
(2019) 05 UK CK 0024

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 2040 Of 2018

Anuradha Dalmia

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173(2), 228, 482
Protection Of Children From Sexual Offences Act, 2012 — Section 3, 4, 9, 10, 16, 17, 21, 376, 354(A)
Indian Penal Code, 1860 — Section 109, 161, 354A, 376
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 UK CK 0024

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Avtar Singh Rawat, Sweta Jain, S.S. Adhikari

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. Present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") has been filed by the petitioner to quash the summoning order dated 28.11.2018, passed by

the Fast Track Court/Special Judge (POCSO)/Additional District and Sessions Judge, Dehradun in Special Sessions Trial No. 133/2018, State Vs. Suchit Narang and others, under Sections 376, 354 (A) and

Section 3, 4, 9, 10, 16, 17 & 21 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act") as well as the charge sheet dated 08.11.2018 and entire proceedings

arising out of it.

2. Heard learned counsel for the petitioner and learned counsel for the State and perused the record.

3. In the instant case, an FIR was lodged on 18.08.2018, under Section 9 and 10 of the POCSO Act, and under Section 354-A I.P.C. The FIR was lodged by the Chairman, Child Welfare Committee, Dehradun

(for short â??the CWCâ?). According to it, on 18.08.2018, the CWC visited the National Institute For The Empowerment Of Persons With Intellectual Disabilities at Dehradun (for short â??the Instituteâ?) and

recorded statements of the inmates. It was brought to the notice that a Suchit Narang has been inappropriately touching the private parts of the minor girls and thereby exploiting them. After investigation, charge

sheet has been filed against the petitioner and others. Vide order dated 28.11.2018, learned court below summoned the co-accused Suchit Narang under Section 376, 354 (A) I.P.C. and Section 3, 4, 9 & 10 of the

POCSO Act. The petitioner and three others have been summoned to answer the accusations under Section 16 and 17 of the POCSO Act. Aggrieved, the instant petition.

4. Learned Senior counsel for the petitioner would argue that the petitioner was posted as the Director in the Institute. The Institute carries out various activities, which include a model school for visually impaired

children. On 16.08.2018, when the petitioner was away from Dehradun, the Principal informed her telephonically that there are some allegations against Suchit Narang. The petitioner immediately cut short her

trip and returned Dehradun and on 17.08.2018, she put Suchit Narang under suspension. On the same day, constituted a committee to conduct an inquiry and also informed the CWC, which in turn lodged a report

on 18.08.2018. The petitioner also informed the Police on 19.08.2018. Thereafter, it is argued that on 23.08.2018, the petitioner was transferred to Secunderabad from Dehradun. Not only this, learned Senior

counsel would argue that earlier also in the month of April, 2018, there was a complaint of sexual harassment by one of the members of the faculty and on that complaint the petitioner had constituted a committee

and reported the matter to Police; The petitioner has taken all necessary steps with promptitude. When she was reported about the commission of the offence; she neither concealed any thing nor ever made any

mis-representation. The Institute on both the occasions constituted committees and took appropriate actions at an appropriate time and informed the police without any delay. The petitioner has not committed any

offence under Section 16 and 17 of the POCSO Act, and whatever allegations have been leveled, they do not attract these provisions. It is argued that according to the charge sheet, based on the statement of a

victim, recorded during investigation, the petitioner has been charge sheeted. But, whatever the victim has stated that reflects, as to what has happened after the incident. Therefore, it is argued that provisions of

Section 16 of the POCSO Act, does not attract in the matter and it is a case, in which, interference under Section 482 of the Code, is warranted. In support of his contention, learned counsel has placed reliance

upon the judgment of Honâ??ble Delhi High Court in the case of Shyam Kumar Vs. State (NCT of Delhi), 2017 SCC Online Del 7349. In the case of Shyam Kumar (supra), the Honâ??ble Court of Delhi

High Court had quoted the principle of law, as reported in the case of Kulwant Singh alias Kulbansh Singh Vs. State of Bihar, (2007) 15 SCC 670, wherein it was held as hereunder:-

11. Section 109 IPC reads as follows:

â??109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.- whoever abets any offence shall, if the act abetted is committed in

consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the

abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of Bâ??s official functions. B accepts the bribe. A has abetted the offence defined in Section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in

Aâ??s absence and thereby causes Zâ??s death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to be punishment for murder.â??

12. Where a person aids and abets the perpetrator of a crime at the very time

exercising all the inherent power of the High

Court under section 482 of the Code of Criminal Procedure.

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 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.

(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.

(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.

(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.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently 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.

(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.

(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.

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.â??

(emphasis supplied)

9. Again, in the case of Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, Honâ??ble Supreme Court has elaborated the principles to be considered by the High Court while exercising the jurisdiction under

Section 482 of the Code of Criminal Procedure. The Court, interalia, held observed as hereunder:-

â??27.1 Though there are no limits of the powers of the Court under section 482 of the code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of

quashing criminal proceedings, particularly, the charge framed in terms of section 228 of the code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the

allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may

interfere.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or

quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases,

the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5 Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is

intended to provide specific protection to an accused.

27.6 The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7 The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8 Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a civil wrong with no element of criminality and

does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which

the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10 It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11 Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was

disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13 Quashing of a charge is an exception to the rule of continuous prosecution.

doing of that act.

Explanation III.â?" Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception abuse of power or of a position,

vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of the

act.

17. Punishment for abetment.â?" Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.â??

11. A bare perusal of these provisions makes it abundantly clear that it apply prior to commission of offence. In the instant case, records have been submitted by the petitioner to reveal that, in fact, on 17.08.2018,

Suchit Narang was placed under suspension. On the same day, regarding alleged case of inappropriate behavior of Suchit Narang, a preliminary inquiry was ordered. It is also the fact that in the instant case,

CWC, after recording the statements of the inmates of the Institute, lodged an FIR on 18.08.2018. It has also been brought on record, that on 19.08.2018, the matter was also reported by the petitioner to the

Police. There is no allegation or averment, which suggests that any abetment was done by the petitioner, prior to commission of offence. It is also not a case that the petitioner ever failed to report the matter. It is

also not a case that in one or other manner, the petitioner ever tried to hush up the incident. But as stated, it is argued that every time, whenever, it was reported to the petitioner, she took action with promptitude.

12. Now the question is, if the witness is tried to be influenced by the petitioner, does it attract the provision of Section 16 and 17 of the POCSO Act?

13. Learned Senior counsel for the petitioner would argue that whatever, the victim has stated to the Investigating Officer, that is based on the statements given to her by the co-accused, which is definitely

hearsay and that part of the statement cannot be taken into consideration as legally admissible evidence.

14. Apart from that, as stated, it is also argued that whatever the victim child says during investigation relates to what has happened, after commission of offence and according to learned senior counsel, it does

not come within the ambit of definition of abetment as defined under Section 16

of the POCSO Act.

15. Undoubtedly, abetment of the offence is some action which precedes the action. There cannot be abetment of a thing, after action is taken. Even in the charge sheet, the Investigating Officer categorically

states that during investigation, co-accused has conveyed it to the victim child that she should turn hostile and on that basis charge sheet under Section 16 read with Section 17 of the POCSO Act, has been

submitted against the petitioner. Even if, for the sake of argument, it is presumed that the petitioner, through some one, approached the victim child to change her statement, this Court is of the view that the

provision of Section 16 & 17 of the POCSO Act would not come into play.

16. In view of the foregoing discussion, this court is of the view that even if the material collected during investigation is taken at its face value and accepted in its entirety does not prima facie constitute

offence under Section 16 read with Section 17 of the POCSO Act, against the petitioner, therefore, continuance of the trial against the petitioner would definitely be abuse of the process of law. Therefore, in this

matter, proceedings against the petitioner, deserves to be quashed and petition allowed.

17. Accordingly, the petition under Section 482 of the Code is allowed. The summoning order dated 28.11.2018, passed by the Fast Track Court/Special Judge (POCSO)/Additional District and Sessions Judge,

Dehradun in Special Sessions Trial No. 133/2018, State Vs. Suchit Narang and others, under Sections 376, 354 (A) I.P.C. and Sections 3, 4, 9, 10, 16, 17 & 21 of the POCSO Act, as well as the charge sheet

dated 08.11.2018 is quashed and set aside qua the petitioner.