2022 INSC 1152

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.1874 of 2022
(Arising out of Special Leave Petition (Crl.) No.718 of 2022)

The State of Maharashtra & Anr.
…Appellants

Versus

Dr. Maroti s/o Kashinath Pimpalkar
…Respondent

J U D G M E N T

C.T. RAVIKUMAR, J.

1. Leave granted.

2. This Court in ***Shalu Ojha v. Prashant Ojha***[1] observed: "this is an unfortunate case where the provisions of the Protection of Women from Domestic Violence Act, 2005 are rendered simply a pious hope of the Parliament and a teasing illusion for the appellant". Even while, borrowing those words, we may say, we are

1 (2015) 2 SCC 99

not peeved, but certainly pained, as a legitimate prosecution under another Act viz., the Protection of Children from Sexual Offences Act, 2012 (for short **"**POCSO Act**"**), has been throttled at the threshold by the exercise of power under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), without permitting the materials in support to it to see the light of the day in respect of misprision of sexual assault against minor tribal girls in a girls' hostel. As per the impugned judgment, the High Court of Judicature at Bombay, Nagpur Bench in Criminal Application (APL) No.841 of 2019 dated 20.04.2021 quashed FIR No.185 of 2019 dated 12.04.2019 of Rajura Police Station and the final report filed thereon under Section 173(2), Cr.P.C. qua the Respondent. The *raison d'etre* for the said opening remarks would be unraveled by the factual narration and the legal analysis to be made hereinafter.

3. The stated chargesheet was laid on investigation in FIR No.185/2019 registered at Rajura Police Station, Distt. Chandrapur, for the offences under Section 376AB of the

Indian Penal Code, 1860, Section 4 and 6 of POCSO Act, Section 3(1)(w) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013. We may hasten to add that it was filed under those Sections against the first five accused and in fact, the Respondent herein was arraigned as the 6th accused thereunder, essentially for the failure to report the commission of the offence under the POCSO Act (then, of course by unknown persons), in compliance with the legal obligation under Section 19 (1) of POCSO Act, punishable under Section 21 (1) thereof.

4. The stated FIR came to be registered against unidentified person(s) on the accusation of commission of sexual offences against minor tribal girls who were students of Infant Jesus English Public High School, Rajura residing in its girls' hostel. The complaint was lodged by one Rajesh Tulsidas Dhotkar, Assistant Project Officer, Integrated Tribal Development Project, Chandrapur.

According to the appellant, on 06.04.2019 the said officer received a telephonic information from Chhaban Pandurang Pachare, the Superintendent of the said hostel which is under the control of the Integrated Tribal Development Project, Chandrapur that one girl studying in the 3rd standard and another studying in the 5th standard, of the said school were not keeping well. Immediately, he visited the hospital where they were admitted. Later, he received letter No. 3392/2019 dated 10.02.2019 revealing that the students were shifted from Rural Hospital Rajura to General Hospital, Chandrapur owing to their deteriorating health condition. From the General Hospital, Chandrapur a medical certificate was issued to the effect that there is suspicion of sexual abuse. Thereupon, the Project Officer, Integrated Tribal Development Project, Chandrapur authorised him to lodge the complaint and accordingly, it was laid. We may state at this juncture that going by Criminal Application (APL) No.841/2019, filed along with the present Appeal as Annexure-P3, the parents of the victims were not happy

with the investigation in the crime and they filed a Criminal Writ Petition No.342/2019 and subsequently, Final Report / Charge-Sheet No.43/2019 dated 08.06.2019 was filed.

5. Now, reverting to the case of the appellant, it is to the effect that during the investigation, Superintendent of the aforementioned hostel and four others, namely, Narendra Laxmanrao Virulkar, Sau Neeta alias Kalpana Mahadeo Thakare, Sau Lata Madhukar Kannake, Venkateswami Bondaiyaa Jangam were arrested and arraigned as accused in the crime. During the investigation, it was found that 17 minor girls were abused by the accused and on their medical examination rupture of hymen was found. The respondent herein is the Medical Practitioner appointed for treatment of girls admitted to the said Girls' hostel and the victim girls were taken to him. The investigation revealed that the respondent had knowledge about the incidents occurred, from the victims themselves as the victim girls revealed in their statements recorded under Section 161 of Cr.P.C.

about their divulgation of sexual assault on them to the respondent. In fact, some of the victims had specifically revealed it in their statements recorded under Section 164 Cr.P.C. The respondent who was under a legal obligation, in terms of the provisions under Section 19(1) of the POCSO Act upon getting the knowledge about committing of an offence under the POCSO Act, to provide such information either to the Special Juvenile Police Unit or the local police remained silent and did not provide such information to help the accused, is the gist of the allegation against him. As already stated, after investigation a charge sheet was also filed. The Respondent has been arraigned as accused No. 6 in the aforesaid crime.

6. Apprehending arrest in connection with the said crime, the respondent herein filed an anticipatory bail application before the Ld. Sessions Judge on 10.06.2019 and the same was rejected on 25.06.2019. The said order was challenged before the High Court and the High Court allowed the appeal and granted him protection from

arrest. Thereafter, the respondent herein filed Criminal Application (APL) No.841/2019 under Section 482 of the Cr.P.C. seeking quashment of the FIR dated 12.04.2019 and the chargesheet dated 08.06.2019 to the extent they are against him. The High Court passed the impugned judgment and quashed the FIR as also the chargesheet qua the respondent. Hence, this appeal.

7. Before considering the merits of the challenge against the impugned judgment whereby and whereunder the stated FIR and the chargesheet were quashed, we think it appropriate to refer to certain aspects and also the position with respect to scope of exercise of power under Section 482 Cr.P.C. Exercise of power under Section 482 Cr.P.C. is an exception and not the rule and it is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. This position has been stated and reiterated by this Court time and again.

8. This Court in the decision in ***R.P. Kapur v. State of Punjab***[2], held that the High Court could not embark upon an enquiry as to whether the evidence is reliable or not while exercising the power under Section 482 Cr.P.C. In ***State of Haryana & Ors. v. Bhajan Lal & Ors.***[3], at paragraph 102 this Court held that quashing may be appropriate where the allegations made in the First Information Report or the complaint, even if 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 and where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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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2 A.I.R. 1960 S.C. 866
3 1992 Supp (1) SCC 335

9. In the decision in ***State of M.P v. Awadh Kishore Gupta & Ors.***[4], this Court held that the High Court could not embark upon an enquiry as to whether the evidence is reliable or not as that would be the function of the Trial Court. In ***Dr. Monica Kumar & Anr. v. State of Uttar Pradesh & Ors.***[5], this Court held that the inherent power under Section 482 Cr.P.C. should not be exercised to stifle a legitimate prosecution. In ***Shiji alias Pappu and Ors. v. Radhika and Another***[6], a two Judge Bench of this Court held thus:

> *"...plenitude of the power under Section 482 Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482*

4 (2004) 1 SCC 691
5 (2008) 8 SCC 781
6 AIR 2012 SC 499

may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law."

10. Having made such a short survey on authorities on the exercise of power under Section 482 Cr.P.C. as above, we will now refer to the object and purposes of the POCSO Act. Article 15 of the Constitution, *inter alia* confers powers upon the State to make special provisions for children and Article 39 (f) provides not only that the State shall direct its policy towards securing that the children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity but also to ensure that their childhood and youth are protected against exploitation and against moral and material abandonment. Recognising the constitutional obligation and keeping in view the fundamental concept under Article 15 of the Constitution and also realizing that sexual offences against children are not adequately

addressed by the existing laws, POCSO Act was enacted. The provisions thereunder would reveal that it also aims to ensure that such offenders are not spared and should be properly booked.

11. 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.

12. 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 POCSO

Act. We are fortified in our view, by the decisions of a three Judge Bench of this Court in ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.***[7] and a two Judge-Bench in ***Shankar Kisanrao Khade v. State of Maharashtra***[8].

13. In the decision in ***Shankar Kisanrao Khade's*** case (supra), a two Judge Bench of this Court in paragraph 77.5 and 77.6 issued certain directions for due compliance and they read thus: -

> *"**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.*
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> ***77.6.** The non-reporting of the crime by anybody, after having come to know that a minor child*

7 2022 SCC OnLine SC 929
8 (2013) 5 SCC 546

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."

14. In ***Vijay Madanlal Choudhary'***s case (supra), 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 recognized 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.

15. 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 A of the Cr.P.C., which provides the procedures for medical examination of the victim of rape.

In this contextual situation, it is also relevant to refer to Section 53 A of Cr.P.C. that mandates for examination of a person accused of rape by a medical practitioner. It is also a fact that clothes of the parties would also offer very reliable evidence in cases of rape. We refer to the aforesaid provisions only to stress upon the fact that a prompt reporting of the commission of an offence under POCSO Act would enable immediate examination of the victim concerned and at the same time, if it was committed by an unknown person, it would also enable the investigating agency to commence investigation without wasting time and ultimately to secure the arrest and medical examination of the culprit. There can be no two views that in relation to sexual offences medical evidence has much corroborative value.

16. Bearing in mind the position with respect to the exercise of power under Section 482 Cr.P.C., the provisions, penal and procedural, under POCSO Act, we will proceed to consider the case on hand.

17. The FIR registered in the case on hand would reveal that it came to be registered on coming to know about the suspected commission of sexual offence against minor tribal girl(s) against unidentified person(s). Failure to report regarding the commission of the offence under the POCSO Act despite knowledge about the same is the accusation against the respondent revealed from the charge-sheet. The FIR reveals the ingredients of an offence under the POCSO Act and the real magnitude of the same was revealed during the investigation, as stated above. On completion of the investigation, based on the materials collected, the Officer-in-Charge of the police station concerned formed an opinion that a cognizable offence as mentioned therein, appears to had been committed and that the persons named therein, including the respondent herein, appears to have committed the offences specified against them and filed final report under Section 173(2) for prosecuting them. It is the stated FIR dated 12.04.2019 and the stated chargesheet

dated 08.06.2019 which were sought to be quashed and consequently quashed as per the impugned judgment.

18. If FIR and the materials collected disclose a cognizable offence and the final report filed under Section 173(2), Cr.P.C. on completion of investigation based on it would reveal that the ingredients to constitute an offence under the POCSO Act and a *prima facie* case against the persons named therein as accused, the truthfulness, sufficiency or admissibility of the evidence are not matters falling within the purview of exercise of power under Section 482 Cr.P.C. and undoubtedly they are matters to be done by the Trial Court at the time of trial. This position is evident from the decisions referred supra.

19. In the decision in ***M.L. Bhatt v. M.K. Pandita***[9], this court held that while considering the question of quashing of FIR the High Court would not be entitled to appreciate by way of sifting the materials collected in course of investigation including the statements recorded under Section 161, Cr.P.C. In the decision in ***Rajeev Kourav v.***

9 JT 2002 (3) SC 89

Baisahab & Ors.[10], a two Judge Bench of this Court dealt with question as to the matters that could be considered by the High Court in quashment proceedings under Section 482 Cr.P.C. It was held therein that statements of witnesses recorded under Section 161 Cr.P.C. being wholly inadmissible in evidence could not be taken into consideration by the Court while adjudicating a petition filed under Section 482 Cr.P.C. In that case, this Court took note of the fact that the High Court was aware that one of the witnesses mentioned that the deceased-victim had informed him about the harassment by the accused, which she was not able to bear and hence wanted to commit suicide. Finding that the conclusion of the High Court to quash the criminal proceedings in that case was on the basis of its assessment of the statements recorded under Section 161 Cr.P.C., it was held that statements thereunder, being wholly inadmissible in evidence could not have been taken into consideration by the Court while adjudicating a petition filed under Section 482 Cr.P.C. It

10 (2020) 3 SCC 317

was also held that the High Court committed an error in quashing the proceedings by assessing the statements recorded under Section 161 Cr.P.C.

20. There can be no dispute with respect to the position that statements recorded under Section 161 Cr.P.C. are inadmissible in evidence and its use is limited for the purposes as provided under Sections 145 and 157 of the Indian Evidence Act, 1872. As a matter of fact, statement recorded under Section 164, Cr.P.C. can also be used only for such purposes.

21. In the instant case, a scanning of the recitals in paragraph No.10 of the impugned judgment would undoubtedly reveal the fact that the High Court had formed an opinion on perusal of the statement of a teacher of the victims and also the statements of the victims that sexual assault was detected only from the General Hospital, Chandrapur and then arrived at the conclusion that the Respondent was not made aware of sexual assault committed on the victims and there is no

evidence to implicate him in the said crime. Paragraph No.10 of the impugned judgment reads thus: -

> *"In the above backdrop, we have gone through the statements of victims which have been referred by the prosecution. The statements show that the applicant had examined the victims. Their condition was deteriorating. Therefore, they were sent to General Hospital, Chandrapur. There is no material on record to show that the applicant was made aware about the sexual assault committed on the victims. On the contrary, from the statement of the teacher of victims it appears that the sexual assault was detected only in General Hospital, Chandrapur. Therefore, we are of the view that there is no evidence to implicate the applicant in the said crime. Therefore, the continuation of proceedings against the applicant would amount to abuse of process of Court."*
>
> *(Emphasis added)*

22. Thus, a bare perusal of the above extracted recitals from paragraph No.10 of the impugned judgment would reveal that the High Court had gone through the statements of victims/witnesses cited by the prosecution, to arrive at the conclusion as to the existence or otherwise of evidence against the respondent. In view of the provisions referred above and also plethora of decisions including the decisions in ***M.L. Bhatt's*** case (Supra) and in ***Rajeev Kourav's*** case (supra), statements recorded under Section 161 Cr.P.C. are inadmissible in evidence and, therefore, could not have been made the basis for arriving at such conclusions. As noted above, the FIR carries suspicion of commission of sexual assault and the charge-sheet reveals prima facie against the respondent in relation to non-reporting of such an offence under the POCSO Act. The very case of the Appellant is that some among the seventeen victims have given statements under Section 161, Cr.P.C. and some others under Section164 Cr.P.C., specifically stating that the respondent was informed of the sexual assault on them.

When that be the position, we have no doubt that the High Court should not have embarked upon an enquiry, especially by looking into the statements of the victims recorded as also their teacher to form an opinion regarding the availability of evidence to connect the Respondent with the crime. 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 Kisan Rao Khade's*** case (supra) 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 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.

23. The learned counsel for the respondent attempted to support and get sustained the impugned judgment contending that it was rendered relying on the decision of this Court in ***A.S. Krishnan & Ors. v. State of Kerala***[11] and that going by the said decision, the respondent could not have been accused of having failed to report the commission of the offence of sexual assault under the POCSO Act despite possessing knowledge about its commission. Upon going through the judgment, we have no hesitation to hold that the said decision is totally inapplicable in the facts and circumstances of this case, for more than one reason. Firstly, a bare perusal of the said judgment would reveal that the question of knowledge was considered by this Court not at the stage of looking into the correctness or otherwise of a finding on knowledge and the consequential quashment of proceedings under Section 482, Cr.P.C. As a matter of

11 (2004) 11 SCC 576

fact, it was so considered in an appeal against conviction of the appellants therein under Sections 471, 420 read with Section 34, IPC. This Court was considering the expression 'knows or has reason to believe' occurring under Section 471, IPC and while explaining the meanings of the words "knowledge" and "reason to believe" this Court held: -

> *'9. Under IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC*

explains the meaning of the words "reason to believe" thus:

> *"26. 'Reason to believe'. – A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."*
>
> *(Emphasis added)*

In the contextual situation, it is also worthy to refer the following recital from para 8 of the said decision:

> *"Whether the accused knew or had reason to believe the document in question to be forged has to be adjudicated on the basis of materials and the finding recorded in that regard is essentially factual".*

In the case on hand, the High Court arrived at the finding of absence of evidence to implicate the respondent in the crime in question upon going through the statements of the victims and also the statement of the teacher of the victims, which recourse is absolutely impermissible.

24. There is yet another reason to decline the aforesaid contention of the respondent. We would not have even perused Annexures- A_1 to A_8, which are statements of some of the victims recorded under Section 161/164, Cr.P.C., recorded much prior to the impugned judgment dated 20.4.2021 viz., in the year 2019 itself. We do so solely to verify the verity of the finding of the High Court to the effect that such statements do not disclose anything suggesting knowledge of the respondent about the commission of the crime. In troth, those statements did mention about divulgation of sexual assault on them by victims to the respondent. We may hasten to add, at the risk of repetition, that such statements recorded under Section 161/164, Cr.P.C. are inadmissible in evidence, as held in **M.L. Bhatt's** case (supra) and in **Rajeev Kourav's** case (supra). In the light of the circumstances available as above and in the light of Section 59 of the Evidence Act, the High Court was not justified in bringing abrupt termination of the proceedings qua the respondent. The position revealed from the

discussion above constrains us to hold that there is *prima facie* case against the respondent for the offence referred above and hence, the appeal is liable to succeed.

25. In the light of the decisions and the provisions referred above, the impugned judgment resulting in quashment of the stated FIR and the charge-sheet throttling the prosecution at the threshold, without allowing the materials in support of it to see the light of the day, cannot be said to be as an exercise done to secure interests of justice whereas it can only be stated that such exercise resulted in miscarriage of justice.

26. In the result, the impugned judgment of the High Court is set aside and the Appeal is, accordingly allowed. Pending applications, if any, are disposed of.

......, J.
(Ajay Rastogi)

......, J.
(C.T. Ravikumar)

New Delhi;
November 02, 2022.