

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF JUNE, 2023

R

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.8789 OF 2023 (GM - RES)

BETWEEN:

DR. CHANDRASHEKAR T.B.
AGED ABOUT 62 YEARS,
S/O LATE BEERAPPA T.S.,
R/AT 3RD CROSS
LAXMISHA NAGARA
NEAR TELEPHONE EXCHANGE
CHIKKAMAGALURU - 577 101.

WORKING AS
OBSTETRICIAN AND GYNAECALOGIST
PRASANTHI HOSPITAL
LAXMISHA NAGARA
NEAR TELEPHONE EXCHANGE
CHIKKAMAGALURU - 577 101.

... PETITIONER

(BY SRI P.P.HEGDE, SR.ADVOCATE FOR
SRI VENKATESH SOMAREDDI, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
THROUGH SUB INSPECTOR OF POLICE
BELTHANGADY POLICE STATION,
REPRESENTED BY STATE PUBLIC
PROSECUTOR

HIGH COURT OF KARNATAKA, AT
BENGALURU – 560 001.

2 . DEVIKA
AGED ABOUT 12 YEARS
D/O LATE SHASHIDHAR
R/AT KOPPADAGANDI,
KADIRUDAVARA VILLAGE,
BELTHANGADY TALUK
D.K.DISTRICT – 574 214
REPRESENTED BY HER MOTHER.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DTD. 06.03.2023 TAKING COGNIZANCE AND ALL FURTHER PROCEEDINGS IN SPL.C. NO. 44/2023 PENDING ON THE FILE OF THE ADDL. DISTRICT AND SESSIONS JUDGE, FTSC-II (POCSO) D.K. MANGALORE FOR THE OFFENCES PUNISHABLE U/S 5(J)(II), 5(L), 5(Q), 6, 21 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 SECTION 376, 376(2)(H), 376(2)(N), 376(3), 201, 313 R/W SEC. 34 OF IPC 1860 AGAINST THE PETITIONER, WHICH IS PRODUCED HEREWITH AS ANNEX-C.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.05.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/accused No.8 is before this Court calling in question proceedings in Special Case No.44 of 2023 arising out of Crime No.1 of 2023 of Belthangady Police Station registered for offences punishable under Sections 5(J)(II), 5(L), 5(Q), 6 and 21 of the Protection of Children from Sexual Offences Act, 2012 ('the Act' for short) and Sections 376, 376(2)(h), 376(2)(n), 376(3), 201, 313 and 34 of the IPC, insofar as it concerns the petitioner, it is under Section 21 of the Act.

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

The petitioner, a doctor by profession, having taken voluntary retirement from service now runs a hospital in the name and style of "Prashanthi Hospital" at Laxmisha Nagara, Chikkamagaluru. The incident that triggers registration of crime is that on 17-12-2022 between 13:00 to 14:00 hours, the 2nd respondent/victim comes to the hospital owned by the petitioner, seeking treatment. The victim is said to have entered the hospital with severe bleeding with

decreased vitals and her condition was very serious due to such heavy bleeding. The companions along with the victim informed the petitioner that she had taken some tablets for abortion 2 to 3 days back and that has caused severe bleeding. The persons who accompanied the victim claimed to be her parents. It is the averment of the petitioner in the petition that considering the condition, the patient was immediately admitted to the hospital and was put on oxygen, IV fluids etc. The conservative treatment improved the vitals of the victim. She was still unstable and there was no danger to her life. The petitioner is said to have performed medical termination of pregnancy which was incomplete, leaving the placenta behind. On the victim being unstable, further examination was conducted and it was noticed that the bleeding was also seen from outside and, therefore appropriate procedure was performed to retain the placenta as further expulsion would have created danger to the life of the victim. After the victim became stable, which is after about 2 days of such admission, the victim was discharged in the morning hours and was taken by the people, said to be her relatives. After about one month of the said incident, the crime comes to be registered in Crime No.1 of 2023

before the Belthangadi Police Station for the aforesaid offences. The petitioner was not arrayed as accused at that point in time.

3. Investigation is conducted by the jurisdictional Police and the result of such investigation was issuance of a notice to the petitioner on 17-02-2023, two months after the aforesaid incident. The allegation against the petitioner was that he has performed the act of medical termination of pregnancy on the victim who was then 12 years and 11 months old and had been subjected to sexual activity. The offence against the petitioner, in particular was the one punishable under Section 21 of the Act. After issuance of notice and recording of statement of the petitioner a charge sheet comes to be filed on 26-02-2023 for the aforesaid offences against other accused and against the petitioner/accused No.8 for the offence under Section 21 of the Act. Filing of the charge sheet is what drives the petitioner to this Court in the subject petition.

4. Heard Sri P.P.Hegde, learned senior counsel appearing for the petitioner and Sri Mahesh Shetty, learned High Court Government Pleader appearing for respondent No.1.

5. The learned senior counsel would contend with vehemence that the petitioner is a reputed doctor and had no intention to do anything that is alleged. Being a doctor, it was his bounden duty to treat the patient who came with severe bleeding. The victim was accompanied by three or four people, who had introduced themselves, as parents and husband of the victim and the age of the victim was given as 18 years and 3 months. It is the submission of the learned senior counsel that physical appearance of the victim was such that, it could be believed that she was more than 18 years old and, therefore, without going into further details the petitioner performed the surgery and protected the patient/victim. It is his case that he had no knowledge of the victim, being less than 18 years old, and he should not be penalized by forcing him to undergo trial, in which eventually he would get acquitted. He would therefore, seek quashment of entire proceedings.

6. Per-contra, the learned High Court Government Pleader would refute the submissions to contend that the petitioner being a doctor of sufficient standing, ought to have taken note of the fact

that the victim was of a tender age and therefore all the submissions are a matter of trial for the petitioner to come out clean.

7. I have given my anxious consideration to the aforesaid submissions of the learned senior counsel and the learned High Court Government Pleader and have perused the available material on record.

8. The afore-narrated facts are not in dispute. The petitioner, doctor by profession – Gynaecologist, claims to have worked as Taluk Health Officer in Chikkamagalur Taluk for almost 20 years and starts his own hospital in the name and style of “Prashanthi Hospital” after taking voluntary retirement from Government service. It is his claim that he has put in 35 years of practice as a Gynaecologist and still continues to practice the said discipline in his profession.

9. On 17-12-2022 the 2nd respondent/victim who was 12 years and 11 months old, as on the date on which she enters the

hospital of the petitioner and was allegedly studying in the 7th standard at the Taluk Higher Primary School, Belthangady is subjected to physical relationship/sexual activity by accused No.1 and on continuing the said act she becomes pregnant. Accused No.1 administers certain tablets to the child to get the pregnancy aborted. The tablets appear to have harmed, resulting in severe bleeding to the victim. It is the narration in the petition that the victim when appeared before the petitioner, she was wearing a *saree* and *mangala sutra*. She was accompanied by accused No.1, 2 and other relatives. While filling up the application regarding the information of the patient it is recorded that the patient was 18 years and 3 months and wife of one Sudhir, C/o Vinoda. She was admitted as an inpatient on 17-12-2022. Summary sheet of admission of the patient, reads as follows:

*"PRASHANTHI HOSPITAL
LAKSHMISHA NAGAR, CHIKMAGALUR - 577 101, 232558
SUMMARY SHEET*

<i>Date & time of Admission</i>	<i>17-12-2022, 2PM</i>
<i>Sex</i>	<i>Female</i>
<i>Religion</i>	<i>Hindu</i>
<i>I.P.No.</i>	<i>1180/2022</i>
<i>Date and time of discharge</i>	<i>19-12-2022</i>
<i>Name of Patient</i>	<i>Mts. Devika, 18 years 3</i>

	months
Father/Husband's name	W/o Sudeer c/o Vinod
Address	Gowri Kaluve, near water tank, Chikmagalur 7259112174
Date of surgery	17-12-2022
Operative procedure	Spontaneous expulsion of placenta after induction, following check curettage has done on 17-12-2022
Final Diagnosis	Incomplete abortion, hemorrhagic shock Anemia Retained placenta
Result	Discharged on 19-12-2022"

(Emphasis added)

The treatment given and the procedure performed upon the child reads as follows:

Name	Age	Sex	Inpatient No.
Devika	18 years 3 months	Female	1180/22

(Emphasis added)

Chief Complaints: Amenorrhoea 3/12 months
Bleeding Pv/Plain Abdomen since morning

H/O Present illness: Prime, Married Life – 3months
Taken some tablets for termination of Pregnancy locally, following Plain Abdomen/ Bleeding Pv started

(Emphasis added)

Past history: on examination, general condition – fair B.P 90/60
Pallar ++, CVS – Tachycardia
Per abdomen uterus just palpable, tenderness present
Pervaginal examination: Bleeding, ++, card (Umb)
Seen outside the valva, bleeding present
Patient is very uncooperative for the examination,
Cord tied with tread, bleeding stopped
Incomplete abortion in shock and retained placenta.

(Emphasis added)

Treatment given:

I.V.fluids started
Antibiotics stated
Oxygen
Foot elevation done
Oxytocin started
Tables: Cytolog 400mg
Arrange for 1unit blood
Patient condition improving
BP 100/62”

After about 2 days when the condition of the victim became stable, she was discharged from the hospital. The discharge summary reads as follows:

"PRASHANTHI HOSPITAL
Lakshmisha Nagar, Chikmagaluru – 577101, 232558
DISCHARGE SUMMARY

O.P No.-
(In – patient No.) **I.P.No. – 1180/22**

Name	Mrs.Devika
------	------------

Age	18 Years 3 months
Sex	Female
Husband Name	w/o Sudeer c/o Vinoda
Address	Gowri Kaluve, near water tank, Chikmagalur 7259114174
Date of admission	17-12-2022
Date of discharge	19-12-2022
Date of surgery	-
Brief History	3/12 months, bleeding PV Pain in abdomen Primi – Incomplete abortion-shock-retained placenta
Examination	O/A, low vitals BP – 90/60 RR – 26/nt
Lab Investigation	Rh 'A' negative O/A HB 7.5gms, O/D 8.5 gms
Course in the hospital	Sedation after improving general condition, Placenta removed, check curotise done
Final diagnosis	Primi: Incomplete abortion, retained placenta
Treatment given	IV fluids, 02 Oxytocin drip Supportives started”

(Emphasis added)

Brief history of the discharge summary was that incomplete abortion, retention of placenta. Reasons are also indicated. In all the aforesaid three documents the age of the victim is quoted as 18 and years 3 months. The age of the victim is not on the basis of any record or document. The age of the victim is quoted as

disclosed by the relatives/other accused who accompanied the victim. That too without any further clarification or verification the petitioner admits the child and performs the procedure. No doubt being a doctor it was his bounden duty to treat the patient in need of treatment but, the aftermath of the treatment is what becomes the fulcrum of the subject *lis*.

10. After about 2 months, a notice comes to be issued on 17-02-2023 to provide treatment details and to tender his statement to the Investigating Officer. The petitioner tenders his statement and claims to be ignorant of the age of the victim which was 12 years and 11 months according to the records. It is the submission of the learned senior counsel that the petitioner was of the firm belief that the age of the victim was 18 years and 3 months as the person who claimed to be her husband has mentioned as such. It is germane to notice the statement made by the husband on 17-12-2022 and reads as follows:

“ಸುಧೀರ್ 21 ವರ್ಷ ನನ್ನ ಹೆಂಡತಿ ದೇವಿಕಾ ಗೌರಿಕಾಲು ವೆ ಚಿಕ್ಕಮಗಳೂರು ನಮಗೆ ಮದುವೆಯಾಗಿ 3 ತಿಂಗಳಾಗಿದ್ದು ಈ ದಿನ 17/12/2022 ರಂದು ಮಧ್ಯಾಹ್ನ 2 ಗಂಟೆಗೆ ಹೊಟ್ಟೆನೋವು ರಕ್ತಸ್ರಾವದಿಂದ ಈ ಆಸ್ಪತ್ರೆಗೆ ದಾಖಲಾಗಿರುತ್ತೇವೆ. ನಾನು 2 ದಿನಗಳ ಹಿಂದೆ ನಾನು 3 ತಿಂಗಳಿಂದ ಮುಟ್ಟಾಗದೆ ಇರುವುದಕ್ಕೆ ಮಾತ್ರ ತೆಗೆದುಕೊಂಡಿದ್ದು ತಡನಂತರ ಹೊಟ್ಟೆನೋವು ರಕ್ತಸ್ರಾವವಾಗುತ್ತಿದ್ದು ನಾವು ಆಸ್ಪತ್ರೆಗೆ ಬಂದಿರುತ್ತೇವೆ. ನನ್ನನ್ನು

ವೈದ್ಯರು ಪರೀಕ್ಷಿಸಿ ಗರ್ಭಪಾತವಾಗಿ ಕಸ(ಮಾಸ) ಮಾತ್ರ ಉಳಿದಿದ್ದು ಅದರಿಂದ ತೀವ್ರ ರಕ್ತಸ್ರಾವವಾಗುತ್ತಿದೆ ಎಂದು ತಿಳಿಸಿ ನನಗೆ ಸೂಕ್ತ ಚಿಕಿತ್ಸೆ ನೀಡಿರುತ್ತಾರೆ. ಆಸ್ಪತ್ರೆಗೆ ಬರುವಾಗ ನನ್ನ ಹೆಂಡತಿಯು ರಕ್ತಸ್ರಾವದಿಂದ ಹೆಚ್ಚಾಗಿ ಬಳಸಿದ್ದು ನಾವು ಬೇರೆ ಆಸ್ಪತ್ರೆಗೆ ಹೋಗದೆ ಇಲ್ಲೇ ಚಿಕಿತ್ಸೆ ಪಡೆಯಲು ಕೋರಿರುತ್ತೇವೆ.

ನನಗೆ ಚಿಕಿತ್ಸೆ ನೀಡುವಾಗ ಆಗುವ ತೊಂದರೆಗಳ ಬಗ್ಗೆಯೂ ತಿಳಿಸಿರುತ್ತಾರೆ ಕಸವನ್ನು ತೆಗೆಯಲು ಸೂಕ್ತ ಚಿಕಿತ್ಸೆಯನ್ನು ನೀಡಿರುತ್ತಾರೆ ಇದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ವಿನೇ ತೊಂದರೆಯಾದರೂ ನಾವೇ ಜವಬ್ದಾರರಂದು ತಿಳಿದಿರುತ್ತೇವೆ.

ಇದನ್ನು ಓದಿ ಓದಿಸಿ ಈ ಕೆಳಗೆ ನಾವು ಸಹಿ ಮಾಡಿರುತ್ತೇವೆ.”

Accused No.1/husband nowhere mentions the age of the victim in his statement. What he mentions is that he is 21 years old and had administered some tablets to the victim for abortion among other things. The recording of the statements of all the accused led to the filing of the charge sheet by the Investigating Officer for the aforesaid offences. Insofar as the petitioner is concerned, the charge is for the offence punishable under Section 21 of the Act.

The charge against the petitioner reads as follows:

1	ಹೆಸರು: ಎ 8) ಡಾ. ಟಿ.ಬಿ ಚಂದ್ರಶೇಖರ್	
2	ತಂದೆ/ಗಂಡನ ಹೆಸರು: -	ಹುಟ್ಟಿದ ದಿನಾಂಕ: - -
3	ಲಿಂಗ: ಪುರುಷ	4) ರಾಷ್ಟ್ರೀಯತೆ: ಭಾರತೀಯ
5	ಪಾಸ್‌ಪೋರ್ಟ್ ನಂಬು: -	ಪಡೆದ ದಿನಾಂಕ ಮತ್ತು ಸ್ಥಳ:
6	ಧರ್ಮ: ಹಿಂದು	7) ಪ.ಜಾ/ಪ.ಪಂ. ದವರೇ:
8	ಉದ್ಯೋಗ: ವೈದ್ಯ	9) ವಿಳಾಸ: ಪ್ರಶಾಂತಿ ಆಸ್ಪತ್ರೆ, ಟೆಲಿಫೋನ್ ಎಕ್ಸ್‌ಚೇಂಜ್ ಹತ್ತಿರ, ಲಕ್ಷ್ಮೀನಗರ, ಚಿಕ್ಕಮಗಳೂರು, ಚಿಕ್ಕಮಗಳೂರು ಜಿಲ್ಲೆ.

ಮೇಲಿನ ವಿವರಗಳನ್ನು ದೃಢಪಡಿಸಿಕೊಳ್ಳಲಾಗಿದೆಯೇ:-

10)	ಕ್ರಿಮಿನಲ್ ನಂ. ಗೊತ್ತಿದ್ದರೆ:	ತಾತ್ಕಾಲಿಕ ಕ್ರಿಮಿನಲ್ ನಂ: _____
11)	ಬಂಧನದ ದಿನಾಂಕ: -	ಜಾಮೀನಿನ ಮೇಲೆ ಬಿಡುಗಡೆಯಾದ ದಿನಾಂಕ: -
12)	ನ್ಯಾಯಾಲಯಕ್ಕೆ ಕಳುಹಿಸಿದ ದಿನಾಂಕ: -	
13)	ಕಾಯ್ದೆಗಳು ಮತ್ತು ಕಲಂಗಳು: 21 POCSO ACT 2012	
14)	ಜಾಮೀನುದಾರರ ಹೆಸರು ಮತ್ತು ವಿಳಾಸ: -	
15)	ಹಿಂದಿನ ಶಿಕ್ಷೆಯ ವಿವರ ಸಂಬಂಧಿಸಿದ ಕೇಸಿನ ಉಲ್ಲೇಖರೂಪ: _____	
16)	ಅಪರಾಧ ಈಗ ಎಲ್ಲಿದ್ದಾನೆ: ತಲೆಮರೆಸಿಕೊಂಡಿದ್ದಾನೆ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿದೆ/ ಪೊಲೀಸರಿಂದ ಜಾಮೀನು/ ಪೊಲೀಸು ಕಸ್ಟಡಿಯಲ್ಲಿ/ ನ್ಯಾಯಾಲಯದಿಂದ ಜಾಮೀನು/ ನ್ಯಾಯಾಂಗ ಬಂಧನ ತಲೆಮರೆಸಿಕೊಂಡಿದ್ದಾನೆ/ ಘೋಷಿತ ಆರೋಪಿ.”	

(Emphasis added)

Therefore, it is germane to notice Section 21 of the Act. Section 21 of the Act reads as follows:

"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."

Section 21 directs that any person who fails to report the commission of an offence under sub-section (1) of Section 19 or

Section 20 shall be punished with six months of imprisonment or fine. Section 19 deals with reporting of offence and reads as follows:

“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 sub-section (2) in a simple language so that the child understands contents being recorded.

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

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the

child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

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

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

(Emphasis supplied)

Section 19 clearly mandates that notwithstanding anything contained in the Code of Criminal Procedure any person who has knowledge that such an offence has been committed shall report to the local Police or any other enumerated Authority under clause (a) without any loss of time. Therefore, the allegation against the petitioner is that he has not reported the offence to the jurisdictional police or any other Authority enumerated therein.

11. The defence of the petitioner is that he had no knowledge that the victim was only 12 years and 11 months. I decline to accept the said defence. The petitioner claims to be Gynaecologist having 35 years of practice. It is highly improbable that the petitioner at the very look of the patient did not get to know that

the victim was of tender age of 12 years and 11 months and had been subjected to sexual intercourse as she had become pregnant. Mere statement or wearing a saree at the time the victim entered the hospital are all a matter of evidence and trial, which this Court at this stage in exercise of its jurisdiction under Section 482 of the CrPC would not consider. The offence against others is horrendous. The information ought to have been given. Defence of ignorance by the petitioner is a matter of trial.

12. Though the offence under Section 21 of the Act attracts imprisonment for six months, the offence by the very nature is serious. Merely because it is six months, it cannot be said that the petitioner should be left off the hook at this stage. Being a responsible doctor having close two score years of service as a Gynaecologist, who ought to have been cautious and informed the concerned, as obtaining under Section 19 of the Act. Having not done so, is a serious dereliction.

13. It is in public domain that several cases of heinous offences committed under the Act go unnoticed due to the lack of

information, as it is suppressed by the concerned. But, the fact is that, the victims who are subjected to such assault, by the accused, except in justifiable cases, get away by lack of reporting. Therefore, non-reporting snowballs into a serious offence.

14. The Apex Court has time and again considered this aspect i.e., importance of reporting of offences, particularly by doctors and the seriousness attached to such reporting. A three Judge Bench of the Apex Court in the case of **X .. v. PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT**¹ has held as follows:

"82. Furthermore, Section 19(1) of the POCSO Act requires that any person, including a child, who has knowledge of the commission of an offence punishable under the POCSO Act, or an apprehension that such an offence may be committed, is mandatorily required to provide information to the Special Juvenile Police Unit or the local police. Section 19(2) of the POCSO Act stipulates that every such report under Section 19(1) shall be ascribed an entry number and recorded in writing, read over to the informant, and entered in a book to be kept by the police unit. Failure to report, as mandated by Section 19, is a punishable offence under Section 21 of the POCSO Act. Neither the POCSO Act nor the Protection of Children from Sexual Offences Rules 2012 prescribe a template or a format for the report mandated under Section 19(1).

¹ 2022 SCC OnLine SC 1321

83. When a minor approaches an RMP for a medical termination of pregnancy arising out of a consensual sexual activity, an RMP is obliged under Section 19(1) of the POCSO Act to provide information pertaining to the offence committed, to the concerned authorities. An adolescent and her guardian may be wary of the mandatory reporting requirement as they may not want to entangle themselves with the legal process. Minors and their guardians are likely faced with two options - one, approach an RMP and possibly be involved in criminal proceedings under the POCSO Act, or two, approach an unqualified doctor for a medical termination of the pregnancy. If there is an insistence on the disclosure of the name of the minor in the report under Section 19(1) of POCSO, minors may be less likely to seek out RMPs for safe termination of their pregnancies under the MTP Act.

84. To ensure that the benefit of Rule 3B(b) is extended to all women under 18 years of age who engage in consensual sexual activity, it is necessary to harmoniously read both the POCSO Act and the MTP Act. For the limited purposes of providing medical termination of pregnancy in terms of the MTP Act, we clarify that the RMP, only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act. The RMP who has provided information under Section 19(1) of the POCSO Act (in reference to a minor seeking medical termination of a pregnancy under the MTP Act) is also exempt from disclosing the minor's identity in any criminal proceedings which may follow from the RMP's report under Section 19(1) of the POCSO Act. Such an interpretation would prevent any conflict between the statutory obligation of the RMP to mandatorily report the offence under the POCSO Act and the rights of privacy and reproductive autonomy of the minor under Article 21 of the Constitution. It could not possibly be the legislature's intent to deprive minors of safe abortions."

(Emphasis supplied)

The Apex Court holds that Section 19(1) of the Act requires that any person, including a child, who has knowledge of commission of an offence under the Act is mandatorily required to provide information to the Special Juvenile Police Unit or local Police. Section 19(2) of the Act stipulates that every such report under Section 19(1) shall be ascribed an entry number and recorded in writing, read over to the informant and entered in a book to be kept by the Police Unit. Failure to report would definitely ensue punishment. It further observes that when a minor approaches a Registered Medical Practitioner for medical termination of pregnancy arising out of consensual sexual activity, the RMP is obliged under Section 19(1) of the Act to provide information pertaining to the offence committed to the concerned authorities. An adolescent and her guardian may be wary of the mandatory requirement of reporting, as they may not want to entangle themselves in a legal web.

Later to the aforesaid judgment, the Apex Court in the case of

STATE OF MAHARASHTRA AND ANOTHER v. DR. MAROTI²

² (2023) 4 SCC 298

directs that reporting of offences under Section 19 and punishment for those offences under Section 21 must be of strict compliance.

The Apex Court holds as follows:

"12. To achieve the avowed purpose, a legal obligation for reporting of offence under the Pocso Act is cast upon on a person to inform the relevant authorities specified thereunder when he/she has knowledge that an offence under the Act had been committed. Such obligation is also bestowed on person who has apprehension that an offence under this Act is likely to be committed. Besides casting such a legal obligation under Section 19, the legislature thought it expedient to make failure to discharge the obligation thereunder as punishable, under Section 21 thereof. True that under Section 21(1), failure to report the commission of an offence under sub-section (1) of Section 19 or Section 20 or failure to report such offence under sub-section (2) of Section 19 has been made punishable with imprisonment of either description which may extend to six months or with fine or with both. Sub-section (2) of Section 21 provides that any person who 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 punishable with imprisonment with a term which may extend to one year or with fine. Certainly, such provisions are included in with a view to ensure strict compliance of the provisions under the Pocso Act and thereby to ensure that the tender age of children is not being abused and their childhood and youth is protected against exploitation.

13. Looking at the penal provisions referred above, making failure to discharge the obligation under Section 19(1) punishable only with imprisonment for a short duration viz. six months, one may think that it is not an offence to be taken seriously. However, according to us that by itself is not the test of seriousness or otherwise of an offence of failure to discharge the legal obligation under Section 19, punishable under Section 21 of the Pocso Act.

We are fortified in our view, by the decisions of a three-Judge Bench of this Court in *Vijay Madanlal Choudhary v. Union of India* [*Vijay Madanlal Choudhary v. Union of India*, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] and a two-Judge Bench in *Shankar Kisanrao Khade v. State of Maharashtra* [*Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546 : (2013) 3 SCC (Cri) 402] .

14. In the decision in *Shankar Kisanrao Khade* case [*Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546 : (2013) 3 SCC (Cri) 402] , a two-Judge Bench of this Court in paras 77.5 and 77.6 issued certain directions for due compliance and they read thus : (SCC p. 583, para 77)

"77. ... 77.5. If hospitals, whether government or privately-owned or medical institutions where children are being treated come to know that children admitted are subjected to sexual abuse, the same will immediately be reported to the nearest Juvenile Justice Board/SJPU and the Juvenile Justice Board, in consultation with SJPU, should take appropriate steps in accordance with the law safeguarding the interest of the child.

77.6. The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening the offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law."

15. In *Vijay Madanlal Choudhary* case [*Vijay Madanlal Choudhary v. Union of India*, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] , this Court observed that the **length of punishment is not only the indicator of the gravity of offence and it is to be judged by a totality of factors, especially keeping in mind the background in which the offence came to be recognised by the legislature in the specific international context.** In this context, it is also relevant to note that the United Nations Convention on Rights of Children, which was ratified by India on 11-12-1992, requires the State parties to undertake all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other

unlawful sexual practices, etc. Articles 3(2) and 34 of the Convention have placed a specific duty on the State to protect the child from all forms of sexual exploitation and abuse.

16. Prompt and proper reporting of the commission of offence under the PocsO Act is of utmost importance and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act. We say so taking into account the various provisions thereunder. Medical examination of the victim as also the accused would give many important clues in a case that falls under the PocsO Act. Section 27(1) of the PocsO Act provides that medical examination of a child in respect of whom any offence has been committed under the said Act, shall, notwithstanding that a first information report or complaint has not been registered for the offence under the Act, be conducted in accordance with Section 164-ACrPC, which provides the procedures for medical examination of the victim of rape.

... ..

30. True that the FIR and the charge-sheet still remain in fact in respect of the other accused. But then, non-reporting of sexual assault against a minor child despite knowledge is a serious crime and more often than not, it is an attempt to shield the offenders of the crime of sexual assault. Be that as it may in view of the decision in Shankar Kisanrao Khade case [Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546 : (2013) 3 SCC (Cri) 402] holding non-reporting of such a crime as serious and in view of the position obtained from a conjoint reading of Sections 19(1) and 21 of the PocsO Act, such persons are also liable to be proceeded with, in accordance with law. In this context, it is also relevant to refer to an observation made by this Court in the said case that this Court under parens patriae jurisdiction has a duty to give directions for compliance of the provisions under the PocsO Act."

(Emphasis supplied)

The Apex Court was considering a case of non-reporting by a doctor and directed strict compliance of Section 19 of the Act. Therefore,

both the judgments of the Apex Court quoted *supra* would unmistakably direct that reporting of offences under the Act, particularly by doctors, requires strict compliance failing which, the offender committing offence arising out of consensual sexual activity or a rape or sexual abuse on a child will get away from the clutches of law, which would defeat the very object of promulgation of the Act as the provision is one of those steps towards preventive measures of child abuses. Therefore, responsibility to report is cast on all stake holders. Wherefore, it is necessary for the State to direct strict compliance with Section 19 and reporting of offences particularly by doctors who indulge in medical termination of pregnancy of minors in extenuating circumstances. Even though the offence as observed hereinabove, is punishable by six months, the doctors in particular, shall take into consideration the entire attendant facts, that would have befallen on a child, who is subjected to any of the ingredients under Sections 4, 5 and 6 of the Act.

15. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition stands dismissed.
- (ii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of the petitioner in exercise of jurisdiction of this Court under Section 482 CrPC. It shall not influence or bind the trial against the petitioner or any other accused in Special Case No.44 of 2023.

**Sd/-
JUDGE**

bkp
CT:MJ