

**IN THE SPECIAL COURT (UNDER THE POCSO ACT)-CUM-  
ADDITIONAL SESSIONS JUDGE 1<sup>st</sup> COURT DURGAPUR,  
PASCHIM BARDHAMAN**

**Present : MOHD. AQIL SAIFI  
JO CODE-WBO1310  
Date of Delivery of Judgment:- 07.07.2026**

**Special Case (POCSO) No. 19 of 2018 (S.T No.41 of 2019)  
CIS No.19 of 2018  
Arising out of NTS P.S Case No.156/18 dated 16.11.2018  
under section 363/365/366/366A/376(f)/120B of IPC and  
under section 6 of POCSO Act  
CNR – WBBD090015302018**

**Complainant..... State of West Bengal**

**Represented by :- Sri Debabrata Sain.....Ld. Special P.P**

**Accused ..... Mahammad Hussain @ Md. Hussain (On CB)  
Murtoja Answari @ Murtaza (On CB)**

**Represented by :- Kazi Md. Hussain ...Ld. Advocate**

|                                    |            |
|------------------------------------|------------|
| Date of Offence                    | 12.11.2018 |
| Date of FIR                        | 16.11.2018 |
| Date of Charge-sheet               | 30.12.2018 |
| Date of Framing of Charge          | 11.11.2019 |
| Date of commencement of Evidence   | 10.02.2025 |
| Date on which judgment is reserved | 01.07.2026 |
| Date of Judgment                   | 07.07.2026 |
| Date of Sentencing Order, if any   | Nil        |

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Accused Details

| Rank of Accused | Name of Accused                 | Date of Arrest | Date of release on Bail | Offences charged with                                 | Whether acquitted or convicted | Sentence imposed | Period of Detention undergone during Trial for purpose of Section 468, BNSS |
|-----------------|---------------------------------|----------------|-------------------------|-------------------------------------------------------|--------------------------------|------------------|-----------------------------------------------------------------------------|
| A1              | Maham mad Hussain @ Md. Hussain | 23.11.18       | 06.12.18                | Under section 363/366A/ 376(f) and u/s 6 of POCSO Act | Acquitted                      | None             | Not applicable                                                              |
| A2              | Murtoja Answari @ Murtaza       | 21.11.18       | 06.12.18                | Under section 363/366A/ 376(f) and u/s 6 of POCSO Act | Acquitted                      | None             | Not applicable                                                              |

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution

| Rank   | Name         | NATURE OF EVIDENCE |
|--------|--------------|--------------------|
| P.W.-1 | Complainant  | Father of the VG   |
| P.W.-2 | Victim Girl  | Victim Girl        |
| P.W.-3 | Mother of VG | Mother of VG       |
| P.W.-4 | Friend of VG | Friend of VG       |

B. Defence Witnesses, if any - Nil

C. Court Witnesses, if any - Nil

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### **LIST OF PROSECUTION/ DEFENCE/COURT EXHIBITS**

#### **A. Prosecution**

| Sr. No. | Exhibit Number                                    | Description                                                                |
|---------|---------------------------------------------------|----------------------------------------------------------------------------|
| 1       | Exhibit P-1(1)/PW 1                               | Signature of PW-1 on the Written complaint                                 |
| 2       | Exhibit P-2/PW 2                                  | Medical Examination Report                                                 |
| 3       | Exhibit P-3/PW 2                                  | Statement of VG under section 164 of Cr.P.C                                |
| 4       | Exhibit P-4(1)/PW 4 and P-4(2)/PW 4 (in a series) | Signature of witness on her statement recorded under section 164 of Cr.P.C |

#### **B. Defence :-**

| Rank | Exhibit Number | Description |
|------|----------------|-------------|
| NIL  | NIL            | NIL         |

#### **C. Court Exhibits :-**

| Rank | Exhibit Number | Description |
|------|----------------|-------------|
| NIL  | NIL            | NIL         |

#### **D. Material Object Number- Nil**

| Sr. No. | Material Object Number | Description |
|---------|------------------------|-------------|
|         | Nil                    | Nil         |

### **J U D G M E N T**

**1.** In the instant case, the accused persons Mahammad Hussain @ Md. Hussain and Murtoja Answare @ Murtaza were charged under section 363/366A/376(f) of IPC and under section 6 of POCSO Act.  
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This case is the result of a written complaint filed by the complainant i.e. the father of the victim girl.

**2.** The factual matrix of the prosecution case, in brief, is that on 16.11.2018 at 18:05 hours O/C New Township P.S ADPC, Paschim Bardhaman received a written complaint from complainant i.e. the father of the VG that his 14 years old daughter, student of Class IX, has gone on 12.11.2018 at 6:00 AM to attend private tuition but she did not return and they are dead sure that his daughter has been kidnapped by the dance teacher Md. Hussain for ransom or for marriage or for some unlawful activities.

**3.** On the basis of this written complaint O/C New Township P.S started New Township P.S Case No.156 of 2018 dated 16.11.2018 under section 363/365 of IPC and later during the investigation sections 366/366A/376(f)/120B of IPC and section 6 of POCSO Act were added.

**4.** Thereafter the charge-sheet bearing No.117/2018 dated 30.12.2018 under section 363/365/366/366A/376(f)/120B of IPC and under section 6 of POCSO Act against the accused persons was filed and cognizance was taken by this Court on 14.01.2019. After considering the case prima facie and after perusal of the entire material available on record, this court on 11.11.2019 framed charge against accused persons under section 363/366A/376(f) of IPC and under section 6 of POCSO Act and the same were read over and explained to the accused persons in vernacular to which they pleaded not guilty and claimed to be tried.

#### **POINT FOR DETERMINATION**

**5.** Whether the prosecution has been successful in proving the charge under section 363/366A/376(f) of IPC and under section 6 of POCSO Act against accused persons Mahammad Hussain @ Md. Hussain and Murtoja Ansvari @ Murtaza ?

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**EVIDENCE OF PROSECUTION AND ITS CROSS EXAMINATION**

**6.** In order to bring home the charge as framed against the accused persons the prosecution has examined as many as **04 witnesses** in all and during their evidence some documents have been exhibited as **Documentary Exhibits** on behalf of the prosecution.

**7.** In order to dispose of the instant case fairly and effectively this Court now proposes to discuss in detail the examination in chief and cross examination of vital prosecution witnesses.

**7.1 P.W.1 (father of the VG) the complainant in his examination in chief** stated that he has one daughter and one son and VG is his daughter and his daughter used to attend dance class of Mahammad Hussain @ Md. Hussain and on 12.11.2018 at about 6:00 AM his daughter left home to attend private tuition but she did not return and he suspected that Mahammad Hussain @ Md. Hussain has kidnapped his daughter for ransom or for marriage or for some illegal activities and he lodged complaint against accused Mahammad Hussain @ Md. Hussain before O/C NTS P.S. on 16.11.2018 and his signature over the complaint was marked as **Exhibit-P-1(1)/PW-1** and after 12 days his daughter was recovered by the police from Jharkhand and then he came to know that Mahammad Hussain @ Md. Hussain took away his daughter for dance competition without his permission.

**In Cross Examination** he admitted that his daughter left house saying that she was going to attend private tuition but she went to attend dance competition and also admitted that he has not seen Md. Hussain while taking away his daughter.

**7.2 P.W.2 - the victim girl in her examination in chief** stated that she used to attend dance class of Mahammad Hussain @ Md. Hussain and on 12.11.2018 at about 6:00 AM she left house on

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pretext of attending private tuition but she went to Jharkhand to attend dance competition along with other girls and their dance teacher Md. Hussain and she was recovered by the police from Jharkhand and she was medically examined at Bidhannagar SD Hospital, Durgapur and medical examination report was marked as **Exhibit-P-2/PW-2** and her statement was also recorded before Ld. Magistrate and her statement recorded under section 164 of Cr.P.C were marked as **Exhibit-P-3/PW-2**.

**In Cross Examination** she admitted that other girls also went to attend the dance competition with her and they were staying together and dance teacher did not take her forcibly and also admitted that she did not make any complaint of physical abuse at the time of medical examination.

**7.3 P.W.3 (mother of the VG) in her examination in chief** stated that she has one daughter and one son and VG is her daughter and her daughter used to attend dance class of Mahammad Hussain @ Md. Hussain and in 2018 her daughter left home to attend private tuition but she did not return and thereafter her husband lodged complaint against accused Mahammad Hussain @ Md. Hussain before O/C NTS P.S. and after 12 days her daughter was recovered by the police from Jharkhand.

**In Cross Examination** she admitted that her daughter went to attend dance competition without informing them and later she came to know that her daughter went to Jharkhand with Mahammad Hussain @ Md. Hussain to attend dance competition along with other girls and she came to know that her daughter was staying there properly.

**7.4 P.W.4 (friend of the VG) in her examination in chief** stated that VG of this case is her friend and VG had gone to Suri on 12.11.2018 at about 6:00 AM without informing her family members and they did not inform their family members because they had gone to attend dance show and she had returned to her

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home after attending the dance show only one day whereas the VG had returned to her house after 2/3 days because she attended several dance shows and further admitted that she and VG had gone to attend dance show with their Sir namely Md. Hossain and she further stated that father of VG had lodged a written complaint before Kanksa P.S in connection with leaving of house by the VG and she was examined by the police in connection with this case and she was brought by the police to the court where her statement was recorded by a Judge and signatures on the statement recorded under section 164 of Cr.P.C was marked as **Exhibit-P-4(1)/PW-4** and **Exhibit-P-4(2)/PW-4 (in a series)**.

**In Cross examination** she admitted that the accused persons did not commit any physical or mental wrong with either her or the VG of this case and also admitted that they had gone to attend the dance programme at their own on various occasion.

#### **ARGUMENTS ADVANCED ON BEHALF OF BOTH THE PARTIES**

**8.** The Ld. Special PP has very fairly admitted that the evidence as produced by the prosecution does not have material which could have proved the case of the prosecution against the accused persons and the prosecution has miserably failed to prove the charge levelled against the accused persons.

**9.** On the other hand, the Ld. Advocate for the accused persons has submitted that the case of the prosecution has not been supported by the witnesses produced by the prosecution in this case and there is no evidence and material on record to suggest that the accused persons have committed the offence charged with and accordingly, he has prayed for the acquittal of the accused persons in this case.

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### **DECISION AND REASONS FOR THE DECISION**

**10.** It is already stated that the complainant i.e. the father of the victim girl on 16.11.2018 at 18:05 hours lodged a written complaint before O/C New Township P.S ADPC, Paschim Bardhaman to the effect that his 14 years old daughter, student of Class IX, has gone on 12.11.2018 at 6:00 AM to attend private tuition but she did not return and they are dead sure that his daughter has been kidnapped by the dance teacher Md. Hussain for ransom or for marriage or for some unlawful activities and on the basis of this written complaint NTS P.S Case No.156/18 dated 16.11.2018 under section 363/365 was started and during the investigation sections 366/366A/376(f)/120B of IPC and section 6 of POCSO Act were added and after completion of investigation the charge-sheet bearing No.117/2018 dated 30.12.2018 under section 363/365/366/366A/376(f)/120B of IPC and under section 6 of POCSO Act against the accused persons was filed and cognizance was taken by this Court on 14.01.2019. After considering the case prima facie and after perusal of the entire material available on record, this court on 11.11.2019 framed charge against accused persons under section 363/366A/376(f) of IPC and under section 6 of POCSO Act and the same were read over and explained to the accused persons in vernacular to which they pleaded not guilty and claimed to be tried. During trial the prosecution examined **04 witnesses** to prove its case and the same witnesses were cross examined by the defence. The accused persons were not examined under section **351 BNSS** by the Court as no incriminating material was found against the accused persons in the deposition of any of the prosecution 04 witnesses but this court intends to have glimpse of the evidence of prosecution witnesses. The accused persons Mohammad Hussain @ Md. Husssain and Murtoza Ansvari @ Murtaza were arrested in this case but the accused persons were enlarged on bail and remained on bail during the trial of this case.

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**11. P.W.1** in his examination in chief stated that he has one daughter and one son and VG is his daughter and his daughter used to attend dance class of Mahammad Hussain @ Md. Hussain and on 12.11.2018 at about 6:00 AM his daughter left home to attend private tuition but she did not return and he suspected that Mahammad Hussain @ Md. Hussain has kidnapped his daughter for ransom or for marriage or for some illegal activities and he lodged complaint against accused Mahammad Hussain @ Md. Hussain before O/C NTS P.S. on 16.11.2018 and his signature over the complaint was marked as **Exhibit-P-1(1)/PW-1** and after 12 days his daughter was recovered by the police from Jharkhand and then he came to know that Mahammad Hussain @ Md. Hussain took away his daughter for dance competition without his permission and in cross examination he admitted that his daughter left house saying that she was going to attend private tuition but she went to attend dance competition and also admitted that he has not seen Md. Hussain while taking away his daughter.

**12. P.W.2 - VG** in her examination in chief stated that she used to attend dance class of Mahammad Hussain @ Md. Hussain and on 12.11.2018 at about 6:00 AM she left house on pretext of attending private tuition but she went to Jharkhand to attend dance competition along with other girls and their dance teacher Md. Hussain and she was recovered by the police from Jharkhand and she was medically examined at Bidhannagar SD Hospital, Durgapur and medical examination report was marked as **Exhibit-P-2/PW-2** and her statement was also recorded before Ld. Magistrate and her statement recorded under section 164 of Cr.P.C were marked as **Exhibit-P-3/PW-2** and in cross examination she admitted that other girls also went to attend the dance competition with her and they were staying together and dance teacher did not take her forcibly and also admitted that she did not make any complaint of physical abuse at the time of medical examination.

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**P.W.3 in her examination in chief** stated that she has one daughter and one son and VG is her daughter and her daughter used to attend dance class of Mahammad Hussain @ Md. Hussain and in 2018 her daughter left home to attend private tuition but she did not return and thereafter her husband lodged complaint against accused Mahammad Hussain @ Md. Hussain before O/C NTS P.S. and after 12 days her daughter was recovered by the police from Jharkhand and in Cross Examination she admitted that her daughter went to attend dance competition without informing them and later she came to know that her daughter went to Jharkhand with Mahammad Hussain @ Md. Hussain to attend dance competition along with other girls and she came to know that her daughter was staying there properly.

**7.4 P.W.4 in her examination in chief** stated that VG of this case is her friend and VG had gone to Suri on 12.11.2018 at about 6:00 AM without informing her family members and they did not inform their family members because they had gone to attend dance show and she had returned to her home after attending the dance show only one day whereas the VG had returned to her house after 2/3 days because she attended several dance shows and further admitted that she and VG had gone to attend dance show with their Sir namely Md. Hussain and she further stated that father of VG had lodged a written complaint before Kanksa P.S in connection with leaving of house by the VG and she was examined by the police in connection with this case and she was brought by the police to the court where her statement was recorded by a Judge and signatures on the statement recorded under section 164 of Cr.P.C were marked as **Exhibit-P-4(1)/PW-4** and **Exhibit-P-4(2)/PW-4 (in a series)** and in Cross examination she admitted that the accused persons did not commit any physical or mental wrong with either her or the VG of this case and also admitted that they had gone to attend the dance programme at their own on various occasion.

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**13.** The written complaint speaks about the commission of offence of kidnapping of the victim girl by the accused Mahammad Hussain @ Md. Hussain and the FIR under section 363/365 of IPC was registered by NTS P.S. and during the investigation section 366A/376(f)/120B of IPC and Section 6 of POCSO Act were added but it is well settled that the FIR is not a substantive piece of evidence and it can be used for corroboration or contradiction of the maker thereof and during the deposition the complainant retracted from his version made in the FIR and during the deposition of victim girl nothing has come on record to suggest that the accused persons have committed any of the offences charged with and as such there is no evidence at all to suggest that the accused persons have committed the offence charged with.

**14.** The above discussion goes to prove that the prosecution has miserably failed to prove its case. So, in view of the above discussion, this Court is of the opinion that there is no cogent evidence on record that suggests commission of the offence punishable under section 363/366A/376(f) of IPC and Section 6 of POCSO Act by the accused persons and the instant case has not been proved against the accused persons.

**15.** In the result, I have no hesitation to hold that the prosecution has miserably failed to bring home the charge under section 363/366A/376(f) of IPC and Section 6 of POCSO Act against the accused persons Mahammad Hussain @ Md. Hussain and Murtoza Ansvari @ Murtaza and as such they are entitled to acquittal.

Hence, it is

### **ORDERED**

that the accused persons Mahammad Hussain @ Md. Hussain and Murtoza Ansvari @ Murtaza are found not guilty to the charge under section 363/366A/376(f) of IPC and Section 6 of POCSO Act and said accused persons are hereby acquitted from this case under Section 255 of BNSS.

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The accused persons Mahammad Hussain @ Md. Hussain and Murtoza Answari @ Murtaza be discharged from their bail bonds.

The seized Alamats, if any, be destroyed after the expiry of the period of appeal.

In terms of Section 481 of the BNSS accused persons Mahammad Hussain @ Md. Hussain and Murtoza Answari @ Murtaza are directed to furnish a bond of Rs.1,000/- each with one surety of like amount each with condition to appear before the Higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of this court and such bail bond shall be in force for six months. If the accused persons fail to appear, the bond would stand forfeited and the procedure under section 491 of BNSS shall apply.

Let a copy of the judgment be sent to the Secretary, DLSA, Paschim Bardhaman as well as to the District Magistrate, Paschim Bardhaman.

Dictated & corrected by me

Sd/-

Judge Special (POCSO) Court  
cum-Additional Sessions Judge,  
1<sup>st</sup> Court, Durgapur  
J.O Code: WB01310

Sd/-

Judge Special (POCSO) Court  
cum-Additional Sessions Judge,  
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