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Neutral Citation No. (2024:HHC:4780)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No.825 of 2023
Reserved on: 27.06.2024
Date of Decision: 09.07.2024.

Rakesh Kumar Bansal ...Petitioner

Versus

State of H.P. and others ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioner : Mr. P.P. Chauhan, Advocate (through VC) with Ms. Tara Devi, Advocate.

For the Respondents : Mr Jitender Sharma, Additional Advocate General, for respondents No.1 to 3-State.

Mr. Ajay Kumar Dhiman, Advocate, for respondent No.4.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing of FIR No. 95 of 2023, dated 9.5.2023, registered under Section 354-A of IPC and Section 7 of the Protection of Children from Sexual Offences Act (POCSO Act) with Police Station Paonta

[1] *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

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Sahib, District Sirmour, H.P. (The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present petition are that the Principal of Government Senior Secondary School received a complaint regarding the sexual harassment of a girl. The matter was referred to the Sexual Harassment Committee, which called the girl and her parents; however, they did not appear before the Committee and the Committee was unable to do anything. The matter involved the sexual harassment of a girl; therefore, a request was made to the police to take action as per law.

3. The police conducted the investigation and went to the school. The statement of the victim was recorded and the accused was arrested. The victim made a statement under Section 164 of Cr.P.C. The female students also mentioned their views against the accused. 21 girls had objected to the behaviour of the accused. The police recorded the statements of about 20 girls, who stated that the accused used to utter double-meaning words and touch the girls on their backs, cheeks etc. which made

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them uncomfortable. Hence, the challan was prepared and presented before the Court for the commission of offences punishable under Section 354-A of IPC and Section 10 of the POCSO Act.

4. The petitioner/accused filed the present petition asserting that he was falsely implicated. The Principal misunderstood the tenor of the complaint and referred the matter to the Chairperson of the Sexual Harassment Committee to take further action. The Sexual Harassment Committee also did not take any action in the matter and referred it back to the principal. The petitioner/accused has been serving in the Department for 22 years and has won many awards from various institutions. No offence is made out against the petitioner even if the allegations in the FIR are taken to be true. Continuing with the criminal proceedings will amount to gross abuse of the judicial process. Therefore, it was prayed that the present petition be allowed and the FIR be quashed.

5. I have heard Mr P.P. Chauhan, learned Counsel through video-conferencing with Ms Tara Devi, learned counsel for the petitioner, Mr Jitender Sharma, learned Additional

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Advocate General, for respondents No.1 to 3 and Mr Ajay Kumar Dhiman, learned counsel for respondent No.4.

6. Mr. P.P. Chauhan, learned Counsel for the petitioner submitted that the initial complaint made to the Principal did not disclose the commission of any cognizable offence. There was not even a mention of sexual harassment and the principal erred in referring the complaint to the Sexual Harassment Committee. The Sexual Harassment Committee also did not carry out any investigation and the principal referred the matter to the police. The allegations in the complaint even if accepted to be correct do not fulfill the ingredients of Section 7 of the POCSO Act. The continuation of the proceedings amounts to abuse of the process of the Court. Therefore, he prayed that the present petition be allowed and the FIR be quashed.

7. Mr. Jitender Sharma, learned Additional Advocate General for respondents No.1 to 3-State submitted that the police found after investigation that the accused had sexually assaulted the girl students. The truthfulness or otherwise of the allegations is not to be seen at this stage but is to be seen after the conclusion of the trial. The allegations in the charge sheet

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constitute the commission of an offence punishable under Section 7 of the POCSO Act. Therefore, he prayed that the present petition be dismissed.

8. Mr. Ajay Kumar Dhiman, learned counsel for respondent No.4 adopted these submissions of learned Additional Advocate General and prayed that the present petition be dismissed.

9. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

10. The law regarding the exercise of jurisdiction under Section 482 of Cr.P.C. was considered by the Hon'ble Supreme Court in ***A.M. Mohan v. State, 2024 SCC OnLine SC 339,*** wherein it was observed: -

> **9.** The law with regard to the exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of ***Indian Oil Corporation* v. *NEPC India Limited (2006) 6 SCC 736: 2006 INSC 452***[1] after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:
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> "**12.** The principles relating to the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—***Madhavrao Jiwajirao***

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Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692: 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194: 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591: 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164: 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259: 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269: 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168: 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645: 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283].* The principles, relevant to our purpose are:

> (*i*) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.
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> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing a complaint.
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> (*ii*) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.
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> (*iii*) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The

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power should be used sparingly and with abundant caution.

(*iv*) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are necessary for making out the offence.

(*v.*) A given set of facts may make out : (*a*) purely a civil wrong; (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

11. Similar is the judgment ***Maneesha Yadav v. State of U.P., 2024 SCC OnLine SC 643***, wherein it was held: -

12. We may gainfully refer to the following observations of this Court in the case of ***State of Haryana v. Bhajan Lal1992 Supp (1) SCC 335: 1990 INSC 363***:

"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the

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inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
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> (5) Where the allegations made in the FIR or complaint are so absurd and inherently

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> improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
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> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
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> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.
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> 103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

12. The police conducted the investigation and recorded the statements of the victim and other girls. The victim stated that the accused caught her by her neck. Another girl stated that the accused used to touch the back and the cheek of the girls. One

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girl stated that the accused used to utter double-meaning words. One girl stated that the accused used to touch the girls in the class inappropriately. One girl stated that the accused used to say that he was very sexy and would not age. Another girl stated that the girls are doing whatever is to be done after the marriage. He used to ask the girls whether they knew how the children were born.

13. The accused was a teacher of physics and had no concern with reproduction. Many girls stated that he used to touch the girls inappropriately on their back, cheek and neck. He used to comment about himself and the dress of the girls. These acts constitute the commission of an offence punishable under Section 7 of the POCSO Act, which provides punishment for physical contact with a minor with sexual intent. It was laid down by the Hon'ble Supreme Court in ***Attorney General v. Satish, (2022) 5 SCC 545: 2021 SCC OnLine SC 1076*** that any act involving physical contact done with sexual intent would attract Section 7 of the POCSO Act. It was observed:

> "**34.** Now, from the bare reading of Section 7 of the Act, which pertains to the "sexual assault", it appears that it is in two parts. The first part of the section mentions about the act of touching the specific sexual parts of the body

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with sexual intent. The second part mentions about "any other act" done with sexual intent which involves physical contact without penetration. Since the bone of contention is raised by the learned Senior Advocate Mr Luthra with regard to the words "touch", and "physical contact" used in the said section, it would be beneficial first to refer to the dictionary meaning of the said words.

35. The word "touch" as defined in the *Oxford Advanced Learner's Dictionary* means "the sense that enables you to be aware of things and what are like when you put your hands and fingers on them". The word "physical" as defined in the *Advanced Law Lexicon*, 3rd Edn., means "of or relating to body...." and the word "contact" means "the state or condition of touching; touch; the act of touching...". Thus, having regard to the dictionary meaning of the words "touch" and "physical contact", the Court finds much force in the submission of Ms Geetha Luthra, learned Senior Advocate appearing for the National Commission for Women that both the said words have been interchangeably used in Section 7 by the legislature. The word "touch" has been used specifically with regard to the sexual parts of the body, whereas the word "physical contact" has been used for any other act. Therefore, the act of touching the sexual part of the body or any other act involving physical contact, if done with "sexual intent" would amount to "sexual assault" within the meaning of Section 7 of the POCSO Act.

36. There cannot be any disagreement with the submission made by Mr Luthra for the accused that the expression "sexual intent" having not been explained in Section 7, it cannot be confined to any predetermined format or structure and that it would be a question of fact, however, the submission of Mr Luthra that the expression "physical contact" used in Section 7 has to be construed as "skin-to-skin" contact cannot be accepted. As per the rule of construction contained in the maxim "*ut res magis valeat quam pereat*", the construction of a rule should give effect to the rule rather than destroying it. Any narrow and

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pedantic interpretation of the provision which would defeat the object of the provision, cannot be accepted. It is also needless to say that where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. Restricting the interpretation of the words "touch" or "physical contact" to "skin-to-skin contact" would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. "Skin-to-skin contact" for constituting an offence of "sexual assault" could not have been intended or contemplated by the legislature. The very object of enacting the POCSO Act is to protect children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case touching the sexual or non-sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault under Section 7 of the POCSO Act. The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the "sexual intent" and not the "skin-to-skin" contact with the child.

37. At this juncture, it may also be beneficial to refer to the observations made by the foreign courts in the judgments cited by Ms Geetha Luthra, wherein the said courts while interpreting analogous provisions as prevalent in such countries, have held that "skin-to-skin contact" is not required to constitute an offence of sexual assault. It is not the presence or lack of intervening material which should be focused upon, but whether the contact made through the material, comes within the definition prescribed for a particular statute, has to be seen. Of course, the judgments of the said courts proceed on the interpretation arising out of the terms defined in the provisions contained in the legislations concerned and are not pari materia to the

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language of Section 7 of the POCSO Act, nonetheless, they would be relevant for the purpose of interpreting the expression "touch" and "sexual assault". In ***R. v. H [R. v. H, (2005) 1 WLR 2005 (CA)]***, the Court of Appeal while interpreting the word "touching" contained in Section 3 of the Sexual Offences Act, 2003 as in force in the UK, observed that the touching of clothing would constitute "touching" for the purpose of said Section 3. Similarly, in ***State v. Phipps [State v. Phipps, 442 NW 2d 611 (Iowa Ct App 1989)]*** the Court of Appeals of Iowa held that a lack of skin-to-skin contact alone does not as a matter of law put the defendant's conduct outside the definition of "sex act" or "sexual activity", which has been defined in Section 702.17 of the Iowa Code.

38. The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialised or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" under Section 7. As held by this Court in ***Balram Kumawat v. Union of India [Balram Kumawat v. Union of India, (2003) 7 SCC 628]***, the law would have to be interpreted having regard to the subject matter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law.

39. It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can

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> take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub-section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe a fact. Thus, on the conjoint reading of Sections 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, "sexual intent" would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of "culpable mental state" on the part of the accused."

14. In the present case, the physical contact made by the accused with the girls coupled with the words uttered by him can only lead to one inference that the touch was with sexual intent. Merely because the informant had not mentioned the ingredients of the commission of offence initially in the complaint made to the Principal cannot lead to an inference that no such facts had taken place. The girls have made statements showing that the accused used to touch them inappropriately and the result of the investigation cannot be ignored at this stage.

15. It was submitted that the accused had won many awards from many different institutions. This submission will

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not help the petitioner, as the Court is not concerned with the capability of the petitioner as a teacher but with the allegations of sexual assault made against him.

16. It was laid down by the Hon'ble Supreme Court in ***Priyanka Jaiswal vs. State of Jharkhand, 2024 SCC OnLine SC 685*** that the Court exercises extra-ordinary jurisdiction under Section 482 of Cr.P.C. and cannot conduct a mini-trial or enter into an appreciation of evidence of a particular case. It was observed:-

> "**13.** We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini-trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of ***Akhil Sharda 2022 SCC OnLine SC 820*** held to the following effect:
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> > "**28.** Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in the exercise of powers under Section 482 Cr. P.C., it appears that the High Court has virtually conducted a mini-trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr. P.C. As observed and held by this Court in a catena of

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> decisions no mini-trial can be conducted by the High Court in the exercise of powers under Section 482 Cr. P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr. P.C., the High Court cannot get into appreciation of evidence of the particular case being considered."

17. A similar view was taken in ***Maneesha Yadav's case (supra)***, wherein it was held that: -

> "**13.** As has already been observed hereinabove, the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint at the stage of quashing of the proceedings under Section 482 Cr. P.C. However, the allegations made in the FIR/complaint, if taken at its face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case, the allegations made in the FIR/complaint even if taken at its face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view that the present case would fall under Category-3 of the categories enumerated by this Court in the case of ***Bhajan Lal (supra)***.
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> **14.** We may gainfully refer to the observations of this Court in the case of ***Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home(2019) 11 SCC 706: 2018 INSC 1060***:
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> > "**14.** First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge sheet is filed, the petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in ***Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23]***. In ***Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23]***, this Court while deciding the question of whether the High Court

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> could entertain the Section 482 petition for quashing of FIR when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed : (SCC p. 63, para 16)
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> > "*16.* Thus, the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge [***Joesph Saivaraj A. v. State of Gujarat*, 2007 SCC OnLine Guj 365**] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."

18. Hence, it is not permissible for the Court to go into the truthfulness or otherwise of the allegations.

19. A charge sheet has been filed before the Court. The learned Trial Court is seized of the matter. It was laid down by the Hon'ble Supreme Court in ***Iqbal v. State of U.P., (2023) 8 SCC 734: 2023 SCC OnLine SC 949*** that when the charge sheet has been filed, learned Trial Court should be left to appreciate the same. It was observed:

> "At the same time, we also take notice of the fact that the investigation has been completed and charge-sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence particularly in the absence of any specific date, time, etc. of the alleged offences, we are of the view that the appellants should

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> prefer a discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and the charge sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the charge sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any discharge case is made out or not."

20. Thus, this Court should not exercise its extraordinary jurisdiction when the learned Trial Court is seized of the matter. The allegations made by the girls in their statements under Section 161 Cr.P.C. duly establish a *prima facie* commission of the offence punishable under Section 7 of the POCSO Act and the FIR cannot be ordered to be quashed at this stage.

21. Consequently, the present petition fails and the same is dismissed.

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

(Rakesh Kainthla)
Judge

9th July, 2024
(Chander)