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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Reserved on: 12.07.2023

Pronounced on : 14.07.2023

Surjeet Khanna

...Petitioner

VersusState of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. Arnav Ghai, Advocate and
Mr. BNS Marok, Advocate, for the petitioner.

Mr. Rupinder Singh Jhand, Addl. AG, Haryana and
Ms. Ankita Ahuja, AAG, Haryana.

Mr. Sumeet Goel, Senior Advocate, with
Mr. Arpandeeep Narula, Advocate, and
Ms. Shivani Kushik, Advocate, for respondent No.2.

Ms. Aarti Malhotra, respondent No.2 in person.

Mr. ADS Sukhija, Advocate (Amicus Curiae).

HARNARESH SINGH GILL, J.

The petitioner seeks quashing of FIR No. 64 dated 25.02.2022 (Annexure P.1) under Section 306 IPC and Sections 6, 18, 8, 21 of the Protection of the Children from Sexual Offences Act, 2022 (for short 'the POCSO Act') added later on, registered at Police Station PS BTPT, District Faridabad, along with all consequential proceedings arising therefrom.

The petitioner is the Principal of Delhi Public School, Greater Faridabad, Sector-81, Faridabad. An unfortunate incident of a suicide committed by a young student of Class X-B, on account of the alleged harassment, bullying and torture by

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his classmates/students of the School, led to the registration of the aforesaid FIR. The petitioner being the overall incharge of the School and having been intimated about the said harassment/bullying/mental torture, did not act in the matter as per the mandate of the POCSO Act.

A hapless mother, whose world came shattering down with the untimely demise of her son, is the complainant. This Court has deep concerns for and all sympathies with the parents of the child and wish this unfortunate act had not happened.

Be that as it may. As the law took its own course, the petitioner has approached this Court for quashing of the FIR and all consequential proceedings.

Learned Senior Counsel appearing for the petitioner would vehemently argue that there is no instigation on the part of the petitioner; that a bare reading of the contents of the FIR and the very role played by the petitioner in sorting out the issues, by engaging the parents of all the children (involved in the alleged incident), including the mother of the deceased child (complainant), would further support the version of the petitioner that no ingredients of Section 107 IPC are made out so as to attract the provisions of Section 306 IPC; that yet further when this role of the petitioner, was not disputed by the complainant-respondent No.2 at any stage, then the provisions of the POCSO Act are not attracted and that the petitioner has been dragged in the present proceedings only for the fact that she was/is the Principal of the School.

It is yet further argued that as out of 8 students (allegedly involved in the harassment/bullying/mental torture caused to the deceased child), four had already left the School, for one or the other reason, there was no occasion for the prosecution to invoke the provisions of the POCSO Act, especially Section 21 thereof.

While expressing his deep empathy with the parents of the deceased child, learned Senior Counsel would argue that the petitioner being a lady is also a mother and she had her concerns regarding the safety and security of the students (children), which is why she had called all the students, their parents and complainant-respondent No.2 and made her all out efforts to resolve the issue once for all. He further argues that this Court may take into consideration the bona-fide and swift approach of the petitioner in the incident in question and the petitioner would have been the last person, to have ever imagined this drastic act at the hands of the deceased child himself.

Mr. Ghai, further submits that the deceased-student (son of the complainant), vide e-mail, had treated the petitioner as his mother, which shows that there was no grudge in his mind against the petitioner, at all, at any stage. It is further submitted that at one stage, even the complainant was also satisfied with the action taken by the petitioner.

Yet further, it is submitted by the learned Senior Counsel that on the day of occurrence, the child was alone from 6.00 p.m. to 9.30 p.m., when the unfortunate incident took

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place and the complainant was aware of the fact that her son was suffering from mental depression and panic attacks, but even then, she had left her son alone, for the reasons best known to her.

On the other hand, the learned State counsel submits that as per the provisions of the POCSO Act, it is the petitioner, being the Principal of the School, at the relevant time, whose inaction led to the loss of a young life and therefore, she cannot be heard to plead her false implication.

Mr. Sumeet Goel, the learned Senior Counsel, appearing for respondent No.2-complainant, would submit that the entire gamut of the facts and the chain of events, which drove the deceased-child to take such a drastic step, speak the obvious. He submits that there is no denying the fact by the petitioner that she had received the information regarding the alleged harassment (mental and sexual) and online bullying caused to the deceased-child by the students of the School and instead of reporting the matter to the Police, the petitioner kept sitting over the matter. It is further submitted that complainant-respondent No.2 had sent an e-mail to the petitioner on 23.09.2021, bringing to her notice the entire factual position including the sexual act(s), but nothing was done. He further submits that had the petitioner acted on time taking into consideration the overall welfare of the children as stipulated under the POSCO Act, the young life could have been saved avoiding the never ending trauma to the bereaved family.

Mr. Goel would further submit that taking into consideration the entire factual position and the circumstances before, at the time and post the committing of the suicide by the deceased-student, the ingredients of Section 305 IPC are attracted, besides the provisions of Section 306 IPC, for which the FIR stands registered.

It is yet further submitted that the petitioner in her supervisory and over all incharge capacity (being Principal of the School) did not ensure that the deceased-child, who belonged to LGBTQ community, had always the susceptibility of falling prey to the unruly behavior of his peers at the School. It is yet further argued that in the suicide note left by the deceased, the cause that drove him to commit suicide clearly finds mention, which belies the stand taken by the petitioner in the present petition.

On the basis of the said grave position, Mr. Goel, submits that the factual position involved in the case is to be appreciated by the trial Court on the basis of evidence and there is no material on record, so as to warrant interference by this Court. He relies upon the judgments of the Hon'ble Apex Court in State of Haryana Vs. Ch. Bhajan Lal and others, 1991(1) RCR (Criminal) 383; Sanjeet Jaiswal Vs. State of Uttar Pradesh and others, 2022(3) RCR (Criminal) 841; Central Bureau of Investigation Vs. Aryan Singh etc., 2023 AIR (Supreme Court) 1987.

Mr. ADS Sukhija, Advocate, appearing as an Amicus Curiae, though submits that the petitioner, being the Principal

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of the School, at her level tried to resolve the issue, yet the mandate of the POCSO Act, was not complied with as, in terms of Section 19 of the Act, she ought to have acted swiftly and reported the matter to the police immediately, as the same concerned the safety and security of the child.

Mr. Sukhija, further argues that the petitioner cannot wriggle out of her liability only for the reason that she had acted bona-fidely on her part, when specifically the mandate of the Act, stipulated a particular line of action. Therefore, the mandate of the law, having been flouted by the petitioner, no case is made out for quashing of the FIR and other consequential proceedings. He places reliance upon the judgment of the Hon'ble Supreme Court in The State of Maharashtra and another vs. Dr. Maroti s/o Kashinath Pimpalkar, 2022(4) RCR (Criminal) 934.

I have heard the learned counsel for the parties and have also gone through the case filed.

There is no denying the factum of the unfortunate incident. The fact, therefore, remains to be considered by this Court as to whether any case is made out for quashing the FIR and other consequential proceedings by accepting the arguments raised on behalf of the petitioner that she has falsely been implicated in the case in hand.

Much emphasis has been laid down by the learned Senior Counsel for the petitioner on Section 21 of the POCSO Act, to assert that no case is made out under the said Act, as against the petitioner. It would, thus, be appropriate to refer to

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the provisions of Section 19 of the POCSO Act, which read as under:-

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

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

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

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under subsection (2) in a simple language so that the child understands contents being recorded.

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

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

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of

Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).”

Still further, Section 21 of the POCSO Act, which provides for punishment for failure to report or record a case, would read as under:-

“21. Punishment for failure to report or record a case:-

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

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

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

The POCSO Act was enacted with the sole object of proper development of the child and to ensure that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child.

Section 19(1) of the POCSO Act, as reproduced above, casts a duty upon all concerned, who either have an apprehension of an offence under the Act likely to be committed

or has knowledge of such offence having been committed, to report the matter to the Special Juvenile Police Unit or the local Police. Sub Sections (2) to (7) stipulate further course of action upon such matter having been reported in the manner provided in sub Section (1).

The emphasis, therefore, is on the safety and security of the child and maintaining the confidentiality of his/her right to privacy. The obligation on the part of the person, so receiving such information or having knowledge of such information, is not to investigate the matter himself or herself, but the mandate of the POCSO Act, is to report the matter to the Police. Thus, to argue that the endeavour on the part of the petitioner to settle the matter at her level, would obliterate her liability under the POCSO Act, is untenable.

The occurrence in question preceded the alleged homophobic and transphobic bullying by the peers of the deceased child. The email was sent by the complainant to the petitioner on 23.09.2021 and due to the inaction on the part of the petitioner, the child committed suicide on 24.02.2022. Thus, the petitioner cannot plead excuses for not reporting the matter to the police for nearly five months.

The argument of the learned Senior Counsel for the petitioner that in the absence of the children, who were alleged part of the incident of harassment and bullying, the petitioner cannot be tried under Section 21 of the POCSO Act, cannot be accepted, for the simple reason that the reasons for the said students leaving the School or their possible expulsion from the

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School, cannot be gone into by this Court, in the present proceedings under Section 482 Cr.P.C.

No other point has been urged.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

However, the observations made above, are only for the purpose of the present petition and the trial Court would proceed with the matter, uninfluenced by the said observations.

14.07.2023
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No