

*** HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Criminal Revision Case No.1970 of 2017

% Dated 07-05-2020

Mondli Murali Krishna

..... Petitioner / *De facto* Complainant

Versus

\$ 1. Dumpa Hanisha Naga Lakshmi & 3 others

..Respondents/Accused 1 to 4

5. The State, Station House Officer, Pedakakani P.S.,
Rep. by its Public Prosecutor, Guntur

... Respondent/State

! Counsel for the petitioner : Sri Nuthalapati Krishna Murthy

^ Counsel for respondent No.1 : Sri K.Surender (Not present)

^ Counsel for respondents 2&3: Smt. M.Radha

^ Counsel for respondent No.4: Sri K.Sai Mohan Rao

^ Counsel for respondent No.5: Additional Public Prosecutor

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? Cases referred

1. AIR 1969 SC 701

2. 2014 Law Suit (SC) 649

HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**Criminal Revision Case No.1970 of 2017****Judgment:**

Assailing the order dated 07-01-2016 whereby the I Additional District and Sessions Judge, Guntur, a Special Court constituted under Section 28 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act, for short), whereby the charge-sheet was filed by the Sub Divisional Police Officer, North Sub Division, Guntur Urban, was returned on the ground that the provisions of the POCSO Act are not applicable to the facts of the case, with a direction to present the charge-sheet before proper Court, the present revision case is preferred by the revision petitioner.

2. It is a most pathetic case where a victim girl who has entered the precincts of the University with a fond hope on her bright future has ended her life by committing suicide on account of the alleged sexual assault and sexual harassment to which she was subjected in the hands of the accused.

3. Facts germane to dispose of this revision case may be stated as follows:

(a) As can be from the charge-sheet, the case of the prosecution is that the daughter of the *de facto* complainant by name Rishiteswari was born on 22-4-1997. She got 112th rank in State Level NATA Entrance Examination during the year 2014 in the Unified State of Andhra Pradesh. Therefore, she got seat in Acharya Nagarjuna University in Guntur

District. She joined First Year course of Architecture in Acharya Nagarjuna University, Guntur, on 07-9-2014. She was a minor at that time. As she is a resident of Warangal District in the State of Telangana, she used to stay in Indira Priyadarshini Ladies Hostel, SPA, Type-III Quarters in the University.

(b) Accused 1 to 3 are also the students studying in the said University. They are her seniors. Accused No.1 with the active support and instigation of accused No.3 used to force the deceased to love accused No.3. When she refused for the same, accused No.1 used to humiliate her and talk to her sarcastically in vulgar language. Accused No.3 used to force her and compel her to come to the upstairs of the class room and talk to him personally. The victim girl, who was in a panic state, went to the upstairs and met accused No.3. At that time, he made an indecent proposal of sexual advances to her stating that he is in love with her. Accused No.2 also had an evil eye on her and with an intention to satisfy his lust with her, he forced her to love him. The victim girl was reluctant to love both accused 2 and 3. In spite of her reluctance, accused No.2 used to make unwanted phone calls to her over mobile phone and unable to bear the same, she transferred her calls to the mobile phone of L.W.1, who is her father, by opting call forward option and when her father lifts the phone, accused No.2 used to disconnect the calls.

(c) In the month of February, 2015, when she went to her native place in Warangal District from Guntur on train, accused No.2 followed her in the train up to Madhira. When the deceased reached her native place at Warangal, accused No.2 made a call to her mobile phone and her mother lifted the phone and replied that the victim girl is sleeping. Thereafter, When the victim girl woke up, her mother informed her about the phone call by accused No.2 and when she called back accused No.2, he informed her that he came to Warangal to see the places in and around Warangal with her and he made some sexual advances and overtures at that time. Accused 2 and 3 used to call her over her mobile phone and express their intention to have their lust satisfied with her. Unable to bear the said sexual harassment of the accused, the victim girl diverted the said calls to the mobile phone of L.W.1, who is her father. When L.W.1 received some of the said diverted calls from accused 2 and 3, they later stopped calling to that number. Accused No.3 with the support of accused 1 and 2 used to call the victim girl aside when she was alone and used to talk to her indecently and they used to express their desire to satisfy their lust with her stating that they are in love with her. The victim girl rejected their proposals. Since then, accused 1 to 3 started teasing and humiliating her by spreading rumours against her character that she got illegal contacts with L.W.3.

(d) The victim girl was thus subjected to severe mental agony and emotional turmoil on account of the indecent behaviour of the accused 1 to 3 and the sexual harassment caused to her by accused 1 to 3. She expressed her agony in the diaries maintained by her. The deceased and other witnesses i.e. her father L.W.1 along with L.Ws.3 and 5 met accused No.4, who is the Principal and informed him about the indecent behaviour of the accused 1 to 3 and also about their acts of ragging. But accused No.4 paid deaf ear and instructed them to inform the Head of the Department, who is L.W.32. When they met L.W.32, L.W.32 instructed accused No.4 to take care. Yet, accused No.4 did not take any action in this regard. He impliedly supported accused 1 to 3.

(e) On 18-4-2015, there was a freshers' party at Haailand at Chinakakani Village. Seniors of the University presented "Miss Perfect" title to the victim girl. At that time, accused No.2 again misbehaved with her and he compelled her to have dinner with him and he forcibly took her mobile phone and made comments regarding the photos available on her mobile phone and insulted her in the presence of other students. The award of "Miss Perfect" title was presented to her through accused No.3. At that time, taking advantage of the situation, accused No.3 touched her hands on the dais with an intention to outrage her modesty. While she was stepping down from the dais, accused No.2, who is present by

the side of the dais, caught hold of her waist with sexual intention and insulted her in the presence of other students.

(f) By exhibiting such wilful conduct, the accused have driven the deceased to commit suicide. Unable to bear their torture, misbehaviour, ill treatment, sexual harassment caused to her, spreading rumours against her character and their acts of ragging, the victim girl ultimately committed suicide by hanging in her hostel room on 14-7-2015.

(g) Her father lodged a report with the Police and the Police initially registered a case in Crime No.241/2015 for the offence punishable under Section 306 of IPC and investigated the same. As the investigation revealed that the accused 1 to 3 subjected the deceased to sexual harassment and outraged her modesty and harassed her and humiliated her and indulged in the acts of ragging towards her, the charge-sheet was filed against accused 1 to 4 for the offences punishable under Sections 354, 354(A)(2), 354(D)(2), 306 and 109 of IPC and under Sections 4(i) and (v) and 7(1) and 2) of the Andhra Pradesh Prohibition of Ragging Act, 1997 and under Sections 8 and 12 of the POCSO Act.

(h) When the charge-sheet was filed before the Special Court under the POCSO Act i.e. the I Additional District and Sessions Judge, Guntur, the record reveals that the office took objection as to how the offences under the POCSO Act are made out. The Investigating Officer answered the objections stating that the facts of the case satisfy the ingredients of

commission of offences of sexual assault and sexual harassment punishable under Sections 8 and 12 of the POCSO Act by the accused against the deceased and as the deceased was a child below the age of 18 years at the time of commission of the said acts of sexual assault and sexual harassment that a case under the POCSO Act is made out.

(i) However, the I Additional District and Sessions Judge, Guntur, by the impugned order dated 07-01-2016 held that as on the date of suicide i.e. on 14-7-2015 she was major and no report was given by her during her life time against accused 1 to 3 alleging that they committed any offences punishable under the POCSO Act and as such the facts of the case only show that the offence punishable under the A.P. Prohibition of Ragging Act is made out and the POCSO Act is not applicable and thereby returned the charge-sheet to present it before the proper Court. Therefore, the Investigating Officer has taken return of the charge-sheet and filed it before the II Additional Assistant Sessions Judge (Fast Track Court), Guntur.

(j) While the matter is coming on for framing charges before the learned II Additional Assistant Sessions Judge (Fast Track Court), Guntur, the *de facto* complainant, who is the father of the deceased, filed a petition under Section 216 of Cr.P.C stating that the facts of the case constitute an offence punishable under Sections 8 and 12 of the POCSO Act and thereby prayed to frame charges under the said Act also.

(k) After hearing both the parties, the learned II Additional Assistant Sessions Judge dismissed the said petition on the ground that Section 216 of Cr.P.C applies to alter the charge and as charges are not yet framed that the petition under Section 216 of Cr.P.C is not maintainable and it is premature and also on the ground that the I Additional District and Sessions Judge, Guntur, already held that the facts of the case do not attract the offences under the POCSO Act as per the order passed by the I Additional District and Sessions Judge, Guntur, while returning the charge-sheet and the said order is not challenged and it became final.

(l) Therefore, in view of the above observation of the II Additional Assistant Sessions Judge that the order of the I Additional District and Sessions Judge is not challenged and it became final, the revision petitioner, who is the father of the deceased, preferred this revision questioning the order of the I Additional District and Sessions Judge, Guntur, dated 07-01-2016, whereunder he has returned the charge-sheet filed in the Special Court to present it in the proper Court. Since there was a delay in preferring the revision in questioning the said order dated 07-01-2016, the revision petitioner has filed a petition to condone the said delay in CrI.M.P. No.3146 of 2017 and the common High Court of Hyderabad by order dated 31-10-2017 allowed the said petition and condoned the delay.

(m) Therefore, the propriety, legality, correctness of the impugned order dated 07-01-2016 of the I Additional District and Sessions Judge, Guntur, whereby it is held that the facts of the case only make out an offence under the A.P. Prohibition of Ragging Act and the Indian Penal Code and they do not constitute any offence under the POCSO Act is being questioned in this revision case.

4. Heard Sri Nuthalapati Krishna Murthy, learned counsel for the petitioner; Smt. M.Radha, learned counsel for the respondents 2 and 3; and Sri K.Sai Mohan Rao, learned counsel for the 4th respondent.

5. Learned counsel for the petitioner would submit that the date of suicide cannot be taken into consideration to ascertain whether the deceased was a child or a minor at the time when she was subjected to sexual assault and sexual harassment in the hands of the accused. According to him, the date of birth of the deceased was 22-4-1997 and as such she became major on 22-4-2015 and as the acts of sexual harassment against her were committed by the accused prior to 22-4-2015 i.e. from 07-9-2014 when she joined First Year Architecture in Acharya Nagarjuna University which continued till she attained the age of majority on 22-4-2015 and also subsequently till her death on 14-7-2015, it is evident that she was subjected to sexual assault and sexual harassment when she was a minor and a child from 07-9-2014 till 22-4-2015. He would contend that as per

Section 2(d) of the POCSO Act, "child" means any person below the age of eighteen years. Therefore, he submits that at the time of commission of the said acts of sexual assault and sexual harassment by the accused against her from 07-9-2014 till 22-4-2015, she was a child for the purpose of the POCSO Act. He would then contend that the said acts of sexual assault and sexual harassment committed by the accused clearly constitute an offence punishable under Sections 8 and 12 of the said Act. The acts of catching her hands and her waist with sexual intent and constantly following her and making a proposal to her or insisting her to satisfy their sexual desire are all the acts which clearly constitute an offence punishable under Sections 7 and 11 of the Act and as these acts took place when she was a child, a clear offence punishable under Sections 8 and 12 of the Act are made out from the facts of the case. Therefore, he would submit that the learned I Additional District and Sessions Judge did not at all apply his mind to the ingredients of the offences punishable under Sections 8 and 12 of the Act and erroneously held that no offence is made out from the facts of the case under the POCSO Act. Therefore, he would submit that the impugned order returning the charge-sheet without taking the same on to the file to try the accused for the said offences under the POCSO Act is erroneous and unsustainable under law and thereby prayed to set aside the

same and direct the Special Court to take the charge-sheet on to the file and proceed with the case according to law.

6. *Per contra*, the learned counsel for the respondents would submit that there was no report lodged by the victim girl during her life time or by any person on her behalf stating that the accused have committed the acts of sexual assault and sexual harassment against her and as such in the absence of any such report by the victim girl or any person on her behalf that there is no basis for taking cognizance of the case for the offence under the POCSO Act. They would further submit that the I Additional District and Sessions Judge, therefore, rightly held that the facts of the case do not constitute any offence under the POCSO Act and at best, they only constitute an offence under the Andhra Pradesh Prohibition of Ragging Act, 1997 and rightly returned the charge-sheet without taking the same on to the file. Therefore, they strongly supported the impugned order of the learned I Additional District and Sessions Judge and thereby prayed for dismissal of the criminal revision case.

7. Now, the points that emerge for determination in this criminal revision case are:

- (1) Whether the facts of the case constitute any offence punishable under the provisions of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) ?
- (2) Whether the impugned order of the I Additional District and Sessions Judge, Guntur, returning the charge-sheet to present the same before the proper Court on the ground that the facts of the case do not constitute any offence under the POCSO Act is sustainable under law, whether it

warrants interference in this revision and whether the same is liable to be set aside ? and

(3) To what relief ?

8. Points 1 and 2: As already noticed supra, this is a pathetic case of unfortunate death of a victim girl who is a brilliant who entered the precincts of the University after securing good rank in the State Level NATA Entrance Examination with a fond hope on her bright future who has committed suicide on account of the harassment said to have been caused to her sexually and mentally by the accused.

9. As per the specific version of the prosecution and as per the evidence collected during the course of investigation, the facts as could be gleaned from the charge-sheet are that the deceased was born on 22-4-1997 and as such when she entered the University on 07-9-2014 that she was a child and since the date on which she entered the University that she was subjected to sexual assault and sexual harassment and ragging and to other offences by accused 1 to 3 abetted by accused No.4. It is the case of the prosecution that she became major on 22-4-2015. Therefore, the acts of sexual assault and sexual harassment caused to her by the accused during the said period clearly constitute an offence under Sections 8 and 12 of the POCSO Act. The said acts of sexual assault and sexual harassment continued even after she became major on 22-4-2015 till she committed suicide on 14-7-2015 unable to bear the said torture, agony and harassment. Therefore, it is the case of the prosecution that

the acts of sexual assault and sexual harassment caused by the accused from 07-9-2014 when she entered the University till she became major on 22-4-2015, clearly constitute offences punishable under Sections 8 and 12 of the POCSO Act and even though the Sub Divisional Police Officer explained these facts while answering the objections taken by the office after returning the charge-sheet by the Special Court that the learned Judge did not properly appreciate the said facts and arrived at an erroneous conclusion that the facts of the case do not constitute an offence under the POCSO Act and erroneously returned the charge-sheet.

10. Before adverting to the point whether the facts of the case constitute any offence under the POCSO Act or not, it is apposite to consider the Legislative history behind bringing this enactment and the object of the said enactment.

11. Article 15 of the Constitution, *inter alia*, confers upon the State the power to make special provision for children. Article 39, *inter alia*, provides that the State shall in particular direct its policy towards securing that the tender children are not abused and that childhood and youth are protected against exploitation. India has ratified the United Nations Convention on the Rights of Children on 11th December, 1992, which requires the State to undertake all appropriate national, bilateral and multilateral measures to prevent – (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of

children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

12. Therefore, to fulfil the constitutional obligation under Article 15 and Article 39 of the Constitution, as discussed supra and also to give effect to the United Nations Convention on the Rights of Children, which is ratified by India, it is proposed to enact a comprehensive legislation to provide for protection of children from the offences of sexual assault, sexual harassment and pornography to safeguard the interest and well being of a child at every stage.

13. Therefore, the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act), an Act to protect children from offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Courts for trial of such offences and matters connected therewith or incidental thereto, was brought into existence. The object of the said enactment is to see that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development of the child and his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of judicial process involving the child.

14. While the above is the Legislative history in bringing the enactment and the object and reasons of the enactment, it is expedient to notice few provisions in the scheme of Act, which are relevant in the context. Section 2(d) of the Act defines “child” which means any person below the age of eighteen years. So, a person below the age of 18 years is considered to be a child for the purpose of this Act. Sections 3 to 12 in Chapter II of the Act pertain to sexual offences against women. Sections 7, 8, 11 and 12 are relevant for the purpose of this case. Section 7 defines the offence of sexual assault and Section 8 deals with punishment for the offence of sexual assault. Section 7 of the Act reads as follows:

“7. Sexual Assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

15. A perusal of the aforesaid Section shows that whoever with sexual intent touches any private parts like vagina, penis, anus or breast of the child or does any other act with sexual intent which involves physical contact without penetration is said to have committed the offence of sexual assault. Thus, the Section is in two parts, since the adjunctive “or” is used in it. The first part deals with touching the private parts of a child like vagina, penis, anus or breast with sexual intent and the second part deals with **doing any other act** with sexual intent which involves physical contact

without penetration which also constitutes an offence of sexual assault. The expression “doing any other act with sexual intent” used in the second part is wide enough to include in it various other acts which are committed by the culprits against a child with sexual intent. Therefore, in the considered view of this Court, the second part of the above Section attracts to the present facts of the case.

16. As can be seen from the contents of the charge-sheet, it is stated that on 18-4-2015, there was a freshers’ party at Haailand at Chinakakani Village. In the said function, the seniors presented “Miss Perfect” title to the deceased. At that time, accused No.2 demanded L.W.3 to inform the deceased to sit by his side and when L.W.3 informed the same to the deceased that she grew wild and questioned accused No.2 for calling her to sit beside him and at that time, accused No.2 talked to her in indecent manner stating that he is interested in her and also forcibly took her mobile and commented on the photos available on her mobile. Now it is significant to note that in the said function when the deceased was on the dais receiving her award through accused No.3 that he caught her hand with an intention to outrage her modesty and when she was alighting the dais that accused No.2 caught her waist with sexual intent and insulted her modesty in the presence of other students. Therefore, these two acts of accused 2 and 3 i.e. accused No.2 catching hold of her hand with sexual intention at the time when she

was receiving the award on the dais with an intention to outrage her modesty and also accused No.3 placing his hand on the waist of the deceased while she was alighting the dais with an intention to outrage her modesty in the presence of other students clearly amounts to doing the other act with sexual intent which involves physical contact which is clearly an offence of sexual assault under Section 7 of the Act. It may be seen here that touching the private parts like vagina, penis, anus or breast of a child is made an offence of sexual assault under the first part and doing any other act with sexual intent which involves physical contact without penetration is also made an offence of sexual assault under the second part of the Section. So, these acts regarding which evidence was collected during the course of investigation, which were committed against the deceased by the accused 2 and 3 on 18-4-2015, by which time she was a child and not a major, *prima facie*, constitute an offence of sexual assault under Section 7 of the Act. As per Section 8, whoever commits any such offence of sexual assault is liable for punishment for not less than three years which may extend to five years and also shall be liable to fine.

17. Now, Sections 11 and 12 of the POCSO Act deal with commission of offence of sexual harassment. Section 11 defines the offence of sexual harassment and Section 12 deals with punishment for the said offence of sexual harassment. Section 11 reads as follows:

“11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,—

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.”

18. It covers six situations which constitute an offence of sexual harassment. For the purpose of this case, Clauses (i) and (iv) of Section 11 are relevant to consider. As per Clause (i), a person is said to commit the offence of sexual harassment upon a child when such person with sexual intent utters any word with an intention that such word shall be heard by the child. As per Clause (iv), when any person with sexual intent repeatedly or constantly follows or contacts a child either directly or through electronic, digital or any other means is said to have committed an offence of sexual harassment.

19. The facts of the case show that accused 2 and 3 uttered directly before the deceased that they are interested in her and they intend to satisfy their sexual lust with her. As per the contents of the charge-sheet, on one occasion, accused No.3 forced her to come to the upstairs of the class room to talk to her personally and when the deceased, out of fear, went to the upstairs of the class room and met accused No.3 that accused No.3 made indecent proposal of sexual advances. Similarly, accused No.2 also expressed his intention to satisfy his sexual desire with her. Accused No.2 also made unwanted calls to her over mobile phone and unable to bear the said act of stalking, that she transferred the said calls to her father L.W.1 by opting call forward option and when her father used to lift the phone that accused No.2 used to disconnect the call. It is also the case of the prosecution that accused No.2 followed the deceased in train when she went to her native place from Guntur and he also called her over her mobile phone and informed her that he came to Warangal to see the places in and around Warangal along with her and also made some sexual advances and overtures at that time. L.Ws.1 and 2, who are the parents of the deceased, were cited as witnesses in proof of these acts. It is also the case of the prosecution that accused 2 and 3 used to call the deceased over her mobile phone and express their lust which they had towards her. It is also the case of the prosecution that with the support of accused No.1,

accused 2 and 3 used to call the deceased while she was lonely and talk to her indecently expressing their intention to have their lust satisfied with her and when she rejected for the same that accused 1 to 3 harassed her, humiliated her and also spread rumours against her character stating that she got illegal contact with L.W.3. The contents of the charge-sheet further show that the deceased has been subjected to severe mental agony and emotional turmoil on account of the said sexual harassment caused to her and on account of behaviour of the accused and that she has also written about her agony in this regard in her diaries maintained by her. Therefore, these acts of following her constantly both physically and by mobile phone clearly attracts the offence under Clause (iv) of Section 11 which says when any person with sexual intention repeatedly or constantly follows or watches or contacts such child either directly or through electronic, digital or any other means is said to have committed the offence of sexual harassment as contemplated under Section 11 of the Act. The explanation appended to Section 11 says that any question which involves "sexual intent" shall be a question of fact. Section 12 deals with punishment for the offence of sexual harassment and whoever commits any such offence of sexual harassment is liable for punishment which may extend to three years and shall also be liable to fine.

20. Therefore, when the facts of the case, as discussed supra, *prima facie* constitute the offences of sexual assault and sexual harassment as defined under Sections 7 and 11 of the Act as per the ingredients of the said Sections, without even considering the provisions of the POCSO Act and discussing the same, the learned I Additional District and Sessions Judge haphazardly arrived at an erroneous conclusion by a cryptic order and erroneously held that the facts of the case do not attract any offences under the POCSO Act. He also grossly erred in stating that as on the date of her death on 14-7-2015 that she is a major and as such the POCSO Act has no application. The learned Judge completely lost sight of the fact that the above acts of sexual assault and sexual harassment which are the offences under Sections 7 and 11 of the Act were committed when she was a child below the age of eighteen years commencing from 07-9-2014 when she entered the University, even till the date when she became major on 22-4-2015 and subsequently also till her death. So, it shows the total non-application of mind of the learned Judge of Special Court to the provisions of the POCSO Act and also to the facts of the case which ultimately made him to arrive at an erroneous conclusion in returning the charge-sheet without taking it on to the file of the said Special Court which amounts to causing gross miscarriage of justice in this case. It also amounts to defeating the very object of the enactment as discussed supra. It is already noticed supra at

the inception while dealing with the Legislative history and objects and reasons of the enactment that to prevent the inducement or coercion of a child to engage in any unlawful sexual activity and also to prevent a child from sexual assault and sexual harassment and to punish such persons who commit any such offences of sexual assault and sexual harassment etc. against a child that the POCSO Act is brought into existence. Unfortunately, the learned I Additional District and Sessions Judge without going through the provisions of the enactment to ascertain whether the facts of the case constitute any such offences or not, by a slipshod and a cryptic order erroneously returned the charge-sheet without taking it on to the file. It shows that the learned Judge has casually and routinely dealt with the matter.

21. Section 16 of the POCSO Act deals with abetment of an offence. Whoever instigates any person to do that offence and also any act of illegal omission which has taken place in doing that act and also intentional aid given to commit the said offence is said to have abetted the said offence. It is the case of the prosecution that accused No.1 aided accused 2 and 3 in the commission of the said offences of sexual assault and sexual harassment. It is also the case of the prosecution that accused No.4, who is the Principal, by his act of illegal omission in not taking any action against accused 1 to 3 when the said acts of sexual assault and sexual harassment and

also the acts of ragging are complained to him by L.W.1, who is the father of the deceased. Therefore, even accused 1 and 4 are also, *prima facie*, liable for abetment of the said offences under Section 16 of the POCSO Act. Section 17 of the POCSO Act makes the said act of abetment punishable and the person who abetted such offence is liable for punishment.

22. Although the accused are also charged with other offences under Sections 354, 354(A)(2), 354(D)(2), 306 and 109 of IPC and Sections 4(i)&(v) and 7(1)&(2) of the Andhra Pradesh Prohibition of Ragging Act, 1997 and outraging the modesty of a woman punishable under the Indian Penal Code and also under Section 366 of IPC along with the offences under the POCSO Act, a reading of Clause (2) of Section 28 of the POCSO Act which deals with designation of Special Courts to try the offences punishable under this Act makes it manifest that while trying an offence under this Act, a Special Court shall also try an offence, with which the accused may, under the Code of Criminal Procedure be charged at the same time. Section 31 of the Act further mandates that the provisions of the Code of Criminal Procedure shall apply to the proceedings before a Special Court and for the purpose of the said provisions, that the Special Court shall be deemed to be a Court of Session. Therefore, when the accused are charged for the other offences under the Indian Penal Code along with the offences under this Act, the Special Court is empowered to try the accused even for the other offences also under Clause

(2) of Section 28 of the Act. Therefore, there is no difficulty in taking the charge-sheet on to the file and also in taking cognizance of the case for the other offences also and in proceeding against the accused as per law.

23. It is pertinent to note Section 42 of the POCSO Act also clarifies that when an act or omission committed by the accused constitute an offence punishable under this Act and also under Sections 166A, 354A to 354D, 370, 370A, 375, 376, 376A, 376C to 376E or under Section 509 of IPC, then notwithstanding anything contained in any law for the time being in force, that the offender found guilty of such offence shall be liable for punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree. Section 42A also mandates that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency. Thus the Legislature has taken many safeguards to overcome any technical objections relating to trial of the case under the provisions of this Act by the Special Court along with the offences under the Indian Penal Code including the sentence to be passed in such a situation. It has also taken care under Section 42A in dealing with the inconsistency between the provisions of this Act and the provisions of the other enactments stating that

the provisions of this Act will prevail and have overriding effect on the provisions of the other enactments. So, there is absolutely no difficulty in taking the charge-sheet on to the file and to take cognizance of the case not only for the offences under this Act but also for the offences under the Indian Penal Code and the offences of ragging under the A.P. Prohibition of Ragging Act, 1997. It is also pertinent to note that even Section 8 of the A.P. Prohibition of Ragging Act, 1997 says that the provisions of the said Act shall be in addition to and not derogation to any other law for the time being in force. Section 7(2) of the A.P. Prohibition of Ragging Act mandates that if a student commits suicide due to or in consequence of ragging, the person who commits such ragging shall be deemed to have abetted such suicide. Therefore, in view of Section 8 of the A.P. Prohibition of Ragging Act and in view of Section 42A of the POCSO Act, it is clear that when the acts committed by the accused constitute offences under both the enactments, they can be tried for both the offences under both the enactments.

24. The proposition of law that when the acts or omissions committed by the accused constitute two offences under two different enactments that they can be tried for both the offences under both the enactments has been well settled. In the case of **T.S. Baliah v. ITO**¹, the question that arose for consideration before the Supreme Court was whether the

¹ AIR 1969 SC 701

appellant therein could be simultaneously prosecuted for the offence under Section 177 of IPC and also for violation of Section 52 of the Income Tax Act, 1922. Considering the provisions of Section 26 of the General Clauses Act, the Supreme Court held as under:

“A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that when an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.”

25. However, the law is also well settled that when the same act committed by the accused constitute an offence under more than one Act, **if they are two distinct and separate offences with different ingredients** under two different enactments, a double punishment is not barred. The said proposition of law is laid down in the case of ***State of NCT of Delhi v. Sanjay; State of Gujarat***². At para-28 it is held as follows:

“ If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred.”

26. In the instant case, the acts committed by the accused as alleged by the prosecution constitute distinct and separate offences with different ingredients under various enactments viz., the POCSO Act, the Indian Penal Code and

² 2014 Law Suit (SC) 649

also the A.P. Prohibition of Ragging Act. Therefore, they can be tried simultaneously for the said offences under all the aforesaid enactments and double punishment is also not barred.

27. While dealing with Sections 7 and 11 whereunder the offences of sexual assault and sexual harassment are defined, it is noticed above that the said acts of sexual assault and sexual harassment are required to be committed by the accused with sexual intention. The explanation appended to Section 11 of the POCSO Act says that the question of “sexual intent” shall be the question of fact.

28. Now, it is relevant to consider Section 30 of the POCSO Act which is relating to presumption of culpable mental state. It says that in any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state and it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. The explanation appended to Section 30 of the Act makes it clear that “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Therefore, as per the said explanation, even when the accused commits an act of sexual assault and sexual harassment, with knowledge or reason to believe that such act committed by him would result into

sexual assault and sexual harassment towards a child, it can be construed as an act of culpable mental state or as an act of sexual intent as required under the Act. The Court can presume that such acts are committed by the accused with such culpable mental state and it is a rebuttable presumption which can be displaced by the accused. Ultimately, after considering the facts of the case, evidence on record and the presumption available under Section 30 of the POCSO Act as per Clause (2) of the said Section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not by preponderance of possibilities. As per Section 33 of the POCSO Act, a Special Court can take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts which constitutes such offence or upon a Police report of such facts. Therefore, when facts of the case *prima facie* constitute an offence under the POCSO Act, the Special Court is under legal obligation to take the charge-sheet on to the file and take cognizance of the case against them and try the accused according to law. It cannot abrogate its lawful duty and refuse to take the case on to the file and defeat the very object of the Act and the purpose of establishing the Special Court.

29. As regards the contention of the respondents and also the finding of the learned Sessions Judge that there was no report given by the deceased during her life time that any such acts of sexual assault and sexual harassment were

caused by the accused towards her or by any person on her behalf, that it shall be held that no offence under this Act is constituted, the said contention is absolutely devoid of any merit. Chapter V of the POCSO Act deals with procedure for reporting of cases. As per Section 19 of the said Act, notwithstanding anything contained in the Code of Criminal Procedure, **any person** (including the child) who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to the Police which shall be entered into a book to be kept by the Police Unit. So, a careful reading of the Section makes it clear that the report relating to commission of any such offence need not necessarily be given by the child who has been subjected to any such sexual assault or sexual harassment. The word “any person” used is of vital significance which is wide enough to embrace every person within its ambit. So, the report relating to the offence under this Act can be lodged with the Police by any person without any limitation. It is important to note that the Section starts with non-abstente clause overriding the provisions of the Code of Criminal Procedure in this regard relating to *locus standi* of a person if any to set the criminal law in motion by lodging a report with the Police or furnishing information to the Police under this Act.

30. In the instant case, L.W.1 is the person who lodged the report with the Police after the death of the deceased.

He is the father of the deceased. The material on record shows that the deceased informed him about these acts of sexual assault and sexual harassment committed by the accused to him during her life time. L.W.1 also reported the matter to the Principal i.e. accused No.4 who did not take any action in this regard. The phone calls made by accused 2 and 3 to the deceased were also diverted by her to the mobile phones of her parents L.Ws.1 and 2 as per the record. It is also the case of the prosecution as can be seen from charge-sheet that the deceased expressed her agony in this regard in the diaries written by her. Therefore, when L.W.1 who comes within the purview of the expression "any person" used in Section 19 of the POCSO Act who can furnish information of commission of such offence under the Act to the Police, has lodged report with the Police and when Police registered the said report and investigated the same and when the investigation revealed that these accused have committed the said offences under this Act along with other offences under the Indian Penal Code and under the A.P. Prohibition of Ragging Act, the case of the prosecution cannot be thrown away outright on the sole ground that there was no report from the victim girl. When evidence was collected during the course of investigation that the accused committed the said acts of sexual assault and sexual harassment against the victim girl and that she was subjected to such sexual assault and sexual harassment in their hands and when the Police

filed charge-sheet stating that the accused committed the offences punishable under the POCSO Act, the Special Court is under the legal obligation to take the said charge-sheet on to the file and proceed according to law when *prima facie* the facts of the case show that it constitutes an offence under the POCSO Act. Whether the said evidence is sufficient to record a conviction or even as to the admissibility of the said evidence etc., is altogether a different aspect which are all the matters to be considered after the trial in the final adjudication of the case. When the record *prima facie* reveals as per the evidence collected by the prosecution that the facts of the case constitutes an offence under the POCSO Act, the Special Court is not justified in returning the charge-sheet on flimsy grounds. So, the learned Judge grossly erred in rejecting the charge-sheet on the ground that there was no report from the victim girl. He has completely ignored Section 19 of the Act.

31. Therefore, the impugned order of the I Additional District and Sessions Judge, Guntur, dated 07-01-2016 returning the charge-sheet is clearly unsustainable under law and it warrants interference in this revision case and the same is liable to be set aside.

32. Before parting with the case, it is made clear that the facts of the case are considered and discussed in this order only to ascertain whether any *prima facie* case is made out constituting an offence punishable under the Act or not.

Therefore, the Special Court shall independently consider the evidence on record in the light of the various legal provisions contained in the POCSO Act and dispose of the said case independently on proper appreciation of evidence, law and facts of the case.

33. Point No.3: In fine, the criminal revision case is allowed setting aside the impugned order dated 07-01-2016 on the file of the I Additional District and Sessions Judge, Guntur cum Special Court under the POCSO Act. The Special Court is directed to take the charge-sheet on to the file and take cognizance of the case and dispose of the said case according to law.

34. Since this is an old case of the year 2015, the learned I Additional District and Sessions Judge cum Special Court under the POCSO Act, Guntur, is directed to dispose of the case in accordance with law as expeditiously as possible, preferably within six months from the date of receipt of a copy of this order.

35. Pending applications, if any, shall stand closed.

CHEEKATI MANAVENDRANATH ROY, J.

07th May, 2020.

Ak

Note:-

L.R. Copy to be marked.

(B/o)

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HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Criminal Revision Case No.1970 of 2017

07th May, 2020.
(Ak)