



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: 26th September, 2025*

Pronounced on: 12th January, 2026

+

CRL. M.C. 870/2021

SH. SURENDER KUMAR

R/o D-475, Pipe Line Road,
Behta-Hazipur,
Loni, Ghaziabad-201102

.....Petitioner

Through: Mr. Ayush Shrivastava,
Ms. Sneha P Mandal,
Advocates

versus

1. STATE NCT OF DELHI

Through SHO, P.S. Vijay Vihar,
Rohini, New Delhi.

2. SMT. "S"

W/o Sh. Nirmal Goyal,
R/o D-1/78, Sector-1,
Rohini, Avantika,
Delhi-110063

.....Respondents

Through: Mr. Shoaib Haider, APP for the
State with Insp. Manohar Lal
SHO PS Vijay Vihar with SI
Rajesh Kumar
Mr. Varun Mehlawat Advocate
for Respondent no.2

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed on behalf of the



Petitioner/Surender Kumar to challenge the **Order dated 17.04.2018** of the learned Special Judge, POCSO, New Delhi in Case bearing N.SC/741/2017, FIR No.654/2017, Police Station Vijay Nagar, Delhi, holding that there was a *prima facie* case made out under Section 509 of the Indian Penal Code, 1860 (*hereinafter referred to as “IPC”*) and consequently formal charges were framed on **and 21.04.2018; and** further against the **Order dated 20.07.2019** whereby the Charge was amended and Section under *Section 12 Protection of Children from Sexual Offences Act, 2012* (*hereinafter referred to as “POCSO Act”*) **read with Section 11 POCSO Act**, was added against the Petitioner.

2. ***Briefly stated***, the Petitioner is the maternal grandfather (*Nana*) of the victim. He is the father of Smt. “P”, who got married to Rakesh Kumar according to Hindu rites and customs on 09.02.2007. From their wedlock, two children were born on 22.02.2008 and 25.09.2012 respectively.

3. The brief background leading to the present FIR No.654/2017 are that Smt. “P” filed a Complaint leading to registration of FIR No.22/2017 dated 02.02.2017 at Police Station Rohini, against her father-in-law, Shri Prayag Chand. It was alleged by Smt. “P” that after marriage, Shri Prayag Chander, her father-in-law, used to improperly look at her with sinister intentions. He used to spike the soft drinks and thereafter, outraged her modesty and committed rape on her. He also took naked photographs of her. He also threatened Smt. “P” and asked her not to disclose the acts of crime to anyone.

4. It is submitted by the Petitioner herein that as a counterblast to the FIR No.22/2017, Respondent No.2/Complainant, Smt. “S” (sister-in-law of Smt. “P”) decided to wreck vengeance on the maternal side of Smt. “P” by



resolving to train and tutor the grandchildren (children of Smt. "P", Child 'A' and 'M') against their maternal relatives by polluting their innocent and impressionable minds against their own mother and maternal grandfather, in order to initiate frivolous criminal proceedings.

5. Respondent No.2/Complainant, the paternal aunt (*Bua*) of the grandchildren filed a Complaint dated 27.03.2017 (First Complaint) before P.S. Vijay Vihar, Delhi, wherein she alleged that during the Diwali holidays of 2015, the grandchildren had visited the Petitioner's house (maternal grandfather/*Nana*) and during such visit, Mr. Amit (Maternal Uncle/*Mama*) had purportedly *sexually assaulted the Child 'M'*. It is claimed that all the allegations in the First Complaint were restricted to maternal uncle and there was not a whisper of any allegation against the Petitioner, let alone any other family member from the maternal side. The First Complaint dated 27.03.2017 resulted in registration of Zero FIR dated 29.03.2017 at P.S. Vijay Vihar, Delhi.

6. Subsequent to the registration of the Zero FIR, Child 'M' was subjected to medical examination wherein it was stated that "*the child has not attained menarche yet*". Furthermore, a UPT Test of child 'M' which gave the result as "*negative*". This Zero FIR registered at P.S. Vijay Vihar, Rohini was transferred to *Loni, Ghaziabad* as maternal grandfather i.e. the Petitioner resided there and the purported offence was claimed to have taken place within the jurisdiction of *Loni, Ghaziabad*.

7. The Respondent No.2 then filed **Second Complaint** dated 30.05.2017 at P.S. Vijay Vihar, Delhi, wherein she reiterated the allegations of the *purported sexual assault committed by the Maternal Uncle* against the Child 'M'. Even in this Complaint, there were no allegations of sexual harassment



qua the Petitioner. On this **Second Complaint, FIR No.654/2017** dated **30.05.2017** was registered at P.S. Vijay Vihar, Rohini, Delhi against Amit, Sachin (brother of Smt. "P"/maternal uncles of Child "A" and "M") and Smt. "P" (mother of Child 'A' and 'M'). The Petitioner (*Nana* of Child 'A' and 'M') was not arraigned as an accused in this FIR, as well.

8. After registration of FIR, the statement of the Child "A" was recorded by the Police under Section 161 Cr.P.C on 02.05.2017 and the statement of the Child "M" was recorded on 02.06.2017.

9. The statement of the Respondent No.2/Complainant and the children was recorded on 31.05.2017, before the learned Metropolitan Magistrate under Section 164 Cr.P.C.

10. It is apparent from the statement of the grandchildren heavily tutored by the paternal side of the family. *Despite this, no allegation of any offence of sexual assault was levelled against the Petitioner.* The only supported incriminatory part of the *Child "M" statement against the Petitioner, suggests that he purportedly 'verbally abused' the Child "M" on certain occasions.*

11. Thereafter, on 18.08.2017, the Petitioner, the mother and the maternal uncle were arrested by the Police and were eventually released on Bail *vide* Order dated 06.10.2017.

12. On the basis of the allegations contained in the Statement under Section 164 Cr.P.C made by the Child "M", the **Petitioner** and accused Sachin were directed to be charged *vide* Order dated 17.04.2018, for the offence under **Section 509 read with Section 34 IPC. Charge under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2000** (*hereinafter referred to as "JJ Act, 2000"*) was framed against the Smt. "P"



and Charge under Section 12 POCSO Act against Amit. Pursuant thereto, formal Charges were framed on 21.04.2018.

13. Thereafter, the evidence of the **PW3/the Complainant** was recorded on 18.08.2018 and 15.12.2018.

14. Statement of **PW2/Child “M”** was recorded on 05.05.2018 and 19.05.2018. During the examination, the Child “M” was asked a specific question as under:-

“Q. Aapke mama ke ghar main aur kon kon rehta tha?

A. Mein, mummy, meri behen, nana, nani, do mama aur mami rahti thi.

Q. Beta aapke nana, nani aur mama mami bhi kuchh kahte the?

*A. Meri naani aur mami kuchh nahi kahti thi aur **nana** aur **Sachin** mama mujhe bahan ki gaali dete the aur **ch****** aur ulli kahte the.”*

15. The proceedings prompted the Respondent No.2/Complainant to file an Application before the learned Trial Court for framing of additional Charge under **Section 12** read with **Section 11 POCSO Act against the Petitioner (nana)**. The learned Special Judge on **20.07.2019** thus, framed an additional Charge under the Section 12 POCSO against the Petitioner.

16. *Aggrieved by the said framing of the Charges, the Petitioner has filed the present Petition.*

17. It is submitted that the Respondent No.2/Complainant had expressed a grievance before the Child Welfare Committee (CWC) stating that the grandchildren are in need of care and protection.

18. In response to the same, the Chairperson of CWC after interacting with the grandchildren, observed that the joint family is unhappy about Smt. “P” not having a male child; Rakesh is influenced by his family members



who own a lot of property; Rakesh had also filed for a divorce; “P” keeps travelling from Delhi to Ghaziabad, where her parental family lives and she has filed a case for custody of her children in Rohini Courts.

19. It was further observed by CWC that the joint family is trying to influence Rakesh to break up with his wife and Child ‘M’ to go against her mother. This case was “*apparently of domestic unrest and property issue*”. Family counselling is urgently needed. Children are being looked after well both by father and presently by the joint family. This is not a case of “*care and protection*”.

20. This Order dated 25.04.2017 of CWC was challenged by the Complainant in an Appeal under Section 27(10) JJ Act before the Deputy Commissioner/Collector, (the Appellate Authority). *The Appellate Authority in its Order dated 04.05.2018 observed that the grandchildren were merely being used as pawn in the larger sinister game being played by the paternal family against the maternal side.*

21. The Petitioner thus, submits that the paternal side of the family has levelled frivolous allegations against the maternal side, including the Petitioner without any basis and merely out of vengeance. The criminal proceedings have been undertaken as a counterblast to harass and intimidate the maternal side of the family, by registration of the present FIR. Even on a demurrer, it is evident that there is not even a whisper of an allegation against the Petitioner, who is being unnecessarily being harassed in these frivolous criminal proceedings.

22. The **impugned Order is challenged on the ground** that the Complaints dated 29.03.2017 and 30.05.2017 were filed as a counterblast to the FIR No.22/2017 registered against the Paternal Grandfather (Prayag



Chand) on the allegations of sexual assault and rape by the mother of the Child. It has not been appreciated that the mother was threatened by the paternal grandfather, who alleged to have taken lots of nude photographs of her and threatened to release the same online.

23. It has further not been appreciated that the paternal side of the family fearing prosecution under Section 376 IPC, planned to use the grandchildren as pawns to settle personal scores and to wreck vengeance. Their anger was exacerbated by the fact that the mother was unable to bear a male child, which was confirmed from the observations of CWC as well as the Appellate Authority.

24. Neither in the Complaint dated 29.03.2017 nor in the Complaint dated 30.05.2017 was there a whisper of any allegation against the Petitioner, which was confined to allegations against the maternal uncle. In fact, at the time of alleged purported acts of the maternal Uncle at the relevant time of Diwali in the year 2015, the grandchildren were residing at the Petitioner's house. Therefore, there is no basis for purporting 'common intent' on the Petitioner for the alleged criminal acts. *The Order on Charge dated 17.04.2018 and 21.04.2018 framing Charged under Section 509/34 IPC is patently erroneous.*

25. The statement of the Child "M" under Section 164 Cr.P.C *betrays extensive tutoring*. Her statement is highly unreliable given her immaturity and lack of understanding at the relevant time. Child "M" was aged 9 years and was a student of fourth standard. There is no substantiation of when the said swear words were uttered, whether they were uttered in the presence of someone else or they were uttered on some provocation; and whether the Petitioner had directed them towards a third person or towards Child "M". It



is claimed that it is completely unclear what the Petitioner has to defend himself because there are absolutely no material particulars provided by the prosecution. If these utterances were made only in the presence of Child 'M', then she would be the only witness who can testify to the veracity of these claims.

26. Given the animosity harbored by the paternal side of the family against the maternal side and considering that the grandchildren have been tutored and poisoned by the paternal side of the family, the only inference is that the statement of the Child 'M' has been embellished and exaggerated at the behest of the Complainant Smt. "S".

27. It is further asserted that the only piece of evidence against the Petitioner is the testimony of PW2, Child "M", wherein she was asked, "*Q. Beta aapke nana, nani aur mama mai bhi kuchh kahte the?*" to which PW2 answered "*A. Meri naani aur mami kuchh nahi kahti thi aur nana aur Sachin mama mujhe bahan ki gaali dete the or ch**** aur ulli kahte the*". Merely based upon the same, the Trial Court erroneously framed the additional charges under Section 12 POCSO Act.

28. It cannot be controverted that requirement of *mens rea* in the purported act is of utmost relevance for attracting the offence punishable under Section 12 POCSO Act. This pre-requisite is glaringly absent and mere utterances of swear words without any underlying sexual intent does not make an offence under Section 12 POCSO Act. It is claimed that the initiation of criminal proceedings, are vexatious and mala fide.

29. Moreover, the legal test applicable in the cases of circumstantial evidence, has not been applied. Reliance is placed on Shatruघna Baban



Meshram vs. State of Maharashtra, 2020 SCC OnLine SC 901; Hanumat vs. State of Madhya Pradesh, (1953) SCR 1091.

30. It is further contended that mere suspicion is not an adequate ground to proceed against an accused, as has been held by the Apex Court in Union of India vs. Prafulla Kumar Samal & Anr., 1979 AIR 366, Sheetla Sahai vs. State of M.P., (2009) 8 SCC 618, Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4 and L. Krishna Reddy vs. State, (2014) 14 SCC 401. Reliance is also placed on Sajjan Kumar vs. CBI, (2010) 9 SCC 368; Common Cause vs. Union of India, (1999) 6 SCC 667; Century Spinning & Manufacturing Co. vs. State of Maharashtra, (1972) 3 SCC 282; State of Karnataka vs. L. Muniswamy & Ors., (1977) 2 SCC 699; Yogesh vs. State of Maharashtra, (2008) 10 SCC 394 and Dilawar Balu Kurane vs. State of Maharashtra, (2002) 2 SCC 135.

31. A prayer is, therefore, made that the Orders dated 17.04.2018, 21.04.2018 and 20.07.2019 in regard to framing of Charges/additional Charge be set aside.

32. A Status Report has been filed on behalf of the State, wherein the facts of the case have been narrated.

33. A Reply has also been filed on behalf of Respondent No.2/the Complainant, wherein it is asserted that the present Petition is not maintainable under Section 482 Cr.P.C. as an efficacious alternate remedy is available to the Petitioner under the provisions of Cr.P.C to challenge the Order of framing of Charge.

34. It is submitted that the Petitioner has claimed that the present FIR No.654/2017 is a counterblast to FIR No.22/2017 which had been filed by Smt. "P" mother of the children against the Petitioner. Prior to registration



of FIR No.22/2017, father of the Complainant, had also made a Complaint regarding the incident with Victim “M” on 13.12.2016 at Police Station Vijay Nagar which was recorded *vide* DD No.60B dated 23.12.2016 through NGP Prayas. The PCR Call was made by Raksh Kumar on 15.11.2015 and 13.09.2016. Therefore, it cannot be said that the present FIR is a counterblast to FIR No.22/2017.

35. It is asserted that Petitioner has deliberately concealed material facts to gain favourable Order from this Court. He has failed to mention that the mother of the victims before registration of FIR No.22/2017, had filed the Complaint on 12.01.2016 before Mahila Thana, Gaziabad and a D.V. Petition on 23.09.2016 before Mahila Court, Rohini court. In both these matters, there was no allegation of rape or outraging of modesty against the father-in-law which proves that the allegations in FIR No.22/2017 against the Petitioner were nothing but an afterthought, motivated and a counterblast to the Complaint dated 26.10.2016, 01.11.2016, 30.11.2016 and 01.12.2016 filed by the husband and Petitioner against the mother of the children. Moreover, *the I.O. had filed a Cancellation Report in FIR No.22/2017 against which a Protest Petition had been filed in the Court, which is pending adjudication.*

36. The Respondent No.2 has further submitted that the Child “M” had specifically and clearly stated in her Statement under Section 161 and 164 Cr.P.C and also during the cross-examination in the Court that Petitioner abused her in filthy language, which is sufficient to bring out a case against the Petitioner under Section 509/34 and Section 12 read with Section 11 POCSO Act. For the offences under POCSO Act, the testimony of the victim is sufficient and needs no corroboration to hold the Petitioner a



guilty. Therefore, the contention of the Petitioner that there are no allegations and no direct evidence against him, is incorrect.

37. The Respondent No.2 has referred to the Order of CWC and learned Appellate Authority dated 25.04.2017 and 04.05.2018 respectively, wherein it was observed that there was a family dispute and that the grandchildren were merely being used as pawns in the larger sinister game being played by the paternal family against the maternal side. It is submitted that no such observation had been made by CWC or its Appellate Authority. Even otherwise, any observations made by CWC or its Appellate Authority cannot be taken into consideration as allegations made in the statement of victim 'M' and 'A' under Section 161 Cr.P.C and 164 Cr.P.C are serious in nature and required appreciation of evidence. The statements under Section 164 Cr.P.C by Child 'M' and 'A' were recorded by the learned MM after satisfying that the victims were making statements voluntarily and without any pressure or influence.

38. It is further asserted that as per Section 30 POCSO Act, the Trial Court is bound to presume the existence of sexual intent in cases of prosecution under Section 11 POCSO Act. The onus is upon the Petitioner to rebut the presumption by proving that he had no such sexual intent. Therefore, all the averments made in the Petition are denied.

39. *It is submitted that the Petition is without any merit and is liable to be dismissed.*

Submissions heard and record perused.

40. The background of the case in which the present FIR got registered, is that Petitioner's daughter, Smt. "P" got married to Rakesh Kumar on 09.02.2007 according to Hindu customs and rights. From the wedlock two



Children “M” and “A” aged 13 years and 9 years, respectively, were born. Between 2007 to 2012 after the birth of two children, Sh. Rakesh, father of the two children decided to stay with his own family along with the children, to the exclusion of Smt. “P”.

41. On 02.02.2017, Smt. “P” registered FIR No.22/2017 against Sh. Prayag Chander (*paternal grandfather of her children*) making allegations of sexual assault and rape. Thereafter, Respondent No.2/Complainant, Smt. “S” (*Bua of her children*) made a Complaint dated 27.03.2017 before Police Station Vijay Vihar, Delhi levelling the allegations of assault.

42. Thereafter, she made another Complaint dated 25.04.2017, wherein grievance was expressed before CWC under JJ Act stating that the grandchildren were in need of care and protection. **Zero FIR** was registered on 30.05.2017, but the matter was transferred to Loni, Ghaziabad as the maternal grandfather/Petitioner’s house was situated there.

43. **The second Complaint** was made by the Complainant/paternal aunt (*bua*) on 30.05.2017 reiterating all her allegations which resulted in registration of present **FIR No.654/2017 dated 30.05.2017**.

44. Charges were framed against the Petitioner under **Section 509 IPC** (*Word, gesture or act intended to insult the modesty of a woman*) and subsequently **Section 12 POCSO Act**, was added.

45. The perusal of the detailed Complaint dated 30.05.2017 filed by the Complainant, Ms. “S” (*Bua*), shows that there is not a single averment against the Petitioner/*Nana* except that there is a reference to the house of *Nana* where the alleged incident of assault, had taken place.

46. The statements of the two children “A” & “M” were recorded under **Section 161 Cr.P.C** by the I.O. However, the perusal of the statement



shows that *Child 'A'* did not make an iota of allegation made against the Petitioner/*Nana*. It is only the **Child "M"** in the statement under **Section 161 Cr.P.C.** stated that "*Nana and Sachin Mama also used to say abusive remark B*****". Similar averments were reiterated by **Child "M"** in her Statement under **Section 164 Cr.P.C** that "*Nana aur Sachin Mama also used to call me B****. Then I went along with my father to her house situated at Sector 24*"; "*Nana-Nani have threatened Dada-Dadi that I should not go for lodging complaint. That's all*".

47. The **Child "M"** as *PW2*, has also deposed that "*Meri naani aur mami kuchh nahi kahti thi aur nana aur Sachin mama mujhe bahan ki gaali dete the or ch*** aur ulli kahte the*".

48. From the aforesaid narration of facts, it emerges that while the Complainant, Smt. "S" and Child "A", had not uttered a word about the alleged criminal act of the Petitioner/*Nana*, but Child "M" has been consistent in levelling the allegations as stated above against the Petitioner *nana*, as well as, *Sachin Mama*.

49. At the stage of framing of Charge, it cannot be concluded that the statement of Child "M", which has remained consistent, is false or contradictory to the statements of the Complainant or Child "A". Each child has described their own independent experience, and merely because Child "A" or the Complainant, Smt. "S", did not refer to any abuses allegedly hurled by the Petitioner at Child "M", such omission cannot cast a doubt on or discredit the consistent statement of Child "M".

50. Pertinently, the Charges were directed to be framed against the Petitioner along with *Amit Mama* under Section 509 IPC *vide* Order dated 17.04.2018 and the formal Charges were framed on 21.04.2018. It is



pertinent to note that on the same allegations, Charge under Section 12 of POCSO Act, was also framed against the Amit *Mama*. Subsequently, as reflected in the Order dated 20.07.2019, the Complainant filed an Application under Section 216 Cr.P.C for framing of additional Charge. The Application was allowed and it was noted that insofar as, the offence under Section 12 read with Section 11 of POCSO Act, is concerned, the Charges under Section 509/34 has already been framed against the Petitioner, Surender/*Nana* and additional Charge of Section 12 of POCSO Act, was directed to be framed against him as well.

51. It is significant to note that there was no grievance of the Petitioner against the first Order on Charge dated 17.04.2018 whereby he was charged with the offence under Section 509 IPC. On the subsequent addition of Section 12 read with Section 11 POCSO Act *vide* Order dated 20.07.2019, the Petitioner has raised the grievance by way of the present Petition. It reflects that the Petitioner had not challenged to the framing of Charge under Section 509 IPC.

52. Herein, it is pertinent to note that the ingredients of Section 509 and Section 12 POCSO Act are *pari materia* with Section 509 IPC except that the offence under Section 12 of POCSO Act, gets invoked when the victim is a child.

53. It is also pertinent to refer to ***Section 42 of POCSO Act*** provides that where an “act or omission” constitutes an offence detailed therein, as well as Section 509 IPC, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such an offence, shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment, which is greater in degree.



54. *Section 42A* further provides that the provisions of POCSO Act is 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 the overriding effect on the provisions of any such law to the extent of the inconsistency.

55. What has thus, become evident from the record is that on the same allegations while Charge under Section 509 IPC was framed against the Petitioner, subsequently, on the same allegation, the Charge of Section 12 read with Section 11 POCSO Act, has also been directed to be framed, which is in accordance with the provisions of POCSO Act. It is not as if there were new allegations on which Section 12 has been added but it is on the same allegations, Section 12 has made added to the Charge. It is not a case where new charge on new allegations has been framed against the Petitioner.

56. The Complainant has rightly contended that there was no objection to the earlier framing of Charges *vide* Order dated 17.04.2018. In such circumstances, the mere addition of Section 12 POCSO Act on the basis of the same allegations, cannot constitute a valid ground for quashing of the Charges. This position is further strengthened by the fact that, on identical allegations, the co-accused Amit, was charged under Section 12 *vide* Order dated 17.04.2018.

57. It has also been rightly contended that neither the Order dated 17.04.2018 nor the Charges framed on 21.04.2018 were ever challenged by the Petitioner by way of a Revision. Section 12 POCSO Act has merely been added on the same allegations, as mandated by law.



58. There may have been a family litigation and there may have been cross-complaints/FIRs but that at this stage, this cannot be a ground to quash the FIR against the Petitioner when there is consistent allegation made by Child "M" against him. It is a matter of trial and at this stage, it cannot be said that the addition of Section 12 read with Section 11 POCSO Act, has been made incorrectly.

59. In view of the foregoing discussion, this Court is of the considered opinion that the present case does not warrant the exercise of its inherent jurisdiction to quash the Charges framed against the Petitioner.

60. There is no merit in the present Petition, which is hereby **dismissed**.

61. The Petition stands disposed of accordingly along with the pending Application(s).

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 12, 2026/VA