

(2019) 10 MAN CK 0006

Manipur High Court

Case No: Criminal Revision Petition No. 19 Of 2019

Thounaojam Tejkumar
Singh

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision: Oct. 14, 2019

Acts Referred:

- Protection Of Children From Sexual Offences (POCSO) Act, 2012 - Section 6, 25
- Code Of Criminal Procedure, 1973 - Section 164, 227, 228

Citation: (2019) 10 MAN CK 0006

Hon'ble Judges: M.V. Muralidaran, J

Bench: Single Bench

Advocate: M. Ibohal, Y. Ashang

Final Decision: Dismissed

Judgement

M.V. Muralidaran, J

Brief Case of the Petitioner:

1. A complaint was lodged against the petitioner before respondent No.4 stating that the petitioner sexually assaulted his daughter the minor girl. After

registering the case and after conducting investigation, respondent No.5 laid charge sheet before the learned Special Court (POSCO) Imphal, East for

the offence punishable under section 6 of the POCSO Act 2012. On receipt of the charge sheet the learned Special Judge took cognizance under

section 6 of POCSO Act 2012 against the petitioner.

2. On 22.04.2019 the petitioner has filed a Criminal Petition No.16 of 2019 before this Hon'ble Court and prayed that the Hon'ble High Court

be pleased to quash ST (POCSO) Case No.2 of 2018 of Special Court (POCSO) Imphal East arising out of the FIR No.36(10) 2017 WPS IE U/s 6

POCSO Act 2012 dated 9.10.2017, the first medical examination report dated 9.10.2017, the statement of the alleged child victim recorded by Judicial

Magistrate First Class, Imphal East, Manipur, the charge-sheet No.1 (WPS-IE) 2018 dated 27.1.2018, the cognizance taking Order dated 22.05.2018

by Special Judge (POCSO) Imphal East in ST (POCSO) Case No.2 of 2018 and the final medical report dated 8.4.2019.

3. On 05.07.2019 this Hon'ble Court passed Judgment and Order in Cril. Petition No. 16 of 2019 thereby directing the learned Special judge

(POCSO) Imphal, East to give fair opportunity to the petitioner/accused to putforth his case in respect of the statement recorded under Section 164 of

Cr.P.C. by the learned Magistrate from the victim child on 16.10.2017.

4. That on 26.07.2019, the Ld Special Judge (POCSO) Imphal East passed the Order of Charge framing in his Special Trial No.2 of 2018 and

accordingly framed Charge under Section 6 of the POCSO Act 2012 (hereinafter the impugned Order and Charge) and has fixed 3.08.2019 for

hearing PWs.

5. The instant case, it is pertinent to note that a detailed order have been passed by this Hon'ble Court in Cril. Petition No.16 of 2019 dismissing

the quash petition of the criminal proceedings ST (POCSO) case No.2 of 2018 and this Hon'ble Court issued directions to all the learned Judicial

Magistrates and the Chief Judicial Magistrates for recording any statement under section 25 of the POCSO Act 2012 and further directed to disposal

of the case within a period of 4 months.

6. The learned trial court framed the charge under section 6 of the POCSO Act 2012 against which this criminal revision petition is filed by the

Petitioner.

7. Before advertng to the question raised in the revision petition for and against framing of charges under different provisions, it has to be clearly kept

in view that a Revisional Court must not interfere with the findings of a Trial Court on the ground of sufficiency or otherwise of the material on record

so as to substitute its own opinion unless some patent perversity or glaring illegality is brought to the notice of the Court. The views expressed by their

lordships of the Supreme Court of India in Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia & Another, are the words of caution for the

Revisional Courts.

8. If upon consideration of the material on record, documents and surrounding facts and circumstances of the case the Trial Judge considers that there

are no sufficient grounds for proceeding against an accused he is under duty to order his discharge under Section 227 of the Code of Criminal

Procedure. However, if upon the consideration of the material on record the Judge is of the opinion that there are grounds for presuming that the

accused has committed the offence, he is under a legal obligation U/S 228 of the Code of Criminal Procedure to frame a charge against him and put

him on trial. The law as to under what circumstances the Courts should pass an order under Section 228 of the Code for framing a charge and on

what ground a discharge should be ordered under Section 227 of the code has been the subject matter of deep deliberations by the High Courts as

well as the Hon'ble Apex Court in a number of cases. Leading judgments on the question are in Century Spinning & Manufacturing Co. Ltd. Vs.

The State of Maharashtra, 1972 CrL. L.J. 329, Malkhan Singh & Another Vs. The State of Uttar Pradesh, State of Bihar Vs. Ramesh Singh, Union of

India Vs. Prafulla Kumar Samal & Another, Rambilas Singh & Others Vs. State of Bihar, Niranjana Singh Karam Singh Punjabi, Advocate Vs.

Jitendra Bhimraj Bijja & Others, Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia & Another, State of Maharashtra etc. Vs. Som Nath

Thapa etc., 1996 CrL. L.J. 2448, Satish Mehra Vs. Delhi Administration & Another, 1996 (5) SCALE 523 and Sumitra Banik Vs. State of West

Bengal.

9. The Hon'ble Apex Court has categorically laid down the law that the Courts at the stage of framing of charge even have to apply their judicial

mind to the material placed on record with a view to find out as to whether there are grounds or not for presuming that the accused has committed the

offence but at this stage neither the guilt of the accused has to be determined nor any elaborate enquiry is to be undertaken by delving deep into

various aspects of the case. Probable defense of an accused is not to be looked into at this stage and if the scales between the accused having

committed the offence or not committed the offence are evenly balanced the charge should be framed as at this stage the facts have to be taken at

their face value only.

10. The Hon'ble Apex Court in *Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijja*, referred to a judgment and quoted

para-18 thereof which reads as under:

“The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to be applied

at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon material before

the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify

the framing of charge against the accused in respect of the commission of that offence.”

11. The Court thereafter went on to make further observations as under :

“From the above discussion, it seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents

on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting

the alleged offence. The Court may for this limited purpose Sift the evidence as it cannot be expected even at that initial stage to accept all that the

prosecution states as gospel truth, even if it is opposed to Common sense or the broad probabilities of the case.

12. In *Satish Mehra Vs. Delhi Administration and others* reported in Scale 1996 (5) 523, their lordships guided the subordinate Courts in the following

words:

“But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted

for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of

the Sessions Courts in India are under heavy pressure of work-load. If the Sessions Judge is almost certain that the trial would only be an exercise in

futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself.

13. In *Som Nath Thapa's case* reported in 1996 Cri. L.J. page 2448, the Apex court again considered the question of framing of charge under Section

228 of the Code of Criminal Procedure and laid down the legal position in following words:

“The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a

probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the

offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that

at the stage of framing of charge, probative value of the materials on record cannot be gone into; the material brought on record by the prosecution

has to be accepted as true at that stage.

14. In the case of *Sajjan Kumar v. Central Bureau of Investigation* reported in (2010) 9 SCC 368, Hon'ble Supreme Court in para 21 of the judgment

has laid down the principles which are to be kept in mind by the Court while exercising jurisdiction under Sections 227 & 228 Cr.P.C., which are as

below :

“ (i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the

evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima

facie case would depend upon the facts of each case.

“ (ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will

be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouth piece of the prosecution but has to consider the broad probabilities of the case, the total

effect of the evidence and the documents produced before the court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry

into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge,

though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the (5 of 10) [CRLR-765/2019]

offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court

must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the state of Sections 227 & 228, the court is required to evaluate the material and documents on record with a view to find out if the facts

emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift

the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common

sense or the broad probabilities of the case.

(vi) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to

discharge the accused at this stage, he is not to see whether the trial will end in conviction or acquittal.

15. In the case of *Amit Kapoor v. Ramesh Chander & Anr.* reported in (2012) 9 SCC 460, the Hon'ble Supreme Court has held that at the initial stage

of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to

trial, could prove him guilty. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the

accused or not. The final test of guilt is not to be applied at that stage.

16. In the case of *Sheoraj Singh Ahlawat & Ors. v. State of Uttar Pradesh & Anr.* reported in (2013) 11 SCC 476, the Hon'ble Apex Court has held

as below :

“While framing charges, court is required to evaluate materials and documents on record to decide whether facts emerging therefrom taken at their

face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative

value of materials on record. It needs to evaluate whether there is a ground for presuming that accused had committed offence. But it should not

evaluate sufficiency of evidence to convict accused. Even if there is a grave suspicion against the accused and it is not properly explained or court

feels that accused might have committed offence, then framing of charges against the accused is justified. It is only for conviction of accused that

materials must indicate that accused had committed offence but for framing of charges if materials indicate that accused might have committed

offence, then framing of charge is proper. Materials brought on by prosecution must be believed to be true and their probative value cannot be decided

at this stage. The accused entitled to urge his contentions only on materials submitted by prosecution. He is not entitled to produce any material at this

stage and the court is not required to consider any such material, if submitted. Whether the prima facie case made out depends upon facts and

circumstances of each case. If two views are possible and materials indicate mere suspicion, not being grave suspicion, against accused then he may

be discharged. The court has to consider broad probabilities of case, total effect of evidence and documents produced before it. The court should not

act as mouthpiece of prosecution and it is impermissible to have roving enquiry at the stage of framing of charge.

17. In the light of the principles governing the framing of a charge under Section 228 of the Code of Criminal Procedure and the evidence required for

proving the offence under POCSO, this Court is of the considered view that the prosecution has succeeded in placing on record the materials on the

basis of which the Court can come to a conclusion that there are grounds to presume. The scales weighing the material on record are not evenly

balanced but are clearly tilted in favor of the accused for the reason that for entertaining a suspicion even the Court must have some material on

record. Baseless suspicion, imaginary inferences and groundless conjectures are to be discarded by a discerning judicial eye.

18. The Protection of Children From Sexual Offences Act, 2012 enacted to protect children from offences of sexual assault, sexual harassment and

pornography and has very stringent provisions. Data has been collected by the National Crime Records Bureau, which shows that there has been

increase in cases of sexual offences against children, and interest of a child both as a victim as well as a witness needs to be protected. Sexual abuse

within the four corners of a home is also not uncommon.

19. It is settled that at the stage of framing of charges the probative value of the material on record cannot be gone into. In other words, it merely sifts

and weighs the evidence for a limited purpose namely whether there is sufficient material to frame the charge. It is not open for the Court to analyse

all the materials including pros and cons, reliability or acceptability etc. It is at the trial, the Court concerned has to appreciate their evidentiary value,

credibility or otherwise of the statement, veracity of various documents and free to take a decision one way or the other. It has been reiterated time

and again that while exercising powers under Section 227 Cr.P.C. the Court should not make a roving enquiry into the pros and cons of the matter and

weigh the evidence as if he was conducting a trial.

20. It is not in dispute that it is the statement of witness recorded under section 164 Cr.P.C. is required to be signed by the witness. However in the

present case, the victim girl being aged four years at the relevant point of time, the learned Judicial Magistrate ought not to have asked the victim girl

to sign in the statement. Anyhow, taking note of the explanation offered by the learned Judicial Magistrate obtaining of signature in Section 164

Cr.P.C. statement of the victim would not be a serious flaw in the facts and circumstances of the case. Further, while recording Section 164 Cr.P.C

statement of witness in the cases of POCSO Act the learned Judicial Magistrate ought to follow the procedure as contemplated under POCSO Act

2012. This court is of the view that it is a right time to issue direction to all the Judicial Magistrate/Chief Judicial Magistrate in the State of Manipur

through the Registrar General of this Court to follow the procedures contemplated under POCSO Act, 2012 while recording Section 164 Cr.P.C.

statement of victims/witnesses. On the reasons this court dismiss the criminal petition filed in CrI.M.P.No.16 of 2019 and directed the learned trial

court to dispose of the case within a period of 4 months. Now the petitioner/accused again challenged the order of framing charge against him. This

court on careful perusal of the charges and other materials not inclined to allow the prayer.

21. In the result, this Criminal Revision Petition is dismissed.