

(2024) 05 CHH CK 0002

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 1725 Of 2023

Dr. R.P. Dwivedi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 167, 192, 193, 197, 203, 354, 354K, 468, 469, 471, 499, 500
Code Of Criminal Procedure, 1973 — Section 154, 156, 156(3), 173, 173(2), 193, 195, 319, 482
Protection of Children from Sexual Offences Act, 2012 — Section 7, 8, 21, 22, 23

Citation : (2024) 05 CHH CK 0002

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Sumit Singh, Mohd. Ruhul Ameen Memon, Rajeev Shrivastava, Jai Singh, Ajay Kumrani

Final Decision : Allowed

Judgement

1. The applicant has filed this petition under Section 482 of the Cr.P.C. for quashing of the order dated 13.06.2023 (Annexure P/1) passed by the learned Special District & Sessions Court, FTSC (POCSO), Durg, District- Durg (C.G.) in Criminal POCSO Case No. 1628/2023 by which the learned Special Judge has directed for issuance of notice to the respondents/proposed accused as per provisions of Section 195 of the Cr.P.C. for offence enumerated in Section 193 of the Cr.P.C. and Section 471 of I.P.C. enquiry is required to be made, therefore, notice to the respondents/proposed accused is necessary and directed them to submit reply to the complaint made by the applicant.

2. The brief facts of the case are that the applicant filed a complaint under Sections 167, 192, 193, 197, 203, 468, 469, 471, 499, 500, 120(B) of IPC and Sections 21, 22 & 23 of Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act") before the learned Fourth FTC/Additional Sessions Judge, Durg on 05.06.2023 against respondent Nos. 2 to 9 mainly contending

that on written complaints dated 14.08.2016 & 16.08.2016 lodged by respondent No. 1 who is Principal of D.P.S. School, offence under Sections 354, 354 (K) & Section 7 & 8 of POCSO Act has been registered against the present applicant bearing Crime No. 223/2016. The applicant was arrested on 17.08.2016. It has been further contended that the learned Special Judge after appreciating the evidence, material placed on record, has acquitted the accused. The learned trial Court while appreciating the material on record, has recorded its finding that FIR and proceedings drawn against the present applicant are doubtful and without default of the applicant, he had to remain in jail for 379 days, thus, the applicant is a sufferer of conspiracy committed by the respondents, therefore, he has filed the complaint for prosecution against all the respondents including respondent No. 9 who is a public servant. The applicant has already moved an application for permission to prosecute respondent No. 7 and as soon as he receives the sanction, he will produce copy of the same before the Court.

3. It has also been stated that the conduct of the respondents falls within the ambit of offence under Sections 167, 192, 193, 197, 203, 468, 469, 471, 499 & 500 & 120B of the IPC read with Section 21, 22, 23 of the POCSO Act, 2011. The complaint was filed on 05.06.2023 and the learned trial Court has fixed the case on 19.05.2023 for consideration on the complaint which was adjourned to 13.06.2023, on 13.06.2023, the learned trial Court has passed the impugned order directing the respondents to submit reply to the complaint and fixed the case on 27.07.2023. This order is being assailed by the applicant by filing the petition under Section 482 of the Cr.P.C. for quashing of the impugned order.

4. This Court has issued notice to respondents No. 2 to 9 vide order 24.08.2023 and the matter was listed on 13.02.2024.

5. Learned counsel for the applicant would submit that the learned trial Court has committed illegality in granting opportunity of hearing to the accused to file reply to the complaint as per the Cr.P.C., there is no provision to give any opportunity to the accused before registration of offence. Thus, the learned trial Court has transgressed its jurisdiction in passing the impugned order dated 13.06.2023 which is against the law laid down by Hon'ble the Full Bench of this Court in case of Dhananjay Kumar Vs. State of Chhattisgarh & others, [WPCR No. 121 of 2017 (decided on 31.01.2020)] wherein Hon'ble the Full Bench has held that prospective accused has no right of hearing before registration of FIR and investigation by the police officer or before the court including the writ court. Therefore, in a writ petition seeking direction for registration of FIR and investigation into a cognizable offence, the prospective accused has no right of hearing and thus, he would submit that the impugned order be kindly quashed.

6. Per contra, learned counsel for respondents No. 2 to 8 & 9 supporting the impugned order would submit that the Magistrate holding the preliminary enquiry has to satisfy that prima facie case is made out against the accused by evidence of witness entitled to a reasonable degree of credit and unless he is so satisfied order of registration of complaint cannot be passed. Thus, he would submit that

to record the satisfaction regarding the material produced by the applicant, the learned trial Court has not committed any illegality in giving opportunity to the accused thus, would pray for dismissal of the present Cr.M.P. To substantiate his submission, he has referred to the judgment rendered by Hon'ble the Supreme Court in case of Chandra Deo Singh Vs. Prokash Chandra Bose reported in 1963 SCC OnLine SC 4.

7. I have heard learned counsel for the applicant Mr. Sumit Singh, for the State/respondent No. 1 Mr. Md. Ruhul Ameen Memon, for respondents No. 2 to 8 Mr. Rajeev Shrivastava, Senior counsel assisted by Mr. Jai Singh and for respondent No. 9 Mr. Ajay Kumrani and perused the documents placed on record with utmost satisfaction.

8. From the above submissions made by the parties, the point to be determined by this Court is whether the learned trial Court was justified in issuing notice to the proposed accused and directing them to file reply to the complaint before registration of complaint made by the applicant. To determine this issue, it is expedient for this Court to extract Sections 154 & 156 of the Cr.P.C. which read as under:-

"Section 154. Information in cognizable cases.- (1) Every information relating to the commission of a cognisable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

[Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer: Provided further that-

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,] [Substituted 'section 376A, section 376B, section 376C, section 376D,' by Criminal Law (Amendment) Act, 2018 (22 of 2018), dated 11.8.2018.] section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator,

as the case may be;

(b) the recording of such information shall be video-graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.]

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognisable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of the police station in relation to that offence.

Section 156. Police Officer's power to investigate cognisable case.- (1) Any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognisable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

9. From bare perusal of Section 154 of the Cr.P.C., it is quite vivid that this Section places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith, but a limited discretion is vested in the investigating officer to conduct a preliminary enquiry pre-registration of a FIR as there is absence of any specific prohibition in the Cr.P.C., express or implied. Therefore, the issue emerges for determination is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect. It is well settled position of law that the rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this

doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Indian Penal Code is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purposes; firstly to adequately punish the offender in accordance with law and secondly to ensure prevention of crime. Thus, on examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer In-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons. Firstly, the Code does not provide for any such right at that stage. Secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage.

10. Thus, while considering the above-stated principles in conjunction with the scheme of the Code, particularly Sections 154 and 156(3) of the Cr.P.C., it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Cr.P.C. is filed terming the suspect an accused that his rights are affected in terms of the Cr.P.C. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

11. The issue whether an accused is entitled to hearing pre-registration of an FIR, has come up for consideration before Hon'ble the Supreme Court in case of Anju Chaudhary Vs. State of Uttar Pradesh and another, reported in (2013) 6 SCC 384 wherein it has been held at paragraph 33 to 35 as under:-

"33. While examining the above-stated principles in conjunction with the scheme of the Code, particularly Section 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a

particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

34. Even in the cases where report under Section 173(2) of the Code is filed in the Court and investigation records the name of a person in column (2), or even does not name the person as an accused at all, the Court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

35. Of course, situation will be different where the complaint or an application is directed against a particular person for specific offence and the Court under Section 156 dismisses such an application. In that case, the higher court may have to grant hearing to the suspect before it directs registration of a case against the suspect for a specific offence. We must hasten to clarify that there is no absolute infeasible right vested in a suspect and this would have to be examined in the facts and circumstances of a given case. But one aspect is clear that at the stage of registration of a FIR or passing a direction under Section 156(3), the law does not contemplate grant of any hearing to a suspect."

12. Again Hon'ble the Supreme Court has considered this issue in case of State Bank of India & others Vs. Rajesh Agarwal & others, reported in (2023) 6 SCC 1 and has held at paragraph 37 & 38 as under:-

"37. While the borrowers argue that the actions of banks in classifying borrower accounts as fraud according to the procedure laid down under the Master Directions on Frauds is in violation of the principles of natural justice, the RBI and lender banks argue that these principles cannot be applied at the stage of reporting a criminal offence to investigating agencies. At the outset, we clarify that principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by this Court.

38. In Union of India v. W N Chadha, a two-judge bench of this Court held that that providing an opportunity of hearing to the accused in every criminal case before taking any action against them would "frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd, and self-defeating."22 Again, a two-judge bench of this Court in Anju Chaudhary v. State of UP 23 has reiterated that the Code of Criminal Procedure, 1973 does not provide for right of hearing before the registration of an FIR."

13. Hon'ble Full Bench of this Court in case of Dhananjay Kumar (supra) has considered the issue whether a prospective accused should be given an opportunity of hearing before taking cognizance of the offence and has held a paragraph 15 & 16 as under:-

"15. In addition, the Supreme Court in W.N. Chadha (supra) has also considered the application of rule of audi alteram partem at the stage of registration of FIR in paras 76 to 90 of the report.

16. In the above view of the matter, it is an absolutely settled legal position that a prospective accused has no right of hearing before registration of FIR and investigation by the police officer or before the Court including the writ Court, therefore, in a writ petition seeking direction for registration of FIR and investigation into a cognizable offence, the prospective accused is neither necessary nor a proper party."

14. In view of the above factual and legal matrix, it is quite vivid that the direction given by the learned trial Court giving liberty to the accused to submit reply to the complaint, deserves to be quashed and accordingly, it is quashed. The learned trial Court is directed to proceed further in the matter in accordance with law. It is made clear that this Court has not gone to the merits of the allegations levelled in the complaint, it is for the learned trial Court to consider and decide the same according to the material placed before it as per the law without being influenced from any of the observations made by this Court.

15. With the afore-stated observation and direction, the instant Cr.M.P. is allowed.