

Spl.C.Child Prot.No.34/2016

ORDER BELOW EXH.100 & Exh.1

1. A charge-sheet has come against accused No.1 to 7 alleging offences punishable under section 376 (2) (i), 354 (A) (a), 354 (B), 506, 109, 323 of IPC and under section 4, 8, 12, 21, 23(4) of Protection of children From Sexual Offences Act, 2012 (in short 'POCSO' Act) and under section 74(1) of The Juvenile Justice (Care and Protection of Children) Act, 2015 (in short JJ Act).

2. On 08.09.2016, one Uma Chaudhari approached to Wani police station and lodged the FIR alleging the her daughter, victim (name not disclosed) aged 4 years is studying in K.G.II of Dreams Play School at Wani. Alongwith her six to eight children of same age group are taking education in said school. The school administration has provided Bus & Van facility for attending the children to the school. They send their children in Van No. MH-29/T-8790 & Bus No.MH-29/TC-107 to the school.

3. At about two months back, the victim was suffering from irritation in her vagina. Similarly other 3-4 girls were also facing with the same irritation. When the children were taken in confidence, it learnt that while to and fro journey of the school, Van and Bus drivers and attendant lady were taking the children at the back seat of the vehicles and asking them to remove their undergarments. Further they were asking the

children to put the fingers of each other to the vagina and private part of each other. They were also threatened of throwing them out of the running vehicle, if they disclose to anyone. On said complaint, crime No.777/2016 for the offence punishable under section 376 (2) (i), 354 (A)(a), 354 (B), 506, 109, 323 of I.P.C. and under section 4, 8, 12, 21, 23(4) of POCSO Act and under section 74(1) of J.J. Act was registered.

4. During investigation of crime, the involvement of the driver of vehicle Surendra Sao, attendant lady Mirabai in crime was revealed. They were arrested in crime. From the statements of the parents of the pupils recorded by the I.O., it gathered that the pupils were playing the game of their private part (Su Su) in the school. Though complained to the principal Lata Jivane & teacher Farin Sayyad, they did not pay any attention towards their complaint. After registration of crime, the director of the school Dipak called a press-conference on 09.09.2016 and tried to cover up the issue by giving explanation in said press-conference. In it, he disclosed the names of pupils, their identity etc. Said press-conference was video-graphed by one Sai cable news of Wani. In the news flashed, the names and the identity of the pupils were made known to the general public. Therefore, on complaint of the parents, the director of the school Dipak and the proprietor of Sai cable news Gajanan Kakade were arrested in the crime. Prior to that, the principal Lata Jivane and teacher Farin Sayyad were also arrested in crime. After completion of investigation a charge-sheet came to be filed against accused No.1 to 7, alleging the offence punishable under section 376 (2) (i), 354 (A)(a), 354 (B), 506, 109, 323 of I.P.C. and under

section 4, 8, 12, 21, 23(4) of POCSO Act and under section 74(1) of J.J. Act.

5. At the stage of proceeding under section 227 & 228 of Cr.P.C., accused Nos.5 & 6 have sought discharge from the offence. It is their plea that they have been falsely implicated in the offence. They had provided the lady attendant Mirabai, accused No.3, in the school Bus & Van. On complaint of playing the game of private part (Su Su) in school by the children, an immediate action was taken. An enquiry of said complaint was also made to the wards. No offence has been made out against them. They have not committed any of the offence punishable under section 376 (2) (i), 354 (A)(a), 354 (B), 506, 109, 323 of I.P.C. and under section 4, 8, 12, 21, 23(4) of POCSO Act and under section 74(1) of J.J. Act. According to them, there is no sufficient ground for proceeding and holding a trial against them.

6. The prosecution strongly objected the application, vide reply Exh. 101 on the premise that in the statements of witnesses Uma Ankur Chaudhari, Mahesh Dharmpal Lal, Anup Rathi, Madhav Chavhan, Ankur Chaudhari, a clear involvement of the accused No.5 & 6 in offence is revealed. Accused No.5 is the principal and accused No.6 is the teacher of the school. On receipt of complaint from the parents, they failed to report the commission of offence to the local police. There is sufficient material against both the accused to hold a trial of the offences. A prima-facie case has been made out by the prosecution to proceed against them. The prosecution asked to reject the application.

7. Heard learned counsel for applicants/accused No.5 & 6. Heard the learned counsel appearing for other accused No.1 to 4 & 7. Heard learned APP Shri R.D.More. Perused application, say and charge-sheet. On its basis, following points rise for the determination and the findings to each of them for the reasons recorded as below.

Sr.No.	Points	Findings
01.	Whether are there sufficient grounds for proceeding against the accused Nos.1 & 2 for the offence punishable under section 354-A, 354-B r/w 34 of IPC and under section 8 & 12 of POCSO Act?	Yes
02	Whether are there sufficient grounds for proceeding against accused Nos.1 to 3 for the offence punishable under section 506 r/w 34 of IPC?	Yes
03	Whether are there sufficient grounds for proceeding against accused No.3 under section 354-A, 354-B r/w 109 of IPC and under section 8 & 12 r/w 16 of POCSO Act?	Yes
04	Whether are there sufficient grounds for proceeding against accused Nos.4, 5 & 6 for commission of an offence punishable under section 21 of POCSO Act?	Yes
05	Whether are there sufficient grounds for proceeding against accused Nos.4 & 7 for the offence punishable under section 23 of POCSO Act and under section 74 of J.J. Act?	Yes

06 What order?

Application Exh.100 is dis-allowed and a charge is framed against accused Nos.1 to 7 for commission of their respective offences.

REASONS

As to point Nos.1 to 5:-

8. Though, while sending the charge-sheet, a role of each accused in crime has been defined by the I.O., the charge-sheet is alleging commission of offence by all punishable under section 376 (2) (i), 354 (A)(a), 354 (B), 506, 109 of I.P.C. and under section 4, 8, 12, 21, 23(4) of POCSO Act and under section 74(1) of J.J. Act. It might have prompted the accused Nos.5 & 6 to move the application Exh.100 seeking discharge from the case as it is their plea that they have not committed any offence punishable under section 376 (2) (i), 354 (A)(a), 354 (B), 506, 109 of I.P.C. and under section 4, 8, 12 of POCSO Act. They might have carried the impression that with the aid of section 109 of IPC and under section 16 of POCSO Act, they have been roped in crime alleging commission of an offence punishable under section 376 (2) (i), 354 (A)(a), 354 (B), 506, and under section 4, 8, 12 of POCSO Act. A perusal of FIR, the statements of witnesses and the other papers of the charge-sheet, no cogent material is found to connect the accused Nos.4 to 7 with the offences punishable under section 376 (2) (i), 354 (A)(a), 354 (B), 506 r/w 109 of IPC and under section 4, 8, 12 r/w section 16 of POCSO Act. There is no cogent evidence for

connecting them with those offences. Therefore, the accused Nos.5 & 6 are justified in claiming that there is no material against them for holding a trial of the offence punishable under section 376 (2) (i), 354 (A)(a), 354 (B), 506 r/w 109 of IPC and under section 4, 8, 12 r/w section 16 of POCSO Act.

9. But, it does not mean that they are entitled to be discharged from the entire case. A perusal of the FIR and the statements of the witnesses namely, Uma Ankur Chaudhari, Mahesh Dharmpal Lal, Anup Rathi, Madhav Chavhan, Ankur Chaudhari, it is appearing that they had complained to them about the illegal activities and sexual abuses of their children in the school. But no cognizance of their complaints was taken by both as well as by the director of the school i.e. accused No.4 Dipak Jivane. According to them, an enquiry of said complaints was made on school level. An enquiry of said complaint was also made to the wards. But neither the wards disclosed anything to them nor the parents co-operated. They stated nothing in respect of the allegations of the complaint. Prima-facie, in absence of any cogent material given to I.O. by them during investigation or production of any such material in the court, it may not be proper to exonerate them from the liability. Section 21 of the POCSO Act makes the person liable for prosecution, if he/she fails to report the commission of an offence as provided under section 19 & 20 of the Act to the local police. Section 19 of the POCSO Act mandates a person, having knowledge of commission of an offence, to provide that information to the local police. Similar obligation is provided in section 20 of the POCSO Act. Being the director, principal and teacher of the

school, it was for accused Nos.4 to 6 respectively to report the commission of an offence to local police in respect of the wards of forcing them to play the game of their private part (Su Su) by the concerned teaching and non-teaching staff of the school. But prima-facie, no such offence appears to have been reported to the local police by the accused Nos. 4 to 6. Prima-facie, a case has been made out against them of committing an offence punishable under section 21 of POCSO Act. The plea of accused Nos.5 & 6 of discharging them from the offence can not be accepted holding that there is absolutely no material against them for holding a trial. The statements of witnesses Uma Ankur Chaudhari, Mahesh Dharmpal Lal, Anup Rathi, Madhav Chavhan, Ankur Chaudhari, prima-facie, sufficient enough to hold that there are grounds for proceeding against accused Nos.4 to 6 for commission of an offence punishable under section 21 of POCSO Act.

10. Now the question is what was the role of each accused in the crime? There is sufficient material in the form of FIR and statements of witnesses showing that the accused Nos.1 & 2 have committed an offence punishable under section 354-A, 354-B, 506 r/w 34 of IPC and under section 8 & 12 of POCSO Act. Though I.O. has applied section 376 (2) (I) of IPC and under section 4 & 6 of POCSO Act against both, Prima-facie, there is no material showing any aggravated or a penetrative sexual assault by the accused Nos.1 & 2 on any of the children of the school Van or Bus. Accused No.3, being the attendant of the Van and Bus, abetted the commission of an offence punishable under section 354-A, 354-B of IPC and under section 8 & 12 of

POCSO Act. Therefore, with the aid of section 109 of IPC and section 16 of POCSO Act, she is liable to be prosecuted alongwith accused Nos.1 & 2. Besides that, she, in furtherance of common intention with accused Nos.1 & 2, threatened the children of school Van and Bus and therefore, she is liable to be prosecuted for the offence punishable under section 506 r/w 34 of IPC.

11. It is the charge against accused No.4 that on dated 09.09.2016 he called a press-conference at Wani. In it, the video-shooting/video-graphy was made by the accused No.7 Gajanan Kakade. In said press-conference called by accused No.4, he tried to explain certain facts. In it, the accused No.4 disclosed the names of pupils (Victims of crime), their identity and other details and particulars to all, who remained present in the press-conference. Thus, he made a clear breach of section 23 of POCSO Act and section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short J.J.Act). The accused No.7, who was a cable operator/director of Sai Cable News, Wani, through his cable network made the names, identity and other details and particulars of the victim pupils public. Said news was spread in entire Wani and thus, the disclosure of the identity of the pupil victims was made to general public. Thus, the accused No.7 committed an offence punishable under section 23 of POCSO Act and section 74 of J.J. Act.

12. The prosecution has brought the sufficient, cogent, convincing and satisfactory material to frame a charge against accused Nos.1 & 2 for the offence punishable under section 354-

A, 354-B r/w 34 of IPC and under section 8 & 12 of POCSO Act.

There is sufficient material against accused Nos.1 to 3 for framing a charge under section 506 r/w 34 of IPC.

Accused No.3 abetted the commission of offence of accused Nos. 1 & 2. Therefore, a charge under section 354-A, 354-B r/w 109 of IPC and under section 8 & 12 r/w 16 of POCSO Act, is required to be framed against her.

There is sufficient material to frame a charge against accused Nos.4, 5 & 6 for commission of offence punishable under section 21 of POCSO Act.

A charge is requires to be framed against accused Nos.4 & 7 for the offence punishable under section 23 of POCSO Act and under section 74 of J.J. Act.

13. For the above reasons, the plea of accused Nos.5 & 6 of discharging them from the case can not be accepted. Their application Exh.100 is devoid of any merit. Hence, answering the point Nos.1 to 5, accordingly, following order is passed.

ORDER

1. The application Exh.100 of accused Nos.5 & 6 is disallowed.
2. A charge be framed against accused Nos.1 & 2 for the offence punishable under section 354-A, 354-B r/w 34 of IPC and under section 8 & 12 of POCSO Act, against accused Nos.1 to 3 for for the offence punishable under section 506 r/w 34 of IPC, against accused No.3 under section 354-A, 354-B r/w 109 of IPC and under section 8 & 12 r/w 16 of POCSO Act, against accused Nos.4, 5 & 6 for commission of an offence punishable under section 21 of POCSO Act and against accused Nos.4 & 7

for the offence punishable under section 23 of POCSO Act and under section 74 of J.J. Act.

3. Accordingly, the application Exh.100 is disposed off.

Dated : 17-05-2022.

(H.S. Satbhai)
Additional Sessions Judge-2,
Kelapur