

(2015) 10 KAR CK 0057

In the Karnataka High Court

Case No : Criminal Revision Petition No. 496/2015

Priyanka Choudhary and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227

Juvenile Justice Act, 1986 — Section 23

Penal Code, 1860 (IPC) — Section 337, 354, 376(i)

Protection of Children from Sexual Offences Act, 2012 — Section 4, 5(f), 6, 8

Citation : (2015) 10 KAR CK 0057

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : Nehru M.N., Advocate, for the Appellant; Nasrulla Khan, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—The present revision petition is directed against the order passed on 24.4.2015 by the 44th sessions judge, Bengaluru, in Spl. C.C. 155/14. These petitioners had filed an application under Section 227 , Cr.P.C. seeking their discharge for the offences punishable under Section 337 , I.P.C. and Section 23 of the Juvenile Justice Act.

2. Petitioners are accused Nos. 2 and 3 in the said case. The main allegation against them is that the 2nd accused-Smt. Priyanka Choudhary, being teacher of the classroom, handed over custody of a girl aged 2 years 11 months to the 2nd petitioner herein to console the child and she handed over the girl to the 1st accused who sexually assaulted the said girl.

3. The main allegation against the 1st accused is of sexually assaulting the child. Hence charge is framed for the offences punishable under Sections 354 , 376(i) and (j), I.P.C. and Sections 4 , 5(f) , 6 and 8 of the Prevention of Children from Sexual Offences Act, 2012, (hereinafter referred to as POCSO Act, for brevity).

4. What is argued before this court by the learned counsel for the revision petitioners is that no materials are forthcoming to proceed further against these petitioners in Spl. C.C. 155/14 and in spite of the same, the learned judge has chosen to reject the application filed under Section 227 , Cr.P.C.

5. Heard the learned counsel for the revision petitioners and learned counsel representing the respondents.

6. HSR Layout police station chose to register first information in Crime No. 23/14 against the 1st accused for the offences under Sections 354 , 376(i) and (j), I.P.C. and Sections 4 , 5(f) , 6 and 8 of the POCSO Act. As per the requisition of the complainant/police on 26.3.2014, Section 337 , I.P.C. and Section 23 of the Juvenile Justice Act have been invoked against these petitioners who are arrayed as accused Nos. 2 and 3. Prosecution case is that the victim girl aged 2 years 11 months was attending Xseed Pre School, Sarjapura Road, Bengaluru. It is alleged that the girl was subjected to rape, molestation and sexual assault by the 1st accused on 7.1.2014. During the course of investigation, the 1st accused was subjected to custodial interrogation and he disclosed to the police about the commission of the offence. Further statements of the witnesses were recorded and it was found that the 2nd accused (1st petitioner herein) was the class teacher of the play group and 3rd accused was in charge Ayah and they had failed in their duty and were negligent in handing over the child to the 1st accused who in turn committed sexual assault.

7. What is argued before this court is that these petitioners have been falsely implicated without any basis to proceed against them for the offences punishable under Section 337 , I.P.C. and Section 23 of the Juvenile Justice Act. It is argued that the very information given by the accused during police custody discloses that the child was handed over to him by the Ayah-Sheela and that she is not at all made as accused. The fact that the 2nd accused was the teacher of the said play group in which the abused child was a student, is not seriously disputed.

8. It is seen that on 12.4.2014, the parents of the victim had filed an application for further investigation and gave some details. This indicated grave negligence of the school authorities. Further statements of witnesses were recorded. Section 23 of the Juvenile Justice Act states that "whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child necessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months or fine, or with both." It is true that the persons who are managing the school are also responsible vicariously. Petitioners were working as teacher and ayah under the management of the school.

9. Records show that at the relevant time the child was crying and wanted her mother. Hence the child was handed over to the ayah-2nd petitioner to console the child. She took the child out of the class room and handed her to the driver

who sexually assaulted the child. Even after 45 minutes, the child did not return and these petitioners did not take care to see as to what happened. From the materials placed on record, there are grounds to proceed further in order to frame charges. A roving inquiry cannot be held while framing charges. If prima facie material is found to frame charge, it will be sufficient.

10. What exactly is the revisional power of the court against an order of framing charges is will dealt with in the case of Munna Devi Vs. State of Rajasthan and anr, . It is reiterated that while exercising revisional power, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the FIR even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged.

11. Just because the accused has volunteered to state that Sheela-ayah handed over custody of the child to him, it cannot be considered as a material aspect. On the other hand, the materials placed on record go to show that the 2nd accused was the class teacher and 3rd accused was the ayah of the play group to whom the 1st petitioner handed over custody of the child. Suffice to state that the learned judge has passed a detailed order adverting to all the materials placed on record and has found that there are materials to proceed further and to frame charge.

12. No illegality or perversity is found in the impugned order while exercising the discretion vested. Accordingly the revision petition is liable to be dismissed.

13. In the result, the petition is dismissed.