), 6** ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿದೀರಿ.*

2. *ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯಾದ ನೀವು ಲೈಂಗಿಕ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿ ಆದಿಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವಳು ಎಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಮುಟ್ಟಿ ಲೈಂಗಿಕ ಅತ್ಯಾಚಾರವೆಸಗಿದ್ದು, **ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಎಸ್ ಸಿ / ಎಸ್ ಟಿ ದೌರ್ಜನ್ಯ ತಡೆ ಕಾಯಿದೆ ಕಲಂ 3(1) (ಡಬ್ಲೂ)(I)(II)** ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿದೀರಿ.*

3. *ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯಾದ ನೀವು ನೊಂದ ಬಾಲಕಿ ಆದಿಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವಳು ಎಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಆಕೆಯ ಮೇಲೆ ಲೈಂಗಿಕ ಅತ್ಯಾಚಾರವೆಸಗಿದ್ದು **ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಎಸ್ ಸಿ / ಎಸ್ ಟಿ***

ದೌರ್ಜನ್ಯ ತಡೆ ಕಾಯಿದೆ ಕಲಂ 3(2) (v)ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿದೀರಿ.

4. *ಮೇಲೆ ಹೇಳಿದ ಸಮಯ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯಾದ ನೀವು ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಪೀಠಾಧ್ಯಕ್ಷರಾಗಿ ಸದರಿ ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ಗೃಹದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ–02 ಹಾಗೂ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಶೋಷಣೆಗೆ ಬಳಸಿಕೊಂಡು ಯಾರಿಗೂ ತಿಳಿಸದಂತೆ ಬೆದರಿಕೆ ಹಾಕಿ* ***ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಬಾಲ ನ್ಯಾಯಿಕ ಸಂರಕ್ಷಣೆ ಕಾಯಿದೆ ಕಲಂ 75*** *ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿದೀರಿ.*

5. ***ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯಾದ ನೀವು ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಪೀಠಾಧ್ಯಕ್ಷರಾಗಿ ಸದರಿ ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ಗೃಹದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ–02 ಹಾಗೂ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಶೋಷಣೆಗೆ ಬಳಸಿಕೊಂಡು ಯಾರಿಗೂ ತಿಳಿಸದಂತೆ ಬೆದರಿಕೆ ಹಾಕಿ ಅಪರಾಧ ಕೃತ್ಯಗಳನ್ನು ನಡೆಸಲು ದುರುಪಯೋಗ ಪಡಿಸಿಕೊಂಡಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಧಾರ್ಮಿಕ ಕೇಂದ್ರ ದುರ್ಬಳಕೆ ತಡೆ ಅಧಿನಿಯಮ ಕಲಂ 3(ಎಫ್), 3(ಸಿ), 3(5), 7 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿದೀರಿ.***

6. ***ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯಾದ ನೀವು 2 ಮತ್ತು 3 ನೇ ಆರೋಪಿಗಳ ಸಹಕಾರದೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ 16 ವರ್ಷಕ್ಕಿಂತ ಕಡಿಮೆ ವಯಸ್ಸಿನ ಚಾಸಾ–02 ಮತ್ತು 3 ರವರನ್ನು, ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ನಿಮ್ಮ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕರೆಯಿಸಿಕೊಂಡು ಲೈಂಗಿಕ ಅತ್ಯಾಚಾರವೆಸಗಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 376–ಡಿಎ ಸಹವಾಚಕ 34 ಮತ್ತು 37 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿದೀರಿ.***

7. *ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯಾದ ನೀವು ನೊಂದ ಬಾಲಕಿಗೆ ತನ್ನ ಮೇಲೆ ಲೈಂಗಿಕ ಅತ್ಯಾಚಾರವಾದ ವಿಚಾರವನ್ನು ಯಾರಿಗೂ ತಿಳಿಸದಂತೆ ಬೆದರಿಕೆ ಹಾಕಿದ್ದು,* ***ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ 506 ಸಹವಾಚಕ 34*** *ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.*

8. ***ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯಾದ ನೀವು 2 ಮತ್ತು 3ನೇ ಆರೋಪಿಯೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ಮೇಲಿನ ಅಪರಾಧಿಕ ಕೃತ್ಯಗಳನ್ನು ಮರೆಮಾಚುವ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿಯರನ್ನು ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ನಿಮ್ಮ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಹಿಂಬಾಗಿಲಿನಿಂದ ಕರೆಯಿಸಿಕೊಂಡು ಮತ್ತು ನೀವು ಲೈಂಗಿಕ ಅತ್ಯಾಚಾರ ಮಾಡಿದ್ದರಿಂದ ಚಾಸಾ–4 ಗರ್ಭವತಿಯಾದಾಗ, 2 ಮತ್ತು 3ನೇ ಆರೋಪಿಗಳ ಸಹಕಾರದೊಂದಿಗೆ ಆಕೆಯ ಗರ್ಭ ಚೀಲವನ್ನು ತೆಗೆಯಿಸಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 201 ಸಹವಾಚಕ 34 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.***

9. ***ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯಾದ ನೀವು ಲಿಂಗಯಿತ ಜಂಗಮ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು, ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ–2 ಅದಿಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವಳು ಎಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಆಕೆಯ ಮೇಲೆ ಮೇಲೆ ಹೇಳಿದ ಆಪರಾಧಿಕ ಕೃತ್ಯ ಎಸಗಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಎಸ್ ಸಿ / ಎಸ್ ಟಿ ದೌರ್ಜನ್ಯ ತಡೆ ಕಾಯಿದೆ ಕಲಂ 3(2)(V-a) ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.***

10. ***2ನೇ ಆರೋಪಿಯಾದ ನೀವು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಮತ್ತು ಆವರಣದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದ ವಾರ್ಡನ್ ಆಗಿದ್ದು, ಸದರಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ 1 ಮತ್ತು 3 ನೇ ಆರೋಪಿಗಳೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ–2 ಹಾಗೂ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬಳಸಿಕೊಳ್ಳಲು ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕಳುಹಿಸಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 376–ಡಿಎ ಸಹವಾಚಕ 34 ಮತ್ತು 37 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿದೀರಿ.***

11. *2ನೇ ಆರೋಪಿಯಾದ ನೀವು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಮತ್ತು ಆವರಣದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದ ವಾರ್ಡನ್ ಆಗಿದ್ದು, ಸದರಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ 1 ಮತ್ತು 3 ನೇ ಆರೋಪಿಗಳೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ–2 ಹಾಗೂ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬಳಸಿಕೊಳ್ಳುವ ಉದ್ದೇಶದಿಂದ ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕಳುಹಿಸಿದ್ದು, **ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ 366 ಸಹವಾಚಕ 34** ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.*

12. *2ನೇ ಆರೋಪಿಯಾದ ನೀವು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಮತ್ತು ಆವರಣದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದ ವಾರ್ಡನ್ ಆಗಿದ್ದು, ಸದರಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2, 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ–2 ಹಾಗೂ ಇತರೆ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ 1ನೇ ಆರೋಪಿ ಬಳಸಿಕೊಳ್ಳುವ ಉದ್ದೇಶದಿಂದ ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕಳುಹಿಸಿದ್ದು, **ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಪೋಕ್ಸೋ ಕಾಯಿದೆ ಕಲಂ 6 ಸಹವಾಚಕ 17** ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿದೀರಿ.*

13. 2ನೇ ಆರೋಪಿಯಾದ ನೀವು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಮತ್ತು ಆವರಣದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದ ವಾರ್ಡನ್ ಆಗಿದ್ದು, ಸದರಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2, 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ–2 ಹಾಗೂ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ 1ನೇ ಆರೋಪಿ ಬಳಸಿಕೊಳ್ಳುವ ಉದ್ದೇಶದಿಂದ ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕಳುಹಿಸಿದ್ದು ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ – 2 ಹಾಗೂ ಇತರೆ ಹೆಣ್ಣು ಹೋಗಲು ನಿರಾಕರಿಸಿದಾಗ ಬೈದು, ಹೊಡೆದು, ಕಿರುಕುಳ ನೀಡಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಬಾಲ ನ್ಯಾಯಿಕ ಸಂರಕ್ಷಣಾ ಕಾಯಿದೆ ಕಲಂ 75 ಮತ್ತು ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 504 ಮತ್ತು 323 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.

14. ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 2ನೇ ಆರೋಪಿಯಾದ ನೀವು ಮರಾಠಿ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು, ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ – 2 ಆದಿ ಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವರು ಎಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಮೇಲೆ ಹೇಳಿದಂತೆ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 376–ಡಿಎ, ಪೋಕ್ಸೋ ಕಾಯಿದೆ ಕಲಂ 6 ಸಹವಾಚಕ 17 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧಿಕ ಕೃತ್ಯವನ್ನು ಎಸಗಿದ್ದು ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಎಸ್ ಸಿ / ಎಸ್ ಟಿ ದೌರ್ಜನ್ಯ ತಡೆ ಕಾಯಿದೆ ಕಲಂ 3(2)**(v)** ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.

15. ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 2ನೇ ಆರೋಪಿಯಾದ ನೀವು ಮರಾಠಿ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು, ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ – 2 ಆದಿ ಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವರು ಎಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಮೇಲೆ ಹೇಳಿದಂತೆ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 323 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧಿಕ ಕೃತ್ಯವನ್ನು ಎಸಗಿದ್ದು ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಎಸ್ ಸಿ / ಎಸ್ ಟಿ ದೌರ್ಜನ್ಯ ತಡೆ ಕಾಯಿದೆ ಕಲಂ 3(2)**(V-a)** ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.

16. 2ನೇ ಆರೋಪಿಯಾದ ನೀವು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಮತ್ತು ಆವರಣದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದ ವಾರ್ಡನ್ ಆಗಿದ್ದು, ಸದರಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2, 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ 1 ಮತ್ತು 3 ನೇ ಆರೋಪಿಗಳೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ–2 ಹಾಗೂ ಇತರೆ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬಳಸಿಕೊಳ್ಳುವ ಉದ್ದೇಶದಿಂದ ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಮುಂಬಾಗಿಲಿನಲ್ಲಿ ಸಿ.ಸಿ.ಕ್ಯಾಮಾರ ಇದ್ದಕಾರಣ ಆರೋಪಿಯನ್ನು, ಮತ್ತು ಅಪರಾಧಿಕ ಕೃತ್ಯವನ್ನು ಮರೆಮಾಚುವ ಉದ್ದೇಶದಿಂದ ಹಿಂಬಾಗಿಲಿನಿಂದ ಕಳುಹಿಸುತ್ತಿದ್ದು ಮತ್ತು ಚಾಸಾ–4 ರವರು 1ನೇ ಆರೋಪಿಯ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯದಿಂದ ಗರ್ಭವತಿಯಾದಾಗ ಆಕೆಯ ಗರ್ಭ ಚೀಲವನ್ನು ತೆಗೆಯಿಸಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 201 ಸಹವಾಚಕ 34 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.

17. ***3ನೇ ಆರೋಪಿಯಾದ ನೀವು ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಎಸ್ ಜೆ ಎಂ ವಿದ್ಯಾಪೀಠದ ಕಾರ್ಯದರ್ಶಿಯಾಗಿದ್ದು, 1ನೇ ಅಪಾದಿತರ ಆಪ್ತರಾಗಿದ್ದು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಮತ್ತು ಆವರಣದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ ಚಾಸಾ – 2, 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ 1 ಮತ್ತು 2ನೇ ಆರೋಪಿಗಳೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2 ಹಾಗೂ ಇತರೆ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬಳಸಿಕೊಳ್ಳುವ ಉದ್ದೇಶದಿಂದ ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕಳುಹಿಸಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 376–ಡಿಎ ಸಹವಾಚಕ 34 ಮತ್ತು 37 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.***

18. *3ನೇ ಆರೋಪಿಯಾದ ನೀವು ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಎಸ್ ಜೆ ಎಂ ವಿದ್ಯಾಪೀಠದ ಕಾರ್ಯದರ್ಶಿಯಾಗಿದ್ದು, 1ನೇ ಅಪಾಧಿತರ ಆಪ್ತರಾಗಿದ್ದು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಮತ್ತು ಆವರಣದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ ಚಾಸಾ – 2, 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ 1 ಮತ್ತು 2ನೇ ಆರೋಪಿಗಳೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2 ಹಾಗೂ ' ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬಳಸಿಕೊಳ್ಳುವ ಉದ್ದೇಶದಿಂದ ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕಳುಹಿಸಿದ್ದು, **ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 366 ಸಹವಾಚಕ 34** ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.*

19. *3ನೇ ಆರೋಪಿಯಾದ ನೀವು ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಎಸ್ ಜೆ ಎಂ ವಿದ್ಯಾಪೀಠದ ಕಾರ್ಯದರ್ಶಿಯಾಗಿದ್ದು, 1ನೇ ಅಪಾದಿತರ ಆಪ್ತರಾಗಿದ್ದು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಮತ್ತು ಆವರಣದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ ಚಾಸಾ – 2, 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ 1 ಮತ್ತು 2ನೇ ಆರೋಪಿಗಳೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2 ಹಾಗೂ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು 1ನೇ ಆರೋಪಿ ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬಳಸಿಕೊಳ್ಳಲು ಚಾಸಾ–2 ಹಾಗೂ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕಳುಹಿಸಿದ್ದು, **ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಪೋಕ್ಸೋ ಕಾಯಿದೆ ಕಲಂ 6 ಸಹವಾಚಕ 17** ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.*

20. ***3ನೇ ಆರೋಪಿಯಾದ ನೀವು ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಎಸ್ ಜೆ ಎಂ ವಿದ್ಯಾಪೀಠದ ಕಾರ್ಯದರ್ಶಿಯಾಗಿದ್ದು, 1ನೇ ಅಪಾದಿತರ ಆಪ್ತರಾಗಿದ್ದು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು***

ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ ಚಾಸಾ – 2, 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ ನೊಂದ ಬಾಲಕಿ /ಚಾಸಾ–2, ಹಾಗೂ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ 1ನೇ ಆರೋಪಿ ಬಳಸಿಕೊಳ್ಳಲು ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕಳುಹಿಸಿದ್ದು, ನೊಂದ ಬಾಲಕಿ/ಚಾಸಾ–2 ಹಾಗೂ ಇತರೆ ಹೆಣ್ಣು ಹೋಗಲು ನಿರಾಕರಿಸಿದಾಗ ಬೈದು, ಹೊಡೆದು, ಕಿರುಕುಳ ನೀಡಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಬಾಲ ನ್ಯಾಯಿಕ ಸಂರಕ್ಷಣಾ ಕಾಯಿದೆ ಕಲಂ 75 ಮತ್ತು ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 504 ಮತ್ತು 323ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.

21. 3ನೇ ಆರೋಪಿಯಾದ ನೀವು ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಎಸ್ ಜೆ ಎಂ ವಿದ್ಯಾಪೀಠದ ಕಾರ್ಯದರ್ಶಿಯಾಗಿದ್ದು, 1ನೇ ಅಪಾದಿತರ ಆಪ್ತರಾಗಿದ್ದು ಚಿತ್ರದುರ್ಗ ನಗರದ ಎಂ.ಕೆ.ಹಟ್ಟಿಯಲ್ಲಿ ಇರುವ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘ ರಾಜೇಂದ್ರ ಬೃಹನ್ಮಠದ ಅಧೀನದಲ್ಲಿ ಇರುವ ಶ್ರೀ ಅಕ್ಕಮಹಾದೇವಿ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿದ್ದ ನೊಂದ ಬಾಲಕಿ/ ಚಾಸಾ – 2, 7ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದಾಗ 1 ಮತ್ತು 2 ನೇ ಆರೋಪಿಯೊಂದಿಗೆ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ನೊಂದ ಬಾಲಕಿ /ಚಾಸಾ–2, ಹಾಗೂ ವಸತಿ ನಿಲಯದಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದಿರುವ ಇತರೆ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಲೈಂಗಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬಳಸಿಕೊಳ್ಳುವ ಉದ್ದೇಶದಿಂದ ಪುಸಲಾಯಿಸಿ ಸದರಿ ಮಠದಲ್ಲಿ ಇರುವ 1ನೇ ಆರೋಪಿಯ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಮುಂಬಾಗಿಲಿನಲ್ಲಿ ಸಿ.ಸಿ.ಕ್ಯಾಮರ ಇದ್ದಕಾರಣ ಆರೋಪಿಯನ್ನು ಮತ್ತು ಅಪರಾಧಿಕ ಕೃತ್ಯವನ್ನು ಮರೆಮಾಚುವ ಉದ್ದೇಶದಿಂದ ಹಿಂಬಾಗಿಲಿನಿಂದ ಕಳುಹಿಸುತ್ತಿದ್ದು ಮತ್ತು ಚಾಸಾ–4 ರವರು 1ನೇ ಆರೋಪಿಯ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯದಿಂದ ಗರ್ಭವತಿಯಾದಾಗ ಆಕೆಯ ಗರ್ಭ ಚೀಲವನ್ನು ತೆಗೆಯಿಸಿದ್ದು, ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 201 ಸಹವಾಚಕ 34 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.

22. ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 3ನೇ ಆರೋಪಿಯಾದ ನೀವು ಲಿಂಗಾಯಿತ ಜಂಗಮ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ – 2 ಆದಿ ಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವರು ಎಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಮೇಲೆ ಹೇಳಿದಂತೆ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 376–ಡಿಎ, ಪೋಕ್ಸೋ ಕಾಯಿದೆ ಕಲಂ 6 ಸಹವಾಚಕ 17 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧಿಕ ಕೃತ್ಯವನ್ನು ಎಸಗಿದ್ದು ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಎಸ್ ಸಿ / ಎಸ್ ಟಿ ದೌರ್ಜನ್ಯ ತಡೆ ಕಾಯಿದೆ 3(2)(**V**) ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.

23. ಮೇಲೆ ಹೇಳಿದ ಅವಧಿ ಮತ್ತು ಸ್ಥಳದಲ್ಲಿ 3ನೇ ಆರೋಪಿಯಾದ ನೀವು ಲಿಂಗಾಯಿತ ಜಂಗಮ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು ನೊಂದ ಬಾಲಕಿ / ಚಾಸಾ – 2 ಆದಿ ಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವರು ಎಂದು ತಿಳಿದಿದ್ದರೂ ಸಹ ಮೇಲೆ ಹೇಳಿದಂತೆ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ ಕಲಂ 323 ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧಿಕ ಕೃತ್ಯವನ್ನು ಎಸಗಿದ್ದು ನನ್ನ ಸಂಜ್ಞಾನಕ್ಕೆ ಬರುವ ಎಸ್ ಸಿ / ಎಸ್ ಟಿ ದೌರ್ಜನ್ಯ ತಡೆ ಕಾಯಿದೆ 3(2)(**V-a**) ರ ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾದವನ್ನು ಎಸಗಿದೀರಿ.

ಈ ಮೇಲಿನ ಆಪಾದನೆಗಳಿಗೆ ನಿಮ್ಮ ಮೇಲೆ ವಿಚಾರಣೆ ನಡೆಸಲಾಗುವುದು."

(Emphasis added)

In the light of the challenge to the charges so framed, I deem it appropriate to consider the submissions, charge by charge, as the contentions advanced by the learned senior counsel, *qua* the impugned order framing of charges, is charge by charge and consider their sustainability.

A. RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1988.

11. The 5th charge is for offences punishable under Section 3 and 7 of the Religious Institutions (Prevention of Misuse) Act, 1988. Sections 3 and 7 read as follows:

> *"**3. Prohibition of use of religious institutions for certain purposes**.—No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution—*
>
> *(a) for the promotion or propagation of any political activity; or*
>
> *(b) for the harbouring of any person accused or convicted of an offence under any law for the time being in force; or*

(c) for the storing of any arms or ammunition; or

(d) for keeping any goods or articles in contravention of law for the time being in force; or

(e) for erecting or putting up of any construction or fortification, including basements, bunkers, towers or walls without a valid licence or permission under any law for the time being in force; or

(f) for the carrying on of any lawful or subversive act prohibited under any law for the time being in force or in contravention of any order made by any court; or

(g) for the doing of any act which promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(h) for the carrying on of any activity prejudicial to the sovereignty, unity and integrity of India; or

(i) for the doing of any act in contravention of the provisions of the Prevention of Insults to National Honour Act, 1971 (69 of 1971).

… … …

7. Penalties.—Where any religious institution or manager thereof contravenes the provisions of Section 3, Section 4, Section 5 or Section 6, the manager and every person connected with such contravention shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees."

(Emphasis supplied)

Sections 3 and 7 as quoted *supra* need not detain this Court for long or delve deep into the matter *qua* its interpretation as a co-ordinate Bench of this Court in a case concerning the same accused, in Writ Petition No.2331 of 2023 disposed of on 22-05-2023 has held as follows:-

> ***"A. THE RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1988 IN A NUTSHELL:***
>
> ***(i) This Act is a small statute in all comprising of ten sections. Its one line Preamble reads: 'An Act to prevent the misuse of religious institutions for political and other purposes.' Section 1 gives the title; sub-section (2) of Section 1 gives the Act a pan-India application; sub-section (3) fixes 26 May 1988 as the date w.e.f. which the Act has come into force. Section (2) is the 'dictionary clause' of the statute. It inter alia defines the terms like ammunition, arms, political activity, political party, religious institution, manager of such institution, etc.***
>
> *(ii) Section 3 of the statute prohibits use of any religious institution or its premises for promotion of political activity, harboring of any accused/convict or for storing arms & ammunitions; it also bars commission of any unlawful or subversive acts or any act which promotes disharmony, hatred, enmity or ill-will between communities/groups of people. Further, its prohibits extends to any act calculated to insult the National Honour. Section (4) prohibits, subject to certain exceptions, entry of arms/ammunition or persons carrying them into religious institution. Section 5 prohibits use of funds & properties of 'religious institutions' for political party or activity or for the commission of any offence. Section 6 prohibits allowing of any ceremony, festival, congregation, procession or assembly organized by or for any political party into the religious institution.*

(iii) Section 7 of the statute prescribes the penalties; sub-section (1) of section 8 provides for disqualification & removal of employees of any religious institution on conviction for the offence under this Act; sub-section (2) of section 8 empowers the Criminal Court to injunct the accused from exercising the powers and duties of his office/post in the religious institution 'pending trial' of criminal cases; sub-section (3) provides for filling of vacancy in such a contingency arising out of order of removal/restraint. Section 9 enjoins employees of the religious institutions with a duty to give information to the Police about the contravention of any provisions of the Act; it also prescribes penalty for infraction of this duty. Section 10 repeals the ordinance that preluded this Act.

***B. AS TO APPLICABILITY OF THE 1988 ACT TO THE CASE OF THE PONTIFF**:*

(i) Petitioner-Pontiff happens to be one of the accused in the subject criminal cases and he having been arrested, continues to be in the judicial custody since 01.09.2022. After investigation, the Police have filed the charge sheet and the trial Court has taken cognizance of the alleged offences which prima facie involve moral turpitude; these offences are punishable under Sections 376(2)(n), 376(3) read with section 149 of IPC and sections 17, 5(l) & 6 of POCSO Act, 2012, is apparent from the prosecution papers. As already mentioned above, the Government Order dated 13.12.2022 appointing the Administrator for the Mutt & its institutions, was put in challenge inter alia by the Petitioner & others in two Writ Petitions Nos. 25316/2022 & 25318/2022. This Court has handed the judgment today invalidating the said appointment, of course with some observations. Be that as it may.

(ii) Learned Sr. Advocate Mr.C.V.Nagesh appearing for the Petitioner argued that going by the intent & policy content of the 1988 Act, there is absolutely no scope for the invocation of any of its provisions and therefore, the impugned order is liable to be voided. This is disputed by the learned AG. In construing the nature, scope & application of plenary legislations like the one at hands, courts are entitled to take into account such external & historical facts as may

be necessary. They can also have regard to the surrounding circumstances that obtained at the time whilst the statute was enacted. This is the practice in all the civilized jurisdiction. Lord Halsbury in HERRON vs. RATHMINES AND RATHGAR IMPROVEMENT COMMISSIONERS observed at page 502 as under:

> *"…The subject-matter with which the Legislature was dealing, and the facts existing at the time with respect to which the Legislature was legislating are legitimate topics to consider in ascertaining what was the object and purpose of the Legislature in passing the Act…".*

Lord Atkinson in KEATES vs. LEWIS MERTHYR CONSOLIDATED COLLIERIES LTD , said:

> *"…In the construction of statutes it is, of course, at all times and under all circumstances permissible to have regard to the state of things existing at the time the statute was passed and to the evils, which, as appears from the provisions, it was designed to remedy…".*

The US Supreme Court in GREAT NORTHERN RAILWAY COMPANY vs. UNITED STATES OF AMERICA observed as under:

> *"…We are not limited to the lifeless words of the statute and formalistic cannons of construction in our search for the intent of Congress and Courts in construing a statute, may with propriety refer to the history of the times when it was passed…".*

The above decision is approved by our Apex Court in HARI PRASAD SHIVSHANKAR SHUKLA vs. A.D. DIVELKAR. Similarly, Lord Wilberforce in R vs. IRELAND observed as under:

> *"…In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs…".*

(iii) The 1988 Act came to be enacted by the Parliament when there was terrorism & turmoil in the

State of Punjab and around perpetrated by an unscrupulous individuals attempting to threaten the sovereignty & integrity of the nation; a sort of secessionist tendency was exhibited by generating fear amongst the masses; the shrines & religious places as holy as the Golden Temple in Amritsar were being misused for creating communal disharmony & hatred. These nefarious acts and other of the kind, the statute in question seeks to proscribe and makes them punishable. All other offences howsoever gruesome, would not fit into the restrictive framework of the statute, notwithstanding the enomity of moral turpitude involved therein.

(iv) Courts should be less willing to extend express meanings if it is clear that the statute in question was designed to be restrictive or circumscribed in its operation rather than liberal or permissive. How liberally a statute is to be construed depends on the nature of enactment, and strictness or otherwise of the words in which the legislature has expressed its intent. Therefore there is force in the vehement submission of Mr.Nagesh that the 1988 Act mainly focuses on serious & distinct acts of nefarious designs that have something to do with secessionist tendencies, terrorism, or such other offences, ejusdem generis. This view gains support from the texture & architecture of the various provisions in the Act, namely, the charging and penal sections. The offences alleged against the Petitioner – Pontiff apparently lack the nature & kind of the acts contemplated by the Act, although what is alleged against him are grave. Therefore, this Act is not applicable.

C. AS TO INVOKABILITY OF SECTION 8(2) OF THE 1988 ACT:

(i) Mr. C V Nagesh secondly contended that provisions of Section 8(2) of the 1988 Act were not invokable in the given fact matrix of the case, assuming that the said Act is otherwise applicable. He structures this argument on the basis of the expression "pending trial" employed in sub-section (2) of Section 8. He also told the Court that trial is a

concept obtaining in criminal jurisprudence; there is no indication the provision in question has employed the term with a different meaning; and that, according to him, unless the trial commences, the question of pendency of trial would not arise. Learned AG disputed this contending that the term should receive a liberal interpretation to include all criminal cases wherein, on the filing of the charge-sheet the cognizance of offence has been taken by the Court. He hastened to add that Section 8(2) has the characteristic of civil law although it is enacted in a penal statute and therefore, strict construction is not warranted.

(ii) Let me examine the nature, scope & meaning of Section 8(2) which has the following text:

> *"Where any manager or other employee of a religious institution is accused of an offence under this Act and a charge-sheet for the prosecution of such person is filed in any court and the court is of the opinion, after considering the charge-sheet and after hearing the prosecution and the accused, that a prima facie case exists, it shall pass an order or direction restraining the person from exercising the powers or discharging the duties of his office or post pending trial."*

This provision authorizes the trial judge to injunct any manager or other employee of a religious institution who happens to be an accused, from exercising the powers or discharging the duties of his office or post 'pending trial'. The questions, what is meant by 'trial' and when the 'trial commences', are no longer res integra. The following observations of the Apex Court at paragraph 38 of HARDEEP SINGH vs. STATE OF PUNJAB are a complete answer to the said questions:

> *"…the law can be summarized to the effect that as 'trial' means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the 'trial' commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken…"*

Admittedly, in the subject criminal cases, the investigation having been completed, charge sheet has been filed and the trial court has taken cognizance of the offences, is true. However, the charges are yet to be framed after hearing the prosecution and the accused, as prescribed by this section. In the light of the observations in HARDEEP SINGH, the trial cannot be said to have commenced; trial that has not commenced, cannot be said to 'pend'. If that be so, it is not a case of 'pending trial', as contemplated by Section 8(2). Thus, the pendency of trial as being a sine qua non for the invocation of sub-section (2) of section 8, the subject application could not have been moved in the court below.

(iii) The vehement contention of learned AG that the expression 'pending trial' employed in section 8(2) should receive liberal construction since that provision has characteristics of a 'civil law', is difficult to countenance, regard being had to its text. The provision which employs concepts of criminal law, such as, 'accused', 'offence', 'charge sheet', 'prosecution', etc, as its building blocks. Merely because, it empowers Criminal Court, to issue restraint order, one cannot at once hastily jump to the contra conclusion. Thus, the said provision having in its muscle criminal law elements in abundance, cannot be treated as a piece of civil law. It hardly needs to be stated that normally, penal laws are construed with usual strictness; the argued case of the Respondent – State, does not carve out an exception to this general norm.

(iv) It is not uncommon that a penal statute may have a few provisions civil in nature. Illustratively, section 125 of Code of Criminal Procedure, 1973 provides for awarding maintenance and, section 357A provides for awarding compensation to the victims of crime; such provisions arguably can be construed as being civil in nature. However, that is not the case when it comes to the text & context of section 8(2) of the 1988 Act. When the Parliament has made a dictionary clause for whole of the Act, leaving the term 'pending trial' undefined; there is no reason for not construing the said term as belonging to the realm of criminal jurisprudence. If something different was intended, the Parliament would have indicated the same by an

appropriate text. Courts by interpretative process cannot rewrite the statute.

(v) The above approach of this Court to the provisions of Section 8(2) gains support from the following observations at paragraphs 42, 43 & 44 of HARDEEP SINGH, supra:

> *"…It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim "A Verbis Legis Non Est Recedendum" which means, "from the words of law, there must be no departure" has to be kept in mind…The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate…No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision an otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable…"*

D. AS TO THE PHRASE 'carrying on of any unlawful or subversive act' EMPLOYED UNDER SECTION 3(f) OF THE 1988 ACT:

(i) Mr. Nagesh, draws attention of the court to the expression 'carrying on of any unlawful or subversive act' employed in clause (f) of section 3 and contended that the said phrase is used in distinction to the phrase the 'commission of any unlawful act'; this according to him is to signify that the alleged pernicious act should have elements of continuity and seriousness, not only as an ordinary offence define under the Indian Penal Code, 1860, but something more & distinct. This submission merits acceptance and, reasons for this are not far to seek: The 1988 Act has been enacted keeping in view the turmoil created by 'anti-national' acts that were perpetrated mainly within the precincts of shrines, temples & other religious institutions in Punjab & around, as already discussed above. The historical background of the statute needs to be borne in mind whilst construing its provisions, need no reiteration. The phrase 'carrying on of any unlawful or subversive act', employed in Section 3(f) of the Act obviously means such serious acts that are not just committed as sporadic acts, but those which have the factors of continuity, in their perpetration or effect. In other words, they do not have sporadicity, but have continuity, both in degree and duration. Otherwise, the Parliament would have employed the usual phrase such as 'commission of an act'.

(ii) Mr. Nagesh's reliance on K.P.S. SATHYAMOORTHY vs. STATE OF TAMIL NADU in a measure come to his aid.

The Madras High Court at paragraph 24, observed as under:

> *"…So far as the third above Section i.e. Section 3(g) of the Religious Institutions (Prevention of Misuse) Act, 1988 is concerned, it requires the premises or the religious institution i.e. the Kanchimatt to have been used to promote disharmony or feeling of enmity or hatred or ill-will between different religious, racial, language or religion groups or castes or communities. Here again, the Section requires the use of the premises or religious institution as a place or instrument for promoting disharmony or hatred or*

> *ill-will. That the framers of law have not intended an isolated event or utterance but made use of the term "use", which would mean habitual, well- designed with continuity making use of the premises or institution for repeated commission of the act in the usual manner and therefore an isolated or casual utterance or reference made cannot be construed to mean using the premises or the religious institution since the term "use", at this juncture, has got wider connotation in the context of the case…"*

(iii) To put it in a grammatical sense, there is a subtle difference between 'commission of an act' and 'carrying on of an act; the former roughly falls into past perfect tense, whereas the latter fits into the present perfect continuous tense. In DEEPAK AGGARWAL vs. KESHAV KAUSHIK , the Apex Court has said: "…present perfect continuous tense is used for a position which began at some time in the past and is still continuing…". It hardly needs to be stated that in the construction of statutes, their words and phrases must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense vide CORPORATION OF THE CITY OF VICTORIA vs. BISHOP OF VANCOUVER ISLAND. Added, the offences alleged against the Petitioner under IPC and POCSO, apparently having elements of sporadicity, do not fit into the architecture of section 3(f) of 1988 Act. The contra contention of learned AG if accepted, would bring into precincts of the statute which textually speaking the Parliament did not even remotely intend.

E. AS TO MEANING OF THE TERM 'religious institution' UNDER SECTION 2(f) OF THE 1988 ACT:

(i) There is force in the submission of learned Senior Advocate Mr. Nagesh that in the dictionary clause of the Act, 'religious institution' has been defined and the impugned order transcends this definition in extending the restraint beyond the Mutt, to even the educational institutions run under its aegis. The operative portion of the said order has the following text:

> *"Requisition given by the Investigating Officer dated 28.11.2022 to pass an order under Section 8(2) of the Religious Institutions (Prevention of Misuse) Act, 1988 is allowed. Accused No.1 is restrained from exercising the Powers or discharging the duties of SJM Mutt and other institutions running under the said Mutt as a Pontiff and head of the institution pending conclusion of trial.'*

Learned AG appearing for the State contended that the Mutt and its educational institutions in all numbering 105, in terms of their management are so intertwined with each other that they constitute a singularity and, the Pontiff manages & administers both of them; he draws attention of the Court to a paragraph in the registered Trust Deed which indicates that the Pontiff shall be the 'supreme authority', there being none above nor below who can veto his decisions. Therefore, he had sought for placing a liberal interpretation on this term, to include such institutions thickly associated with the religious institution. He highlights the possible consequences of placing restrictive meaning on the said term.

(ii) Let me examine the definition itself as given in section 2(f); it has the following text:

> *"religious institution' means an institution for the promotion of any religion or persuasion, and includes any place or premises used as a place of public religious worship, by whatever name or designation known."*

Penal statutes in a modern State are actuated with some policy to curb some public evil. Such statues are primarily directed to the problems before the Legislature based on information derived from past and present experiences. They may also be designed by use of general words to cover similar problems arising in the future. Therefore, ordinarily, the legislatures in their wisdom employ a 'dictionary clause', so that the words & phrases employed in the statute are construed as provided in its definition clause and, not in their common parlance. It hardly needs to be stated that, in any language, words do not have fixed contours as eruditely said by Justice Oliver Wendell Holmes in TOWNE vs. EISNER:

> *"…A word is not a crystal, transparent and unchanged, it is the skin of a living thought, and may vary*

> *greatly in color and content according to the circumstances and the time in which it is used…"*

Similarly, it is apt to recall what Maxwell writes in this regard:

> *"…The words of a statute, when there is doubt about their meaning are to be understood in the sense in which they best harmonize with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained. Grammatically, words may cover a case; but whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense, which is not their ordinary sense in the English language so applied…"*

(iii) If, at the beginning was the word, the word changes its meaning as soon as it is put to the test of reality. Statutes change not only by formal legislative amendment but also and even more by an imperceptible metamorphosis of the established thought, political usages and habits. It is pertinent to see what Justice G.P. Singh says:

> *"…The problem of interpretation is a problem of meaning of words and their effectiveness as a medium of expression to communicate a particular thought. A word is used to refer to some object or symbol in the real world and this object or symbol has been assigned a technical name referent. Word and phrases are symbols that stimulate mental references to referents. But words of any language are capable of referring to different referent in different contexts and times. More over, there is always the difficulty of borderline cases falling within or outside the connotation of a word. Language, therefore, is likely to be misunderstood. In ordinary conversation or correspondence it is generally open for the parties to obtain clarification if the referent is imperfectly communicated. The position is, however, different in the interpretation of statute law. A statute as A statute as enacted cannot be explained by the individual opinions of the legislators, not even by a*

> *resolution of the entire Legislature. After the enacting process is over the Legislature becomes functus officio so far as that particular statute is concerned, so that it cannot itself interpret it. The Legislature can no doubt amend or repeal any previous statute or can declare its meaning but all this can be done only by a fresh statute after going through the normal process of law making…"*

(iv) Section 2(f) is a case of 'means and includes' definition. The Legislature has power to define a word even artificially. So the meaning of a word in the definition clause of a statute may either be restrictive or expansive. When a word is defined to mean such and such, the definition is prima facie restrictive & exhaustive. Where the definition of a word is inclusive, its meaning is prima facie extensive. When the inclusive part of a definition specifically states what all is included, Courts in the interpretative process cannot widen such inclusion. The Apex Court in P. KASILINGAM vs. P.S.G. COLLEGE OF TECHNOLOGY has discussed the matter as under:

> *"…A particular expression is often defined by the Legislature by using the word `means' or the word `includes'. Sometimes the words 'means and includes' are used. The use of the word `means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition"... The word `includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions"...The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of `college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended…"*

(v) The term 'religious institution' employed in Section 8(2) does not have elasticity which the learned AG wants this Court to ascribe to it. It does

> ***not admit anything that is not provided in the inclusive part of the definition under Section 2(f). Even in this inclusive part, the educational institutions of the Mutt do not fit, because of the employment of the qualifying expression in the inclusive part, namely, 'a place of public religious worship'. The educational institutions are certainly not such a place. Thus, the impugned order transcends the statutory definitions to the prejudice of the Petitioner and therefore, suffers from an added legal infirmity.***
>
> ***In the above circumstances, this Petition succeeds; a Writ of Certiorari issues quashing the impugned order, costs having been made easy.***
>
> ***Nothing herein above observed shall cast its shadow on the trial and decision making in the subject criminal cases."***
>
> *(Emphasis supplied)*

In the light of the finding that the very Act is not applicable to the subject religious institution, as the Act was notified at the time of reign of terror in Punjab and Haryana, the Act had been brought into effect which deals with search of arms in religious institutions. In the light of the finding rendered by the co-ordinate Bench *qua* the same parties, it is ununderstandable as to how the charge for offences punishable under Sections 3 and 7 *supra* of the Act, could even be framed and the said charge being permitted to continue, would on the face of it, become an abuse of the process of law.

12. A herculean effort that is made by the learned Additional Special Public Prosecutor to justify the action of laying down the charge for the afore-quoted offences under the Act would tumble down in the teeth of the aforesaid finding, rendered by the co-ordinate Bench. It is submitted across the Bar that the judgment of the co-ordinate Bench though is tossed before the Division Bench, there is no interim order of stay of the findings recorded by the co-ordinate Bench. What is directed by the Division Bench is change in the Administrator and nothing against the finding recorded. Therefore, it can be safely concluded that the 5th charge laid against the petitioner is unsustainable and requires to be obliterated.

B. THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989:

13. The charges 2 and 3 framed against the petitioner are for offences punishable under the Atrocities Act. They are for offences punishable under Section 3(1)(w)(i)&(ii) and 3(2) (v) & (v-a). Therefore, I deem it appropriate to notice those provisions which form the allegations in these charges. They read as follows:-

*"**3. Punishments for offences of atrocities**.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-*

… … …

*(w) **(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;***

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.—For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

… … …

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

… … …

(v) commits any offence under the Indian Penal (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member

> *of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprison-ment for life and with fine;*
>
> *(v-a) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine."*
>
> *(Emphasis supplied)*

The offences alleged are as afore-quoted. Section 3(1) depicts punishments for offences of atrocities by a member who does not belong to a Scheduled Caste or a Scheduled Tribe. What is alleged against the petitioner is Section 3(1)(w)(i) which deals with a person intentionally touching a woman belonging to a Scheduled Caste or a Scheduled Tribe knowing that she belongs to those castes and the act of touching is of a sexual nature without the consent of the recipient. Sub-clause (ii) of clause (w) of sub-section (1) of Section 3 makes the person who uses the words, acts or gestures of a sexual nature knowing that she belongs to a Scheduled Caste or Scheduled Tribe. Clause (v) of sub-section (2) of Section 3 makes an offence punishable for the afore-quoted ingredients. Clause (v-a) of Sub-section (2) of Section 3 deals with

a person who knowingly seeks to snatch away the property belonging to a member of Scheduled caste or Scheduled Tribe. The issue is whether the alleged offence would meet its ingredients qua the case of the petitioner. It is not alleged anywhere in the complaint that the petitioner was aware of the fact that victims 1 and 2 were belonging to Scheduled Caste and having full knowledge of the fact that they belong to Scheduled Caste has indulged in the alleged offences which could become its ingredients. Therefore, the very fact that full knowledge is not alleged against accused No.1 either in the complaint or in the charge sheet or in the evidence that led to registration of crime or filing of the charge sheet, if trial is permitted to continue on that charge it would become an abuse of the process of law. Therefore, the said charge becomes illegal.

C. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015:

14. The 4th charge that is framed against the petitioner is for offences punishable under Section 75 of the Juvenile Justice (Care

and Protection of Children) Act, 2015. Section 75 of the said Act reads as follows:

> ***"75. Punishment for cruelty to child.—Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or willfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:***
>
> ***Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not willful and the penal provisions of this section shall not apply in such cases:***
>
> *Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:*
>
> *Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees."*
>
> *(Emphasis supplied)*

Section 75 deals with cruelty to child being punished. The very beginning of the provision mandates that the accused must have

actual charge of, or control over, a child, assaults, abandons, abuses or cause mental or physical suffering would be liable for punishment. The petitioner as observed hereinabove is the Pontiff of the Mutt. Whether he was in-charge of or control over victims 1 and 2 is what is required to be noticed. The complaint narrates that accused No.2, the warden of the hostel had indulged in exercising dominant position of being the warden had taken victims 1 and 2 to the room of the Pontiff. It is not anywhere alleged that the petitioner was in-charge or had control over the child and had assaulted or indulged in any kind which would become ingredients of Section 75 of the 2015 Act. At best, the allegation can be laid against the person who was in control of the hostel and in control of the child or the children in the hostel. The offence is relatable prima facie only to accused No.2 and cannot be to the Pontiff of the Mutt, accused No.1. It is also not the allegation that every child in the hostel or every intimate in Akkamahadevi hostel was known to the petitioner and he had control over them. Thus, permitting trial of the petitioner on this charge as well would become an abuse of the process of law. Therefore, the said charge is again contrary to law.

D. SECTION 376-DA OF IPC:

15. The 6th charge against the petitioner is for offence punishable under Section 376DA of the IPC. Section 376DA of the IPC reads as follows:

> *"**376-DA. Punishment for gang rape on woman under sixteen years of age**.—Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:*
>
> *Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:*
>
> *Provided further that any fine imposed under this section shall be paid to the victim."*

Section 376D deals with gang rape. It reads as follows:

> *"**376-D. Gang rape**.—Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:*
>
> *Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:*
>
> *Provided further that any fine imposed under this section shall be paid to the victim."*

Section 376DA makes the accused to become punishable for gang rape of a woman who is under 16 years of age. The ingredients are that where a woman under 16 years is raped by one or more person constituting a group or gang in furtherance of common intention, each of those persons shall be deemed to have committed the offence of rape. The complaint in the case at hand is that the petitioner had indulged in certain acts sexually or otherwise qua victims 1 and 2 who were below the age of 16 years. The allegation is not against anybody else. The allegation is only against the petitioner. The provision is clear 'where a woman under sixteen years of age is raped by one or more persons constituting a group'. It is ununderstandable qua the alleged finding in the charge sheet or the evidence as to how gang rape could be alleged against the Pontiff, accused No.1 alone, in the peculiar facts of the case as the allegation is not that there was more than one person having indulged in the alleged act of rape against a woman who was under 16 years of age. As observed, the allegation is against accused No.1, the pontiff and none else. Therefore, the said offence *qua* the charges framed, it is loosely framed by the concerned Court. This charge framed is, on the face of it, illegal.

E. SECTION 201 OF IPC:

16. The other allegation (8th charge) is for offence punishable under Section 201 of the IPC. Section 201 of the IPC reads as follows:

> *"**201. Causing disappearance of evidence of offence, or giving false information to screen offender**.—**Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,***
>
> ***if a capital offence**.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*
>
> ***if punishable with imprisonment for life**.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*
>
> ***if punishable with less than ten years' imprisonment**.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."*
>
> *(Emphasis supplied)*

Section 201 deals with causing disappearance of evidence of offence or giving false information to screen the offender. To buttress justification of the charge, the learned Additional State Public Prosecutor has strenuously contended that whenever the petitioner is alleged to have had sex with victim 1 or 2, he used to ask the staff to wash the bed sheets for removal of stains. These are all acts alleged to have been committed long before generation of the complaint or even the acts alleged. Disappearance of evidence would become an offence after the commission of the act but not the commission alleged close to 3 years or even 1½ years prior to registration of the crime. Therefore, Section 201 is also charged against the petitioner contrary to law or contrary to the evidence available on record. The said charge is thus illegal.

F. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012:

17. What remains are the offences alleged under Section 376 (2)(n), 376(3) of the IPC and Sections 5 and 6 of the POCSO Act. Sections 5 and 6 of the POCSO Act read as follows:

*"**5. Aggravated penetrative sexual assault**.—(a) Whoever, being a police officer, commits penetrative sexual assault on a child—*

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of Section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child

by rendering him physically incapacitated, or mentally ill to perform regular tasks;

(iv) causes death of the child; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence or during any natural calamity or in similar situations; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence

punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

***6. Punishment for aggravated penetrative sexual assault**.—(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.*

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

(Emphasis supplied)

Section 6 makes the person who indulges in aggravated penetrative sexual assault repeatedly of a child on one or more than one occasion is said to become open to punishment under the said Act. Penetrative sexual assault finds its description in Section 3 of the Act and reads as follows:-

*"**3. Penetrative sexual assault**.—A person is said to commit "penetrative sexual assault" if—*

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

(Emphasis supplied)

The ingredients of penetrative sexual assault are as afore-quoted. The learned senior counsel for the petitioner by taking this Court through the statements recorded by the Police under Section 161 of the Cr.P.C., and the medical report would contend that hymen is intact. Therefore, there is no penetrative sexual assault on victims 1 and 2. The medical reports further indicate that there is no history of sexual penetration or there is no rupture of the hymen. Merely because there is no rupture of hymen in the report the charge against the Pontiff cannot be set aside. These would be matters in the realm of evidence and trial.

18. Apart from the afore-quoted offences which suffer from incurable illegality as they have no foundational facts either in the complaint or in the summary of the charge sheet, there are other offences that are alleged against the petitioner, as noted hereinabove, while framing the charge. The other offences are under Section 376 (2)(n), 506, 34, 37 of the IPC and Sections 5(L) and 6 of the POCSO Act. The learned senior counsel has strenuously contended, as observed hereinabove, that the hymen of the victims were not ruptured and, therefore, it would not amount to penetrative sexual assault which is the necessary ingredient for an offence to become punishable under Section 6 of the POCSO Act. This submission does not merit any acceptance. The mere non-rupture of hymen of the victims in the medical reports cannot mean that the petitioner should be left scot free. It becomes a matter of evidence during trial for those facts to be brought about, regarding the contents of the medical report. The petitioner is also alleged of offence punishable under Section 376(3) which deals with commission of rape of a woman repeatedly. If Sections 376(3), 376(2)(n) of the IPC and Sections 5 and 6 of the POCSO Act are read in tandem, it would prima facie meet the ingredients that are

made out against the petitioner. If further consideration of the ingredients that are made out against the petitioner, is undertaken, it would undoubtedly prejudice his case in the trial. Therefore, finding that prima facie those offences do have the foundational facts for the charge to be drawn, I decline to consider those submissions of the petitioner *qua* the aforesaid charge.

19. Notwithstanding sustenance of the charges framed under Section 376(2)(n), 376(3) of the IPC and Sections 5 and 6 of the POCSO Act, I deem it appropriate to interfere with the order framing charges only on the ground that it is one composite document which contains the aforesaid incurable illegality of charges being loosely framed against the petitioner. While framing the charge, it is trite, that the concerned Court cannot act as a mere post office to what the prosecution puts before it in the form of a charge sheet. It has a duty under Section 228 of the Cr.P.C., to apply its mind and then frame the charges. It, therefore, becomes necessary to notice Section 228 of the Cr.P.C., and its interpretation by the Apex Court and other constitutional Courts.

20. Section 228 of the Cr.P.C., reads as follows:

> *"228.* ***Framing of charge, - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –***
>
> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;*
>
> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*
>
> ***(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."***
>
> *(Emphasis supplied)*

Section 228 deals with framing of charge. It begins with the words "if, after such consideration and hearing as aforesaid". The hearing aforesaid would be hearing at the time of framing the charge i.e., hearing before charge or even an application for discharge. Therefore, the concerned Court while framing the charge will have to assess what is laid against the petitioner by the prosecution and arrive at a conclusion that on the facts brought out, and whether

those charges could be laid against any accused. The Apex Court in plethora of judgments has considered importance of Section 228 of the Cr.P.C., and what is the purpose or object of framing a charge. The Apex Court in the case of ***V.C. SHUKLA v. STATE THROUGH CBI***[8] has held as follows:

> ***"108.*** *The contention is that framing of a charge is a matter of moment and of such vital importance that it concludes an inquiry anterior to the framing of the charge and that it is a matter of a moment which is likely to result in the deprivation of the liberty of the accused because he is asked to face the trial. There are two limbs of the submission and both may be separately examined.*
>
> ***109. What is the purpose or object in framing a charge****?*
>
> ***110. When the accused is brought before a court, he is supplied with copies of documents referred to in Section 207. Now, these documents may contain a number of matters and the accused may be at large as to what is the specific accusation, he is supposed to meet. Charge serves the purpose of notice or intimation to the accused, drawn up according to specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial. Section 211 clearly prescribes what the charge should contain and a bare reading of it would show that the accused must be told in clear and unambiguous terms allegations of facts constituting the offence, the law which creates offence with a specific name, if given to it, and the section which is alleged to be violated with the name of the law in which it is contained. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was***

[8] *1980 Supp SCC 92*

fulfilled in the particular case. It is thus an intimation or notice to the accused of what precise offence or what allegations of facts he is called upon to meet. The object of a charge is to warn an accused person of the case he is to answer. It cannot be treated as if it was a part of a ceremonial [B.N. Srikantiah v. State of Mysore, AIR 1958 SC 672 : 1959 SCR 496 : 1958 Cri LJ 1251] . If this be the purpose of the charge, reference to the provisions contained in Chapter XVII as to the various forms and modes of framing a charge or joinder of charges and joinder of persons to be tried at one trial are beside the point. The importance of framing the charge need not be overemphasised and that this should be shunned becomes apparent from the observations of Bose, J. in William Slaney v. State of M.P. [AIR 1956 SC 116 : (1955) 2 SCR 1140, 1165 : 1956 Cri LJ 291] which reads as under:

> *"We see no reason for straining at the meaning of these plain and emphatic provisions unless ritual and form are to be regarded as of the essence in criminal trials. We are unable to find any magic or charm in the ritual of a charge. It is the substance of these provisions that count and not their outward form. To hold otherwise is only to provide avenues of escape for the guilty and afford no protection to the innocent."*

111. It was, however, said that framing of a charge is a matter of moment as has been held by this Court in State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699: 1977 SCC (Cri) 404: (1977) 3 SCR 113] and Century Spinning and Mfg. Co. Ltd. v. State of Maharashtra [(1972) 3 SCC 282: 1972 SCC (Cri) 495 : AIR 1972 SC 545] and therefore the order framing the charge would be an intermediate order and not an interlocutory order. These two cases only emphasize the application of judicial mind by the court at the stage of framing the charge. The question never arose in these two cases about the nature and character of the order framing the charge. In a criminal trial or for that matter in any judicial proceeding, there is no stage at which the court can mechanically dispose of the proceeding. An active judicial mind must always operate at every stage of the

proceeding because any stage of it if mechanically disposed of may cause an irreparable harm*. To wit a rejection of an application for summoning witness may shut out the whole case; even a rejection of an application for adjournment may cause irremediable harm. Therefore, in the course of a trial of a civil or criminal proceeding, it is difficult to conceive of a stage where an order can be made without bringing to bear on the subject an active judicial mind judicially determining the dispute. Any such dispute if mechanically disposed of may warrant an interference. Therefore, emphasis was laid on the court expecting it to seriously apply its mind at the stage of framing the charge. It does not make the order framing the charge anything other than an interlocutory order. There is no decision since the Code of 1973 is in operation, which introduced a concept of commencement of trial at the stage anterior to framing of charge and, eliminating an inquiry before the charge as was the requirement prior to the amendment of 1898 Code in 1955 which would show that court has treated order framing the charge other than interlocutory. However, reference in this context was made to a decision of a Full Bench of the Jammu and Kashmir High Court in State v. Ghani Bandar [AIR 1960 J & K 71, 76 : 1960 Cri LJ 584 (FB)] wherein the court after exhaustively examining various decisions of different High Courts bearing on the subject came to the conclusion that on framing the charge the inquiry anterior to trial of the case is concluded. Let it be recalled that the decision is under a Code which prescribed examination of witnesses prior to framing the charge and the word "trial" was defined to mean the proceeding taken under the Code after a charge has been drawn up and included a punishment of the offender. This procedure is wholly omitted in the Code of 1973 and the stage of commencement of trial is specifically demarcated in Section 238 and therefore this decision would not render any assistance in deciding the point under discussion. Merely because emphasis is laid on the court seriously applying its judicial mind at the stage of framing charge, and therefore, it can be said to be an important stage, the order framing the charge even after applying the ratio of the later decisions would not be an order other than an interlocutory order. It would be unquestionably an interlocutory order.*

(Emphasis supplied)

The said judgment in ***V.C. SUKLA*** is considered by the Apex Court in its latest judgment in ***GHULAM HASSAN BEIGH v. MOHAMMAD MAQBOOL MAGREY***[9] wherein the Apex Court has held as follows:

> ***"17.*** *Section 228CrPC reads thus:*
>
> *"**228. Framing of charge**.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*
>
> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the First Class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the First Class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant - cases instituted on a police report;*
>
> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*
>
> *(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."*
>
> ***18. The purpose of framing a charge is to intimate to the accused the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in***

[9] *(2022) 12 SCC 657*

> ***the course of a trial. [See : decision of a four-Judge Bench of this Court in V.C. Shukla v. State [V.C. Shukla v. State, 1980 Supp SCC 92: 1980 SCC (Cri) 695]].***
>
> *... ... ...*
>
> ***27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge-sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the court by the prosecution in the shape of final report in terms of Section 173CrPC, the court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. [See: Bhawna Bai v. Ghanshyam [Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217 : (2020) 1 SCC (Cri) 581]].”***
>
> *(Emphasis supplied)*

The Apex Court holds that there is some significance in the duty cast upon the concerned Court while framing charges. The purpose of framing a charge, as held by the Apex Court, is to intimate to the accused, clear and unambiguous and precise nature of accusation that the accused is called upon to meet in the course of trial. This is

in fact what is held by the Apex Court in **V.C.*SHUKLA*** (*supra*). The High Court of Delhi in the case of ***V.K. VERMA v. CBI***[10] while delineating the importance of framing of charge and order on charge has held as follows:

> *"**36.** Having decided the maintainability of the petition, it is now pertinent to refer to the objective of framing of Charge under the scheme of the Code.*
>
> ***ii. Framing of Charges & Order on Charge***
>
> ***37.** The Hon'ble Bombay High Court in the case of Samadhan Baburao Khakare v. State of Maharashtra, 1995 SCC OnLine Bom 72 has highlighted the objective and importance of Charge in criminal trial in the following words:*
>
> > ***"11. The whole purpose and object of framing charges is to enable the defence to concentrate its attention on the case that he has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offence with which the accused is convicted is not brought out in the charge then the charge is not only defective but illegal. It is no doubt that when the accused is charged with a major offence, he can be convicted of a minor offence. It is true that what is major offence and what is minor offence is not defined. The gravity of offence must depend upon the severity of the punishment that can be inflicted, but the major and the minor offences must be cognate offences which have the main ingredients in common, and a man charged with one offence which is entirely of a different nature from the offence which is proved to have been committed by him, cannot in the absence of a proper charge be convicted of that offence, merely on the ground that the facts proved constitute a minor offence. For example, a man charged with an offence of murder cannot be convicted for forgery or misappropriation of funds, or such offences which do not constitute offences against person, the***

[10] *2022 SCC OnLine Del 1192*

reason being that the accused had no opportunity in such a case to make defence, which may have been open to him, if he had been charged with the offence for which he is to be convicted."

38. *The Hon'ble Supreme Court has succinctly analyzed its previous decisions with respect to framing of charge in State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and has laid down the following test for framing of charges:*

> *"30. In Antulay case [R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716 : 1986 SCC (Cri) 256] Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of 'prima facie' case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.*
>
> *31. Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean 'to believe or accept upon probable evidence'. In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means 'to take as proved until evidence to the contrary is forthcoming', Stroud's Legal Dictionary has quoted in this context a certain judgment according to which 'A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged.' In Law Lexicon by P. Ramanatha Aiyar the same quotation finds place at p. 1007 of 1987 Edn.*
>
> ***32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the***

offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

39. Thus, the court concerned with the framing of charges has to merely see whether the commission of offense can be a possibility from the evidence on record or not.

40. It is also required to be noted that the charge does not render a conclusive finding with respect to guilt or innocence of the accused. The charge is merely an indication to the accused about the offense for which he is being tried for. In this regard, it is essential to take note of the ruling of the Hon'ble Supreme Court in Esher Singh v. State of A.P., (2004) 11 SCC 585, where the Hon'ble Court observed:

> *"20. Section 2(b) of the Criminal Procedure Code, 1973 (in short "the Code") defines "charge" as follows:*
>
> *'2. (b) 'charge' includes any head of charge when the charge contains more heads than one;'*
>
> *The Code does not define what a charge is. It is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract, but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. A charge is formulated after inquiry as distinguished from the popular meaning of the word as implying inculpation of a person for an alleged offence as used in Section 224 IPC."*

41. Additionally, at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence*. The Hon'ble Supreme Court held in the case of Chitresh Kumar Chopra v. State (NCT of Delhi), (2009) 16 SCC 605 as under:*

> *"25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."*

42. *The Hon'ble Supreme Court in Main Pal v. State of Haryana, (2010) 10 SCC 130 observed as follows:*

> *"17. (i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged."*

43. *The Hon'ble Supreme Court in the case of Santosh Kumari v. State of J&K, (2011) 9 SCC 234 has comprehensively dealt with the question and purpose of framing of charges as under:*

> *"18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in Willie (William) Slaney v. State of M.P. [AIR 1956 SC 116 : 1956 Cri LJ 291 : (1955) 2 SCR 1140] SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without*

> *specifying who are directly liable and who are sought to be made constructively liable."*

44. Therefore, it is clear that the framing of charge is a manifestation of the principle of Fair Trial, by giving sufficient notice along with all particulars to the accused being charged so as to enable him to prepare his defence*.*

45. *Recently, in the case of State of Rajasthan v. Ashok Kumar Kashyap, 2021 SCC OnLine SC 314, the Hon'ble Supreme Court held that the evaluation of evidence on merits is not permissible at the stage of considering the application for discharge. At the stage of framing of the charge and/or considering the discharge application, a mini trial is not permissible. The Bench held as under:*

> *"23. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts."*

46. Thus, the position of law that emerges is that at the stage of discharge/framing of charge, the Judge is merely required to sift the evidence in order to find out whether or not there is sufficient ground for proceeding

> ***against the accused, or in other words, whether a prima facie case is made out against the accused.***
>
> ***47.*** *Now, having analysed the object as well as the test for framing of charges, it is pertinent to refer to the scope of revision as exercisable by this Court in respect to an Order on Charge."*
>
> *(Emphasis supplied)*

The High Court of Delhi follows the judgment of the Apex Court holding that framing of a charge is a manifestation of the principle of fair trial by giving all opportunities to the accused being charged so as to enable him to prepare for his defence. The High Court of Delhi further holds that there should be sufficient ground for proceeding against the accused. Long before the Judgment of the Apex Court in ***GHULAM HASSAN BEIGH*** (*supra*) the Apex Court in ***VINAY TYAGI v. IRSHAD ALI***[11] has held as follows:

> ***"17.*** *After taking cognizance, the next step of definite significance is the duty of the court to frame charge in terms of Section 228 of the Code unless the court finds, upon consideration of the record of the case and the documents submitted therewith, that there exists no sufficient ground to proceed against the accused, in which case it shall discharge him for reasons to be recorded in terms of Section 227 of the Code:*
>
> ***17.1.*** *It may be noticed that the language of Section 228 opens with the words,*

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[11] *(2013) 5 SCC 762*

> *"If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence",*

he may frame a charge and try him in terms of Section 228(1)(a) and if exclusively triable by the Court of Session, commit the same to the Court of Session in terms of Section 228(1)(b). Why the legislature has used the word "presuming" is a matter which requires serious deliberation. It is a settled rule of interpretation that the legislature does not use any expression purposelessly and without any object. Furthermore, in terms of doctrine of plain interpretation, every word should be given its ordinary meaning unless context to the contrary is specifically stipulated in the relevant provision.

17.2. Framing of charge is certainly a matter of earnestness. It is not merely a formal step in the process of criminal inquiry and trial. On the contrary, it is a serious step as it is determinative to some extent, in the sense that either the accused is acquitted giving right to challenge to the complainant party, or the State itself, and if the charge is framed, the accused is called upon to face the complete trial which may prove prejudicial to him, if finally acquitted. These are the courses open to the court at that stage.

17.3. Thus, the word "presuming" must be read ejusdem generis to the opinion that there is a ground. The ground must exist for forming the opinion that the accused has committed an offence. Such opinion has to be formed on the basis of the record of the case and the documents submitted therewith. To a limited extent, the plea of defence also has to be considered by the court at this stage. For instance, if a plea of proceedings being barred under any other law is raised, upon such consideration, the court has to form its opinion which in a way is tentative. The expression "presuming" cannot be said to be superfluous in the language and ambit of Section 228 of the Code. This is to emphasise that the court may believe that the accused has committed an offence, if its ingredients are satisfied with reference to the record before the court.

18. *At this stage, we may refer to the judgment of this Court in Amit Kapoor v. Ramesh Chander [(2012) 9 SCC 460: (2013) 1 SCC (Cri) 986: (2012) 4 SCC (Civ) 687: JT (2012) 9 SC 329] wherein, the Court held as under: (SCC pp. 476-77, paras 16-18)*

> *"16. The abovestated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution aforenoticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited.*
>
> *17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.*
>
> *18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the*

> *class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases."*
>
> *(emphasis in original)*

> ***19. On analysis of the above discussion, it can safely be concluded that "presuming" is an expression of relevancy and places some weightage on the consideration of the record before the court. The prosecution's record, at this stage, has to be examined on the plea of demur. Presumption is of a very weak and mild nature. It would cover the cases where some lacuna has been left out and is capable of being supplied and proved during the course of the trial. For instance, it is not necessary that at that stage each ingredient of an offence should be linguistically reproduced in the report and backed with meticulous facts. Suffice would be substantial compliance to the requirements of the provisions**."*
>
> *(Emphasis supplied)*

The Apex Court holds that charges should be framed upon consideration of the record of the case and the documents submitted therewith, that there exists a sufficient ground to proceed against the accused or not. The Apex Court holds that it is a serious step, as it is determinative to some extent. If regard is had to what the Apex Court and the High Court of Delhi have laid down in the judgments quoted supra, what would unmistakably emerge is the order impugned in these cases which are orders of framing of charges suffers from the vice of non-application of mind.

Merely because the prosecution has filed a charge sheet alleging several charges, those need not form a part of framing of charge in every case. It is the duty of the concerned Court to consider what charges are to be framed as it is the guiding path towards the trial about what the prosecution has to prove and what the accused has to defend. The order impugned would thus become unsustainable only to the extent that it frames those charges which this Court has found to be suffering from illegality. But, as observed supra, it is a solitary document and, therefore, the concerned Court will now have to redraw the charges against the petitioner bearing in mind the observations made in the course of the order and restricting it to the aforesaid observation. This would be subject to the power under Section 216 of the Cr.P.C., to vary the charge at any point in time, in accordance with law.

21. Vehement submissions are made by the learned senior counsel for the petitioner alleging that the entire incident is fabricated and is generated at the behest of one Basavaraju and his wife Sowmya who have filed close to 10 cases against the Pontiff. It is the further submission that Basavaraju wanted to take over the

Mutt and he is a former lawmaker. He is the reason behind all the happenings that form the subject of the petition. All these submissions and allegations would require evidence, which is a matter of trial. If the submissions are considered at this juncture, it would amount to interfering from the stage of the complaint itself, and they are all in the realm of seriously disputed questions of fact, which would require a full blown trial, for appropriate determination. Such disputed questions of facts, cannot be gone into, in exercise of its jurisdiction of this Court under Section 482 of the Cr.P.C. Therefore, those submissions are not considered. Insofar as the reliance being placed on several judgments which are quoted hereinabove, none of them would become applicable to the stage at which the proceedings are brought before the Court. What is called in question are the orders framing the charge. For the challenge, the answer is as analyzed hereinabove. Therefore, those judgments are not considered on account of its inapplicability. For all the aforesaid reasons, the summary that can be drawn is as follows:

SUMMARY OF FINDINGS:

22. The following offences are held to be illegal, as they are loosely laid against the petitioner:

1. **Sections 3 and 7 of Religious Institution Prevention of Misuse Act 1988;**
2. **Sections 3(1)(w)(i)(ii), 3(2)(v)(v-a) of the Scheduled Castes And the Scheduled Tribes (Prevention Of Atrocities) Act, 1989;**
3. **Section 75 of The Juvenile Justice (Care and Protection of Children) Act 2015;**
4. **Gang rape – Section 376DA of the IPC;**
5. **Destruction of evidence - Section 201 of the IPC.**

The offences that are sustained are:

1. **Section 376 (2)(n) of the IPC;**
2. **Section 376(3) of the IPC; and**
3. **Sections 5 and 6 of the POCSO Act, 2012.**

for the reason that they would require evidence and it is for the Pontiff to come out clean in a full blown trial.

The charges by the concerned Court shall accordingly be redrawn.

23. For the *praedictus* reasons, I pass the following:

O R D E R

(i) Writ Petitions are allowed in part.

(ii) The orders dated 13-04-2023 and 15-04-2023 stand quashed.

(iii) The matter is remitted back to the hands of the concerned Court to redraw the charges so framed bearing in mind the observations made in the course of the order.

(iv) It is made clear that the concerned Court shall not be bound by the findings rendered in the course of the order except the ones which are found fault with.

(v) The concerned Court shall not be bound or influenced, while drawing a fresh document of framing of charge, to any of the observations made in the course of the order.

(vi) All other contentions except the one noticed and analyzed shall remain open to be urged before the appropriate *fora* at the appropriate time.

(vii) The concerned Court shall regulate its procedure in accordance with law.

Sd/-
JUDGE

bkp
CT:SS