

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No. 78 of 2018

Sajal Bhowmik & 2 Ors.

.....Petitioner(s)

Versus

The State of Tripura

.....Respondent(s)

For the Petitioner(s) : Mr. J. Bhattacharjee, Adv.

For the Respondent(s) : Mr. S. Ghosh, Addl. PP.

Date of hearing & order: **21.10.2020**

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

ORDER

The challenge in this revision petition is to the orders dated 01.10.2018 (Annexure-1) and 16.11.2018 (Annexure-2) passed by the learned Special Judge (POCSO) of West Tripura Judicial District, Agartala in case number SPL (POCSO) 6 of 2017.

[2] Brief facts of the case are as under:

Smt. Xxxx(name withheld by me), mother of the victim lodged a written FIR with the Officer in Charge of Amtali Police Station on 9th January, 2017 at around 10.44 P.M, alleging, inter alia, that in her absence at home during the day her youngest daughter (name withheld) left the house. After waiting for sometime for her return, she started searching for her daughter in the neighbourhood. During the search for her missing

daughter, she came to know that another girl of the age of 15 years was also missing from the neighbourhood. In the evening she received a call on her mobile from her missing daughter who informed her that she was loitering in an unknown place along with the other missing girl and requested her mother to recover them from there.

[3] Based on her FIR Amtali PS case No.2017 AMT 005 under Section 363 IPC was registered and investigation was taken up by police. The investigation revealed that accused Manindra Sarkar whom they called 'dadu' (grand father) had taken them to a local fair where he introduced them to the other 2 accused namely Sajal Bhowmik and Mithu Bhowmik. The victim girls were then taken to a tea garden in an unknown place on their motorbike where they committed rape on them one after another. The three accused thereafter left the place. When they were loitering around the area, they met a person who informed their parents over telephone for their recovery. They were then recovered by their parents.

[4] Smt. Sova Rani Teli, a woman sub-inspector of police carried out the whole investigation and submitted chargesheet No.50 of 2017 dated 30.05.2017 under Sections 373, 376(D) IPC and Section 4 of the POCSO Act and sent up the three accused namely Manindra Sarkar, Sajal Bhowmik and Mithu Bhowmik for trial citing as many as 25 charge witnesses.

[5] Learned special judge (POCSO) took cognizance of offence and having found prima facie materials framed charges of offence punishable under Sections 366, 376(2)(i), 376(2)(n) IPC and Section 6 of the POCSO Act against accused Sajal Bhowmik and Mithu Bhowmik and charges were framed separately against accused Manindra Sarkar for offences punishable under Sections 376(2)(i), 376(2)(n) and Sections 366 and 506 IPC and Section 6 of the POCSO Act.

[6] After the charges were so framed, learned trial judge issued summons to the prosecution witnesses fixing calendar of dates on 21.07.2018 and 23.07.2018 for their examination. The witnesses could not be examined on those dates as the learned presiding officer of the court was deployed for training. Fresh calendar was prepared and dates were fixed on 24.09.2018 and 25.09.2018 for examination of witnesses. 24.09.2018 was scheduled for examination of 4 witnesses out of which 3 witnesses including the victim and her first informant mother appeared. Examination in chief and cross examination of the mother of the victim could be finished on the date but other 2 witnesses including the victim could only be examined in chief. They were discharged without cross examination on that date as the working hours of the court was over. Next date of hearing was fixed on 01.10.2018.

[7] On 01.10.2018, the victim and another witness appeared before the court for their cross examination by learned defence counsel. Mother of the victim whose evidence was already recorded by the court accompanied her victim daughter to court. When the cross examination of the victim was about to begin, learned defence counsel raised an objection and submitted before the court that he would not cross examine the victim in presence of her mother in the court room and he urged the court to let her mother go out during the cross examination of the victim. Learned trial judge, having declined to entertain the objection, the defence counsel filed a petition in writing to reinforce his objection on the ground that the accused would be prejudiced if the evidence of the child was recorded in presence of the mother in court room. Learned trial court in view of the provisions laid down under sub-section(4) of Section 33 of the POCSO Act instantly turned down the petition filed on behalf of the defence by his order dated 01.10.2018. Having recorded the submissions of learned defence counsel that he would move the High Court seeking revision of the said order, learned Special Judge adjourned the case to 16.11.2018. On 16.11.2018 the learned defence counsel submitted before the court that the accused did not prefer any revision petition before the High Court till then. Learned Special Judge having found that the accused was delaying the proceedings on flimsy ground, imposed exemplary cost of Rs.3,000/- at

Rs.1,000/- each to be paid by the 3 accused and ordered that Rs.1,000/- of the cost, if realized, shall be awarded to the victim and Rs.2,000/- to be deposited in government treasury.

[8] In the back drop of these circumstances, the accused petitioner has challenged the aforesaid order dated 01.10.2018 (Annexure-1) whereby his petition raising objection against the presence of the mother of the victim in the court room during cross examination of the victim was turned down and order dated 16.11.2018 (Annexure-2) whereby cost of Rs.3,000/- was imposed upon the accused persons at Rs.1,000/- each for delaying the proceedings of the case without a valid reason.

[9] I have heard Mr. J.Bhattacharjee, learned counsel appearing for the accused petitioners as well as Mr. S.Ghosh, learned Additional PP.

[10] It is contended by Mr. Bhattacharjee, learned counsel of the petitioner that the mother being the first informant, her presence in the court room during the recording of the cross examination of her victim daughter is likely to impair the defence case because the victim is likely to be tutored by her mother by gestures during her cross examination which will prevent her from telling the truth.

[11] Further submissions on behalf of the petitioner is that the victim is as old as 15 years and therefore,

presence of her mother in the court room is not at all required under the law.

[12] It is also argued by learned counsel that a duty is cast upon the court to ensure a fair trial by removing all apprehensions from the mind of the accused. Finally it is argued by Mr. Bhattacharjee, learned counsel that the learned trial court most arbitrarily imposed a heavy cost of Rs.3,000/- on the accused persons for no fault on their part.

[13] Per contra, Mr. S.Ghosh, learned additional PP submits that it has surfaced on record that the accused delayed the proceedings of the case and that too, in a case under the POCSO Act without any valid reason for which the learned trial judge rightly imposed cost of Rs.3,000/- on them to prevent the abuse of the process of the court. Learned counsel, therefore, urges the court to uphold the order passed by the learned Special Judge (POCSO). It is further contended by Mr. Ghosh, learned Additional PP that presence of mother along with the victim in the court room during the trial of a case under POCSO Act is a requirement of law and therefore, the learned Special Judge (POCSO) did not commit any wrong in permitting the presence of the mother in the court room during the cross examination of her victim daughter.

[14] The core issue which falls for consideration before this court is whether the trial judge committed any

error in turning down the petition of the accused petitioners whereby they wanted the court to keep the mother of the victim outside the court room during the cross examination of her victim daughter.

[15] The Protection of Children from Sexual Offences Act, 2012 under Section 33(4) provides that a POCSO Court shall have a child friendly atmosphere for which the family members, guardians, a friend or relatives in whom the child has trust or confidence shall be present in the court. Undoubtedly mother is the most trusted person of a child and therefore, mother's presence in the court room with her victim child during the trial of a case under POCSO Act is a legal requirement under the Act.

[16] It is a duty of the trial court in terms of the Act to protect the child from all kinds of discomfort, fear and anxiety during the trial and ensure that she does not feel scared under any circumstances. The order dated 01.10.2018 of the learned Special Judge whereby and whereunder he declined to allow the petition of the accused petitioners and permitted the mother of the victim to be with her victim daughter in the court room during her cross examination suffers from no illegality. Rather, the order revealed that the learned Special Judge was quite aware of the duty cast on him under the POCSO Act.

[17] With regard to imposition of cost on the accused persons, I am of the considered view that cost was imposed on the accused persons in the lawful exercise of powers of the trial court with a view to prevent further delay of the proceedings and miscarriage of justice.

[18] However, considering the status and capacity of the accused persons, the amount of cost is reduced to Rs.1800/-(One thousand and Eight hundred) only which will be shared equally by the accused persons and the full amount on realization be awarded to the victim.

[19] Learned Sessions Judge is directed to prepare fresh calendar for recording evidence and expedite the trial of the case keeping in mind the objective of the POCSO Act for time bound disposal of POCSO cases.

The revision petition is accordingly disposed of.

Send down the LCR.

JUDGE