(2026) 08 DEL CK 1118

In the Delhi High Court

Case No : CRL.M.C. 2900/2021 and CRL.M.A. 18263/2021

Dr. Poonam Mishra — APPELLANT

Vs

State Of NCT Of Delhi — RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:
Medical Termination of Pregnancy Act, 1971 — Section 3, Section 3(2), Section 3(4)(a), Section 3(4)(b)
Indian Penal Code, 1860 — Sections 312 to 316
POCSO Act
CrPC — Section 482

Citation : 2022 INSC 1152

Hon'ble Judges : Purushaindra Kumar Kaurav, J

Bench : Single Bench

Advocate : Mr. Faraz Maqbool, Ms. A Sahitya Veena and Ms. Deepshikha, Advocates; Ms. Shubhi Gupta, APP for State with SI Rahul Lamba, PS Saket.

Final Decision : Petition dismissed

Judgement

The Medical Termination of Pregnancy Act, 1971 ("MTP Act") was not enacted to create an unqualified license to terminate pregnancy on demand. It was enacted to carve out the circumstances in which what would otherwise be an offence under Sections 312 to 316 of the Indian Penal Code, 1860 ("IPC") ceases to be punishable, provided the termination is performed strictly in the manner the Act contemplates. Section 3 of the MTP Act, as it stood at the relevant time in July 2019, before the 2021 amendment, permitted termination up to twelve weeks on the opinion of a single registered medical practitioner formed in good faith, and between twelve and twenty weeks on the concurring opinion of two such practitioners, in either case only where the specified grounds under Section 3(2) were satisfied.

2. Section 3(4)(a) of the MTP Act provides that no pregnancy of a woman who has not attained the age of eighteen years shall be terminated except with the consent in writing of her guardian. Section 3(4)(b) separately requires that, save

in the case of a lunatic, no pregnancy shall be terminated without the consent of the pregnant woman herself. The two requirements are cumulative, where the pregnant person is a minor; her own assent is necessary but is not sufficient. The guardian's written consent is an independent precondition without which the "consent" spoken of by the MTP Act simply does not exist in the eye of law, regardless of how many signatures may appear on a hospital's own consent form.

3. The reason this distinction matters is that a minor's purported consent to invasive medical treatment is, throughout the general law, treated as no consent at all. Section 90 of the IPC itself excludes, from the definition of valid consent, consent given by a person under twelve years of age, and the jurisprudence surrounding consent of minors more generally treats a minor as incapable of appreciating the nature and consequences of the act to which she is asked to agree.

4. The MTP Act's insistence on guardian consent for a minor is a legislative recognition of this incapacity. It follows that where a registered medical practitioner terminates the pregnancy of a person who is, in fact, a minor, without obtaining the guardian's written consent because the practitioner has not ascertained, or has been misled about, the true age of the patient, the termination is not saved by Section 3 of the MTP Act merely because a document styled as"consent form" bears a signature.

5. The MTP Act and Regulations therein did not leave the mechanics of ascertaining age, consent, and the practitioner's opinion to informal practice. Section 6 of the MTP Act empowers the Central Government to make rules to carry out the purposes of the Act, and Section 7 of the MTP Act empowers the State Government to make regulations, not directory guidelines, but regulations having the force of subordinate legislation, prescribing, among other things, the manner in which the opinion under Section 3 is to be certified and the records that a registered medical practitioner and the place at which the termination is performed are obliged to maintain.

6. Pursuant to this rulemaking power, the Medical Termination of Pregnancy Regulations, 2003 ("the MTP Rules 2003") prescribe Form-I as the form in which the opinion of the registered medical practitioner(s) under Section 3 of the MTP Act must be certified before a termination is undertaken.The registered medical practitioner is not permitted to certify an opinion under Section 3 in the abstract; the form requires that the opinion be anchored to one of five specified grounds set out on its face, to be selected as applicable, including, at item (iv), that "the pregnancy is alleged by pregnant women to have been caused by rape." The form thus obliges the practitioner to identify and commit to writing the specific ground on which the termination is being carried out. Where that origin is stated to be an assault, the practitioner is not left free to record the opinion under a more general head.The structure of the form directs the practitioner's attention specifically to that circumstance and requires it to be noted down as the basis of the certified opinion. Form I, in other words, is not merely a record of the

practitioner's conclusion that a termination may lawfully proceed. It is a record of the reason offered for that conclusion, and where rape is that reason, the form is drafted to require it to appear in writing rather than remain unstated. Rule 9 and Form I of the MTP Rules is reproduced as under: "9. Form of consent. The consent referred to in sub-section (4) Of section 3 shall be given in Form C." RMP OPINION FORM FORM I
I_____
(Name and qualifications of the Registered Medical practitioner in block letters) (Full address of the Registered Medical practitioner)
I_____
(Name and qualifications of the Registered Medical practitioner in block letters) (Full address of the Registered Medical practitioner) hereby certify that *I/We am/ are of opinion, formed in good faith, that it is necessary to terminate the pregnancy of (Full name of pregnant women in block letters) resident of (Full address of pregnant women in block letters) for the reasons given below**. *I/ We hereby give intimation that *I/We terminated the pregnancy of the woman referred to above who bears the serial no. _____ in the Admission Register of the hospital/approved place. *Strike out whichever is not applicable, ** of the reasons specified items (i) to (v) write the one which is appropriate. (i) in order to save the life of the pregnant women, (v) in order to prevent grave injury to the physical and mental health of the pregnant women, (v) in view of the substantial risk that if the child was born it would suffer from such physical or mental abnormalities as to be seriously handicapped, (iv) as the pregnancy is alleged by pregnant women to have been caused by rape, (v) as the pregnancy has occurred as result of failure of any contraceptive device or methods used by married woman or her husband for the purpose of limiting the number of children Note :Account may be taken of the pregnant women's actual or reasonably foreseeable environment in determining whether the continuance of her pregnancy would involve a grave injury to her physical or mental health. Signature of the registered Medical Practitioner Signature of the registered Medical Practitioners Place : Date : [Emphasis Supplied]

7. Separately, Form C, read with Rule 9 of the MTP Rules, is the form of consent prescribed where the pregnant person is a minor or a person of unsound mind.It is the document through which the guardian's consent under Section 3(4)(a) of the MTP Act is to be recorded, distinct from and in addition to the pregnant person's own consent. Where the treating practitioner has not established that the patient is an adult capable of giving her own valid and complete consent, Form C is not an optional formality; it is the sole statutory mechanism by which the termination of a minor's pregnancy can lawfully proceed at all. Form C of MTP Rules 2003 is reproduced as under:-FORM C (Consent Form)
I ..... daughter/wife of.....aged about .....Years of ..... (here state the permanent address) at present residing at ..... do herebygive

my consent to be termination of my pregnancy at..... (State the name of place where the pregnancy is to be terminated). Place : Date : Signature (To be filled in by guardian where the woman is a lunatic or minor). I ..... son/daughter/wife of ..... aged about ..... Years of ..... at present residing at..... (permanent address)…….. do hereby give my consent to the termination of my pregnancyof my ward ..... who is a minor/lunatic at ..... (Place of termination of pregnancy). Place : Date : Signature

8. The unavoidable inference from this scheme is that verification of age is foundational to the practice of a registered medical practitioner performing terminations. A practitioner who fails to ascertain age, or who proceeds to terminate a pregnancy on the strength of an orally declared age without any document to support it, does not merely commit a procedural lapse; she disables the very mechanism.

9. This scheme also intersects with the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"). Every pregnancy in a girl below eighteen years is, as a matter of law, traceable to a penetrative sexual act that the POCSO Act treats as an offence irrespective of any question of consent on the part of the minor. Section 3 read with Section 5 of the POCSO Act does not recognise the concept of a minor's consent to sexual activity as a defence. It follows, ineluctably, that any registered medical practitioner attending upon a pregnant minor is, by that very fact, in the position of a person who has or ought reasonably to have "knowledge", within the meaning of Section 19(1) of the POCSO Act, that an offence under that Act is likely to have been committed.

10. Section 19(1) of the POCSO Act operates as a mandatory reporting obligation imposed on the ordinary practice of obstetric medicine wherever a minor's pregnancy is involved, and Section 21 of the POCSO Act visits penal consequence,i.e., imprisonment extending to six months, or fine, or both, on a failure to discharge that obligation.Sections 19 and 21 of the POCSO Act are reproduced as under:-"Section 19: Reporting of offences (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,--(a) the Special Juvenile Police Unit; or (b) the local police. (2) Every report given under sub-section (1) shall be--(a) ascribed an entry number and recorded in writing; (b) be read over to the informant; (c) shall be entered in a book to be kept by the Police Unit. (3) Where the report under sub-section (1) is given by a child, the same shall be recorded under subsection (2) in a simple language so that the child understands contents being recorded. (4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or

an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same. (5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed. (6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard. (7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1)." "Section 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. [Emphasis Supplied] FACTUAL MATRIX

11. FIR No. 400/2019 was registered on 04.10.2019 at PS: Saket, Delhi under Sections 376/313/506/34 IPC and Section 6 POCSO Act, on the complaint of the prosecutrix, who alleged that she was administered an intoxicant and sexually assaulted by the main accused, Rishipal Chaudhary, and thereby conceived.

12. On 26.07.2019, the prosecutrix, accompanied by co-accused Anita (who presented herself as the prosecutrix's aunt), presented at Bhatia Medical Centre, Ambedkar Nagar ("BMC"), where the petitioner examined her and, finding her six weeks pregnant, referred her to Talwar Medical Centre, Greater Kailash-II ("TMC"), where the petitioner held a rented consulting chamber and performed termination there itself.

13. In her medico-legal examination at AIIMS on 04.10.2019, and in her statement under Section 164 CrPC on 10.10.2019, the prosecutrix made no allegation against the petitioner. She stated instead that co-accused Anita had told the hospital staff that the child belonged to the prosecutrix's boyfriend, and had caused her age to be recorded as twenty though it was, in reality, sixteen. Statements recorded under Section 161 CrPC on 16.10.2019 and 18.10.2019 are, likewise, silent qua the involvement of the petitioner.

14. The main chargesheet, filed on 13.12.2019, arrayed Rishipal Chaudhary,

Anita, and Nitin Aggarwal as accused under Sections 376AB/312/201/506/34 IPC and Sections 6/21 POCSO Act. The petitioner featured only as a prosecution witness and cognisance post that was taken vide order dated 17.12.2019.

15. On 22.02.2020, the prosecutrix filed a protest petition alleging, for the first time, that the doctors at TMC had performed the termination in conspiracy with the main accused, by forging her signatures on the TMC papers, and misplacing the form recording her true date of birth from the documents relied upon in the chargesheet. When the protest petition was argued, the Investigating Officer informed the Trial Court that no incriminating evidence had been found against the doctors, and that the prosecutrix had not, until then, questioned any TMC document.

16. By the impugned order dated 29.09.2020, the Trial Court allowed the protest petition and directed further investigation into "whether the doctors at Talwar Medical Center had carried out the abortion of the victim against the law/rules while knowing the fact that the victim was a minor girl and in collusion with the main accused persons and they consciously did not report the matter to the police in terms of Section 19 of the POCSO Act, 2012.Paragraph 9 of the order dated 29.09.2020 is reproduced as under:-"9. Accordingly, the IO of the case is directed to further investigate the matter with respect to the fact that whether the doctors at Talwar Medical Centre had carried out the abortion of the victim against the law/rules while having knowledge of the fact that the victim was a minor girl and in collusion with the main accused persons, namely, Rishipal and Anita and they consciously did not report the matter to the police in terms of Section 19 of the POCSO Act, 2012".

17. Pursuant to this direction, the Investigating Officer recalled the petitioner on 03.10.2020 and seized the admission register of BMC. The investigation stood transferred, at the instance of the prosecutrix, from PS Saket to PS Malviya Nagar. On 19.11.2020, a further Section 161 statement of the prosecutrix was recorded, in which she stated, for the first time, that she had herself filled an admission slip at TMC, recording her date of birth as 03.09.2003. Prosecutrix in her 161 CrPC statement also affirmed the incident of hospital staff recording her age, to which the petitioner responded "marvaogekyaise 20 years karo".

18. On interrogation, the petitioner stated that no identity, residence, or age proof of the prosecutrix had been obtained, and that Form I, the form of certified opinion contemplated for a termination of pregnancy, had not been completed. The supplementary chargesheet treats this as attracting "Section 7 of the Medical Termination of Pregnancy Act, 1971 read with Rule 3 of MTP Regulation, 2003," and records that, the prosecutrix being a minor, she was incapable in law of consenting to the procedure, rendering the question of her signature immaterial and attracting Sections 313 and 201 IPC.

19. The supplementary chargesheet dated 19.02.2021 was filed on this basis, arraigning the petitioner as sole accused under Sections 313 and 201 IPC and

Section 7 MTP Act. Vide order dated 31.07.2021, the Trial Court took cognizance, additionally invoked Section 21 POCSO Act, and summoned the petitioner. The petitioner joined proceedings on 11.10.2021, applied for bail the same day, and was enlarged on regular bail on 30.10.2021. II. SUBMISSIONS ON BEHALF OF THE PARTIES: (i) On behalf of the Petitioner:

20. Learned counsel for the petitioner submits that the petitioner stood exonerated across the prosecutrix's MLC, Section 164 CrPC statement, and two Section 161 CrPC statements, and that the allegation against the petitioner surfaces for the first time only in a solitary statement recorded over a year later.

21. It is submitted that the petitioner had no knowledge of the prosecutrix's minority and was expressly told, at both BMC and TMC, that she was twenty years old. Reliance is placed on Dr. Sr. Tessy Jose v. State of Kerala, where the Supreme Court held that the "knowledge" required to trigger the reporting obligation under Section 19 POCSO Act "cannot be that they ought to have deduced from circumstances that an offence has been committed"and that there is "no obligation on this person to investigate and gather knowledge" by placing reliance on Dr. Jenbagalakshmi v. State of Tamil Nadu.

22. On Section 313 IPC, the petitioner submits that she had no occasion to seek a guardian's consent when the prosecutrix was represented and recorded as an adult, and that the prosecutrix herself was present, ambulant, and cooperative throughout. It is submitted that the provisions of the IPC relating to miscarriage stand subservient to the MTP Act by virtue of the non-obstante clause in Section 3, and that the petitioner, having acted in good faith throughout, is entitled to the protection available under Section 8 of the MTP Act to a practitioner so acting.

23. It is further submitted that Section 7 MTP Act creates no offence at all, being confined to the delegation of regulation-making power, and that the invocation of Rule 3 of the MTP Regulation, 2003 discloses further confusion, since no such age-verification requirement is to be found in that provision. It is urged that the petitioner's meticulous contemporaneous documentation is inconsistent with any consciousness of guilt and that she alone among the three doctors involved has been sent up for trial despite an identical finding of "no collusion" against all three, and that continuation of proceedings against her is accordingly an abuse of the process of the Court. (ii) On behalf of Respondent

24. Learned Counsel for the respondent submits that the consent contemplated by the MTP Act, for a minor, is that of the guardian alone, and that the prosecutrix's physical presence and cooperation cannot substitute for that statutory consent. A minor's apparent willingness is precisely the vulnerability the guardian-consent requirement is designed to guard against, and cannot be treated as curing its absence. It is further submitted that Form I was admittedly never completed, that this omission is not a mere labelling error but the absence of a document the law requires the treating practitioner personally to prepare, and that its absence, taken with the untraced admission slip and the misrecorded

age, discloses a pattern that can be evaluated during the trial.

25. It is submitted, further, that Section 482 CrPC does not permit this Court to conduct a preliminary trial on competing versions and documents, and that the material gathered pursuant to an order grounded in the power upheld in VinubhaiHaribhai Malaviya& Ors. v. The State of Gujarat & Anr.discloses, prima facie, triable allegations that ought not to be short-circuited at the threshold. (III) ANALYSIS

26. The question that comes up for consideration is whether a direction for further investigation can be extended by a Magistrate or a Special Judge after taking cognizance of the offences at the stage of the framing of charge. This issue has been dealt with by the Supreme Court in Ram Lal Narang v. State (Delhi Administration)while referring to the ratio laid down by the Supreme Court in its previous judgment H.N. Rishbud v. State of Delhi, it was held as under:-

17. In H. N. Rishbud v. The State of Delhi, this Court contemplated the possibility of further investigation even after a Court had taken cognizance of the case. While noticing that a police report resulting from an investigation was provided in Section 190 Criminal Procedure Code as the material on which cognizance was taken, it was pointed out that it could not be maintained that a valid and legal police report was the foundation of the jurisdiction of the Court to take cognizance. It was held that where cognizance of the case had, in fact, been taken and the case had proceeded to termination, the invalidity of the precedent investigation did not vitiate the result unless miscarriage of justice had been caused thereby. It was said that a defect or illegality in investigation, however serious, had no direct bearing on the competence of the procedure relating to cognizance or trial. However, it was observed: "It does not follow that the invalidity of the investigation is to be completely ignored by a Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for". This decision is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the Court; defective investigation coming to light during the course of a trial may be cured by a further investigation, if circumstances permit it."

27. The power of a Magistrate to direct further investigation under Section 156(3), read with Section 173(8), of the CrPC does not extinguish itself the moment cognizance is taken, or process is issued. The Supreme Court, in paragraph no. 38 ofVinubhaiHaribhai Malaviya(supra) held that:-"38.There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage

the trial commences... What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power... to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out... Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding...” [Emphasis Supplied]

28. The Supreme Court in Vinubhai Haribhai Malaviya (supra) held that, even textually, the term “investigation” referred to in Section 156(1) of CrPC would, as per the definition of “investigation” under Section 2(h), include all proceedings for collection of evidence conducted by police. Accordingly, this would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC. Therefore, the Magistrate empowered under Section 156 of CrPC to order investigation, shall also be empowered to order further investigation under Section 173(8) of CrPC.

29. It is, therefore, well settled that the power to direct further investigation is not a licence for a Court to dictate the outcome or micromanage the manner of that investigation. The police retains the freedom, expressly protected in law, to reach whatever conclusion the material supports, including a conclusion adverse to the very hypothesis that prompted the direction.

30. The petitioner’s grievance is that the order dated 29.09.2020 crossed this line by framing the further investigation in terms that presupposed the doctor’s guilt. This submission does not survive scrutiny of the order as a whole. Immediately after framing the scope of further investigation, the Additional Sessions Judge, ASJ recorded, in terms that directly answer the petitioner’s grievance:-“...the IO shall not be influenced by any observations made in this order and shall conduct independent investigation in this regard, although the points raised by the victim (by way of her protest petition and otherwise) shall be taken into account by the IO and all those issues shall be investigated independently.”

31. The Supreme Court in Nirmal Singh Kahlon v. State of Punjab & Ors.held as under:-“An order of further investigation in terms of Section 173(8) of the Code by the State in exercise of its jurisdiction Under Section 36 thereof stands on a different footing. The power of the investigating officer to make further investigation in exercise of its statutory jurisdiction Under Section 173(8) of the

Code and at the instance of the State having regard to Section 36 thereof read with Section 3 of the Police Act, 1861 should be considered in different contexts. Section 173(8) of the Code is an enabling provision. Only when cognizance of an offence is taken, the learned Magistrate may have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of this Court in Sakiri Vasu v. State of U.P. [MANU/ SC/8179/2007 : (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440], correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to make any further investigation without the express permission of the Magistrate." [Emphasis Supplied]

32. It is imperative to mention that an order that identifies a line of inquiry which the prior investigation had not pursued, while expressly disclaiming any binding effect on the investigating officer's ultimate findings, is not a direction usurping the investigative function. It is the ordinary and correct exercise of the supervisory jurisdiction.

33. Caution presented vide impugned order dated 29.09.2020 was not merely formal as demonstrated by the outcome of the further investigation itself. Had the 29.09.2020 order truly operated as a predetermined verdict awaiting only its formal recording, the further investigation would have returned precisely the collusion finding the order appeared to anticipate.

34. The status report expressly records that no material was found connecting the petitioner, Dr. Talwar, or Dr. Chhabra to the main accused, and that "no collusion" was found. This outcome, is itselfan evidence that the investigation proceeded independently and was not merely dictated to a foregone conclusion. What the further investigation did establish, on independent examination of documents and witnesses, was a separate and distinct set of facts such as:the absence of age verification, the statutorily mandated Form-I, and the specific allegation of contemporaneous knowledge reflected in the victim's supplementary statement.

35. It is also necessary to record that the further investigation was not sought by the State suo motu to reopen a settled matter, but was directed on a protest petition moved by the prosecutrix herself, drawing attention to specific documentary anomalies, the mismatched relationship entries, the absence of any age document, the missing date-of-birth slip, that were plainly discoverable only once she was in possession of the chargesheet and its annexures, a possession she did not have during the four statements recorded in 2019. The delay in raising these specific documentary objections is thus explained by the sequence of disclosure of documents to her, and does not taint the further investigation with the vice of afterthought that the petitioner attributes to it.

36. For these reasons, this Court finds no illegality in the order dated

29.09.2020. It was passed within jurisdiction, on a correct application of the principle in VinubhaiHaribhai Malaviya (supra), expressly safeguarded the independence of the ensuing investigation, and has, on the material this Court has examined, produced results that confirm rather than undermine that independence.

37. The issue here is not whether doctors, as a class, must be treated with suspicion whenever a patient's age later turns out to have been misstated. It is a narrower and more exacting question, i.e., at what point does a doctor's silence about a patient's age stop being an innocent consequence of having been misled, and become a punishable failure to report an offence she knew, or had been told, had occurred.

38. Section 19(1) of the POCSO Act supplies the statutory language, it obliges "any person who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed" to report it to the police, and Section 21penalises the failure to do so with imprisonment extending to six months, or a fine, or both. But the statutory language alone does not tell a Court where, on the facts of a given case, apprehension ends and knowledge begins, or where a doctor's professional role ends, and a citizen's civic duty begins.

39. The statutory text of Section 19(1) of the POCSO Act requires close attention, because both the petitioner's defence and the prosecution's case turn on its precise formulation. It provides that "notwithstanding anything contained in the CrPC, 1973... any person 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 the Special Juvenile Police Unit or the local police". Failure to comply attracts prosecution under Section 21, which prescribes imprisonment extending to six months, or fine, or both.

40. The Supreme Court in State of Maharashtra v. Dr. Maroti,a case in which, as in the present matter, a doctor to whom minor victims of sexual assault had disclosed the assault directly, failed to report the matter either to the Special Juvenile Police Unit or the local police. The Supreme Court, restoring the prosecution the High Court had quashed, held that:-"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 164A 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 53A 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."

41. In Dr. Ditto TomP. v. State of Keralathe accused doctor had on the prosecution's version, been informed by the victim's mother, that the minor had become pregnant through sexual assault and had already undergone an attempted termination through unqualified means. The doctor, despite this disclosure, did not report the matter to the police, and the registration of the FIR was consequently delayed. Rejecting the plea for discharge, the Court held that:-"Even though the facts were suppressed initially before the revision petitioner, the mother informed the Doctor that there was pregnancy to the victim and the victim had been taking medicine from a Homoeo doctor. Thus as on 25.11.2020, the revision petitioner got knowledge regarding the offence under the POCSO Act. Be it so, he is duty bound to report the same to the police in view of mandate under Section 19(1) of the POCSO Act. Otherwise, the same is an offence punishable under Section 21 of the POCSO Act. Even though it is argued by the learned counsel for the revision petitioner that no deliberate omission could be noticed in this matter and the doctor was not inclined to report the same acceding to the humble request of the victim and her mother, the same is not sufficient to avoid prosecution of the revision petitioner. It is discernible that, in this matter crime was registered only on 12.12.2020 because of the failure of the revision petitioner in informing the matter to the police on 25.11.2020. As held by the Apex Court in State of Maharashtra v. Dr. Maroti's case (supra), prompt and proper reporting of commission of the offence under the POCSO Act is of utmost importance and the same would enable immediate registration of case and examination of the victim concerned so as to trace even an unknown accused when on bail. Therefore, even though in cases where deliberate omission is not noticeable, quashment is liable to be allowed as held in Radhakrishna S. Naik (Dr.) v. State of Kerala's case (supra), when deliberate omission was perceivable, the prayer for quashment or discharge must fail. In the instant case, the revision petitioner, who got knowledge regarding the crime on 25.11.2020, failed to inform the same and accordingly registration of crime was delayed for a period of three weeks. That must have attenuated timely investigation of the case without elements of lacuna. In the instant case, the prosecution materials would show that the offence alleged against the revision petitioner is made out, prima facie, from prosecution records, warranting trial."

42. In Dr. Ditto Tom (supra), the interval of non-reporting attributable to the

doctor was some three weeks, and the Court held this sufficient to warrant trial rather than discharge. Here, on the prosecution's specific case, the interval during which the petitioner is alleged to have possessed knowledge without reporting runs from the date of the termination itself, i.e., 26.07.2019, to the date the FIR eventually came to be registered on 04.10.2019, a period more than four times as long.

43. The Kerala High Court made this explicit in George P.O. v. State of Kerala, holding that "the mandate to report does not relate to his official character... it is to be performed in his private capacity", a mandate, that attaches the moment knowledge is acquired, by whatever means, and does not wait upon the doctor's professional role or her diligence in seeking that knowledge out. The scheme that emerges thus is that Section 21 liability does not attach to a doctor who was deceived and had no occasion to know better. It does attach to a doctor who was told, and did not act on what she was told. The dividing line is not diligence, but disclosure, i.e., whether the truth was placed before her and she turned away from it. Paragraph no. 18 of George P.O. (supra) envisaged the intention behind Section 19 POCSO and held that:-(a) The mandate to report the apprehension that an offence is likely to be committed is a preventive measure intended to stall the possibility of commission of the offence. (b) The mandate to report is a legislative tool to overcome the tendency of witnesses of child abuse to be silent, giving undue weightage to factors like social stigma, community pressure, difficulties of navigating the criminal justice system, dependency on the perpetrator emotionally and economically and so on. (c) The legislative mandate is intended to overcome the tendency of even the parents and other members of the family not to report such crimes believing that non reporting of the same would protect the child from social stigma which they believe would do more harm to the victim. (d) The legislative mandate subserves the purpose of curbing the growing tendency not to report the offences, which in turn encourages the perpetrator to remain silent and prowl for the next victim. (e) The mandate to report the offence is intended to obviate such tendency and to weed away any such loophole that would facilitate the perpetrator committing/repeating an offence, encouraged by the remote possibility of reporting the commission of offence. (f) Being a child-centric legislation, prompt reporting facilitates both prevention or commission of the offence and ensuring that in such cases the tormentor, shall not go scot- free. (g) To make the reporting effective and not dependent on the nature of the office on whom the statutory mandate to report is cast. (h) Section 19 casts such mandate on any person, including a child, who has knowledge about the commission of an offence/apprehension that an offence is likely to be committed, irrespective of the nature of the office held by such person. Hence the Act casts a mandate on every person who has knowledge of the commission of offence/apprehension that the offence is likely to be committed to report such offence, unlike Section 21(2) of the POCSO Act, which casts a mandate on any person being in charge of a company or institution to report the commission of an offence, under Section 19 (1) of the POCSO Act by

his/her subordinates.

44. This Court is conscious that the material grounding the "Marwaoge kya ise 20 saal karo" allegation is a solitary statement, recorded during further investigation, and that its evidentiary strength is a matter that goes to the ultimate finding of guilt or innocence at trial. This Court expresses no opinion on whether the allegation will be proved. What this Court is required to determine, at the Section 482 CrPC stage, is narrower: whether the material, taken at face value, discloses a prima facie case.

45. The supplementary chargesheet does not allege that the petitioner failed to ask; it alleges that she was shown the answer, in the victim's own handwriting on the admission slip, and is recorded as having responded, "Marwaoge kya ise 20 saal karo." If that allegation is accepted, it is not a case of inferred or constructive knowledge eat all rather it is a case of disclosure, of exactly the kind that placed the doctor in Dr. Maroti (supra) and the doctor in Dr. Ditto Tom P. (supra) outside the protection the law extends to the deceived and within the liability the law imposes on the informed. Additionally, specific, first-hand attribution of a verbal instruction to falsify prosecutrix's recorded age is qualitatively different from the generalised suspicion, retrospective inference, or bare failure-to-investigate. Relevant part of the supplementary chargesheet dated 19.02.2021 is reproduced as under:-I also did not say anything to Doctor Poonam because I was very scared. After normal check up she referred me to Talwar Medical Center GK-II. Rishipal left me and Anita at Pushp Bhawan using his own vehicle, from where Anita took me in Auto to Talwar Medical Centre GK-II. Thereafter at reception I was made to fill a small form where I myself filled the form and wrote my DOB as 3-9-2003& returned the form to Receptionist. Thereafter Nurse given me injection and medicine. At that time I called my elder brother Nitin there and he remained present during the operation. After some time Dr. Poonam Mishra came there and a hospital staff also came there who told Dr. Poonam that DOB is written 3-9-2003 in the Form. On this, Dr. Poonam said "Marwaogekyaise 20 yrs karo". And thereafter I was taken to OT. My ultrasound was done and some medicine was given because of which I became unconscious. [Emphasis Supplied]

46. The object of Section 19 of the POCSO Act, read alongside the MTP framework, is not merely punitive. It exists because prompt reporting is the trigger for an entire protective apparatus around a child victim: medical examination, forensic evidence collection, referral to the Child Welfare Committee, and the commencement of an investigation that can identify and apprehend a perpetrator before evidence degrades or the perpetrator absconds. Non-reporting by one professional in a position to have set this apparatus in motion does not merely constitute a technical default; it withholds from a child victim of rape the protection, the law specifically intended for her.

47. The termination was performed on 26.07.2019 and the FIR was registered on 04.10.2019. Seventy days lie between these two dates. On the case set up by

the prosecution, this was not merely the ordinary time a criminal justice system takes to set itself in motion; it was an interval during which the one person outside the circle of the offence who is alleged to have known the prosecutrix's true age said nothing, while the machinery that a timely report would have triggered remained unset in motion. This Court notes that, if the prosecution's version is accepted, the seventy day interval is not a peripheral detail, but the very consequence Section 19 of the POCSO Act exists to prevent.

48. The petitioner's answer to this seventy day interval is that she came to know of the prosecutrix's minority status only in October2019, through concerned officials of the Investigating Agency, i.e., after the FIR already existed, advancing the submission that no opportunity to report ever arose before the police had already taken the matter in hand. The supplementary chargsheet discloses that the specific case is not qua the petitioner getting aware of the minority status in October, from the police. Conversely, that the petitioner learned of it on 26.07.2019, from the victim's own admission slip, at the very moment of initiating termination procedure.

49. The prosecution's version places knowledge in the petitioner's hands more than nine weeks before the FIR came to exist at all, which means the premise of her defence, that no opportunity to report ever arose, is not merely disputed but is chronologically impossible.

50. It follows from this that the consequence of the petitioner's alleged silence was not a mere technical lapse in paperwork. It was, in its operative effect, a period during which the ordinary consequences of committing an offence against a child were held in abeyance. Whether that effect was the product of a deliberate choice to protect herself, or of something more innocent that a trial may yet reveal, is not for this Court to decide today. What this Court can and does decide is that the seventy day gap between the procedure and the FIR is not a coincidence to be waved off. It is the very harm Section 19 of the POCSO Act was written to prevent, and the material on record is sufficient to put the petitioner on trial.

51. Section 3(4)(a) of the MTP Act provides that no pregnancy of a minor shall be terminated except with the guardian's consent in writing. Section 7 of the Act, and the Regulations framed under it, prescribe Form-I under Rule 3 as the document through which the practitioner's statutory opinion, is to be certified, and Form C as the document through which a guardian's consent is to be recorded.

52. It bears emphasis that the default here is not confined to the omission of Form-I and Form C of the MTP Rules, 2003. The status report additionally records that no identity proof and no residential proof of any kind were obtained. A registered medical practitioner performing an invasive procedure that the MTP Act itself conditions on the patient's age is not absolved of the obligation to seek some documentary anchor for that age merely because an escort volunteers a

figure. The entire statutory architecture examined presupposes that age is a fact to be ascertained and recorded, not merely accepted on an unverified oral representation from an adult accompanying the patient, particularly where that adult, as later investigation revealed, was not in fact in any relation with the prosecutrix at all.

53. This Court is not, at this stage, called upon to determine finally whether the petitioner's failure to obtain Form-I, Form C, or any identity document was the product of an honest and reasonable belief in the victim's adulthood, or the product of the deliberate concealment, the prosecution alleges.

54. It is also necessary to record that this default cannot be excused merely on the ground that TMC's general clinic practices were informal across the board. The informality of a clinic's record-keeping culture may explain why a particular slip could not later be traced. It does not excuse the practitioner's personal, statutorily mandated obligation to complete Form-I and Form C. Obligations that rest on the registered medical practitioner individually cannot be discharged by, or excused by reference to, the surrounding administrative laxity of the institution in which she practices.

56. Section 313 IPC punishes the causing of a miscarriage without the woman's consent. The petitioner's defence is that a consent form bearing the victim's signature exists on the TMC record, and that whatever else may be said of her conduct, an offence defined by the absence of consent cannot be sustained where a signed consent form is produced. The question this Court must answer is whether that signature, even assumed genuine, is capable in law of constituting the consent Section 313 of IPC speaks of, where the signatory was, in fact, a minor.

57. Section 3(4) of the MTP Act does not treat a pregnant woman's own signature as sufficient consent in every case. It draws a specific distinction, requiring the woman's own consent under Section 3(4)(b) in all cases, and requiring, additionally and separately, the guardian's written consent under Section 3(4)(a) wherever the woman is a minor.

58. The MTP Act does not regard a minor as capable of independently consenting to termination, but the statute itself declares it insufficient. In the present case, no guardian consent was ever sought because no one at TMC turned their mind to whether one was required. The signature of a minor does not supply the consent the MTP Act mandates.

59. It follows that the Forensic Science Laboratory Report's ("FSL")finding on the disputed signature does not resolve this question even if read most favourably to the petitioner. Authenticity of the signature and validity of the consent are two different questions. A genuine signature by a person legally incapable of giving valid consent on her own does not become valid consent merely because it is genuine. On the footing that the victim was, in fact, a minor, her signature on the TMC's form, however authentic, did not constitute the consent the law required,

in the absence of any guardian consent that was never sought.

60. It is discernible that, in this matter, the FIR was registered only on 04.10.2019 because of the failure of the petitioner in informing the matter to the appropriate authorities on 26.07.2019. What is relevant, for the purposes of the present petition, is the legal significance such a delay would carry if established. As held in Dr. Maroti (supra), "prompt and proper reporting of an offence under the POCSO Act is of utmost importance precisely because it enables the immediate registration of the case and the timely medical examination of the victim, and may, in a given case, assist in tracing an accused who might otherwise remain unknown or absconding".

61. The line drawn is between omissions that appear inadvertent and omissions that appear deliberate. Where the record discloses no more than an inadvertent lapse, quashment may be warranted. Whereas, as was held in Dr. Ditto Tom P (supra), a situation where the record discloses a deliberate omission to report, the prayer for quashment or discharge cannot succeed. Whether the omission alleged against the petitioner in the present case falls on one side of that line or the other is a question this Court is not called upon to answer at this stage. It suffices, for present purposes, to hold that the allegation cannot be excluded from consideration as inherently improbable.

62. In the instant case, the petitioner, who got knowledge regarding the crime on 26.07.2017, failed to inform the same and accordingly registration of the crime was delayed for a period of almost 70 days. That must have attenuated timely investigation of the case without elements of lacuna. The prosecution materials would show that the alleged offence against the petitioner is made out from the prosecution records, warranting trial. Therefore, the quashment plea would necessarily fail.

63. For the reasons set out above, this Court holds that the order dated29.09.2020 directing further investigation does not warrant interference and that the order dated 31.07.2021 taking cognizance and issuing summons accordingly does not suffer from any illegality warranting interference under Section 482 CrPC.

64. In view of the above, this Court finds no merit in the present petition and CRL.M.C.2900/2021 is accordingly dismissed. The pending application, if any, stands disposed of.

65. It is clarified that the observations made in this judgment are confined to the limited purpose of examining whether a prima facie case exists to sustain the impugned orders and proceedings, and shall not be construed as an expression of opinion on the ultimate merits of the case. The Trial Court shall proceed with the trial uninfluenced by any observation made herein, and shall decide the matter strictly in accordance with law, on the basis of the evidence led before it. (PURUSHAINDRA KUMAR KAURAV) JUDGE AUGUST 05, 2026 NK

