

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL REVISION CASE No.290 OF 2023

ORDER:

This Criminal Revision Case has been filed challenging the propriety of the order dated 13.03.2023 by the I Additional District and Sessions Judge, Nalgonda, whereby the private complaint filed by the revision petitioner for the offence under the Protection of Children from Sexual Offences Act, 2012 (*for short 'the POCSO Act'*) has been returned with an endorsement to present before the appropriate Court

2. I have heard learned counsel for the petitioner and learned Additional Public Prosecutor for respondent No.1.

3. The relevant facts in brief are that the revision petitioner had filed police report against respondent No.2 alleging offences under Sections 354, 506 and 509 of the Indian Penal Code, 1860 (*for short 'the IPC'*) and the POCSO Act. As the police failed to act upon the report, a private complaint under Section 200 of the Code of Criminal Procedure, 1973 (*for short 'the Cr.P.C.'*) was

filed before the II Additional Judicial Magistrate of First Class, Miryalaguda on 13.02.2023. Learned Magistrate by endorsing that the record is *Prima facie* disclosing an offences under the POCSO Act, returned the complaint to present the same before the competent Court. Thereupon, the revision petitioner approached the I Additional District and Sessions Judge, Nalgonda, which is designated POCSO Court. Learned Sessions Judge by observing that under Section 200 of the Cr.P.C. the Magistrate of I Class is competent to take cognizance and to refer the complaint to police under Section 156(3) of the Cr.P.C. for investigation and though it is designated Court to try the offence punishable under the POCSO Act, cannot entertain the private complaint, returned the file. Hence, the present revision.

4. Learned counsel for the revision petitioner would contend that the II Additional Judicial Magistrate of First Class, Miryalaguda without considering the fact that the Magistrate Court is designated POCSO Court at Miryalaguda, returned the private complaint against the contemplated procedure under

Cr.P.C. To add, the designated Court also returned the complaint to present the complaint before Magistrate. Therefore, the Courts below grossly erred in following the law and made the revision petitioner/victim to run pillar to post even for submitting the private complaint, which is of serious concern and prejudice to her interest. Thus, prayed for intervention.

5. Learned Additional Public Prosecutor submits that the POCSO Court rightly directed the revision petitioner to present the complaint before Magistrate as the matter has to be committed to the Sessions Court and the Magistrate is empowered under Section 200 of the Cr.P.C. to receive the private complaint and at the same time the Sessions Court is barred to directly take cognizance under Section 193 of the code. Therefore, the impugned docket order is justified.

6. I have carefully considered the submissions of the learned counsel and perused the materials on record.

7. The fact that the private complaint has been filed by the revision petitioner was neither received by the learned Magistrate nor by the designated Court for POCSO Act, is not in dispute.

8. In this position, a pertinent and interesting question arising is which Court among the Magistrate and the designated Court has jurisdiction to entertain the private complaint for the offences under POCSO Act.

9. In regard to private complaint, the Section 190 of the Cr.P.C empowers the Magistrate to take cognizance of offence upon receiving a complaint or upon a police report or on information received from any other source than police officer and even upon his knowledge. The Section 193 of the Cr.P.C provides that except expressly provided by the Cr.P.C. or any other law, no Court shall take cognizance of any offence.

10. The jurisdictional Magistrate on receiving of information of any offence as contemplated under Section 190 of the Cr.P.C. may take cognizance and if such offence is exclusively triable by

the Sessions Court, the Magistrate has to commit the file to the Sessions division, as given in Section 209 of the Cr.P.C. Thus, by these provisions, it is obvious that the Magistrate is competent to take cognizance of any offence including the offence even under Special enactment triable by the Sessions Court.

11. On the other hand, the Section 31 of the POCSO Act prescribes that the provisions of the code shall apply to the proceedings before the Special Court and for the purpose of said provisions, Section 33(1) stipulates that a Special Court may take cognizance any offence without the accused being committed to it for trial, upon receiving a complaint of facts constituting the offence or upon a police report of such facts.

12. The above provisions of the POCSO Act are clarifying that the code is applicable to the proceedings before the Special Court as the same is considered to be a Court of Sessions. In addition, the Special Court is also invested with jurisdiction to

take cognizance of the offence without being committed and upon receiving the complaint.

13. As the statutory positions in the Cr.P.C. and the POCSO Act are not mutually exclusive, it shall be construed that the Special Court in the stand of Court of Sessions may receive a case on committal from the Magistrate. Meaning thereby the jurisdictional Magistrate is empowered to receive police report or complaint as set down under Section 190 of the Cr.P.C. even in regard to the offences under POCSO Act and after taking cognizance, the same may be committed to the Special Court.

14. Concomitantly, the Special Court is also empowered under Section 33(1) of the POCSO Act to take cognizance of the offence. In that way, the Special Court without any committal procedure can directly receive complaint and while doing so the Special Court sets in the position of Magistrate and would process the complaint by applying relevant procedure.

15. For the aforesaid, it shall be understood that the legislature at its wisdom had provided direct reach to the special Court in addition to the indirect committal procedure to extend the needed relief employing either of the forums. Thus, the jurisdictional Magistrate and the Special Court are correspondingly empowered to take cognizance of an offence under POCSO Act upon the complaint. Consequently, it shall be held that, returning of the private complaint by the Special Court and the Magistrate is improper and against the provisions of law.

16. At this juncture, learned Public Prosecutor added that as per the averments of the complaint the offence occurred at Rajamahendravaram, in the state of Andhra Pradesh. Therefore, the Courts in Nalgonda would not have jurisdiction. On this aspect, learned counsel for the revision petitioner fairly admits that the offence had occurred during 2016 at Rajamahendravaram in the State of Andhra Pradesh. However, as the complainant is resident of Miryalaguda, Nalgonda District,

the private complaint has been presented before the Courts in Nalgonda.

17. In regard to the jurisdiction of the Criminal Courts Section 177 of the Cr.P.C. directs that the original jurisdiction for inquiry and trial of criminal prosecution would be within the local jurisdiction of the Court where the offence was committed. Section 178 of the Cr.P.C. refers to the situation where the uncertainty of several local areas where the offence was committed and section 179 of the Code specifies a situation where act is done in one jurisdiction and the consequences ensued in the other jurisdiction.

18. In the present case, admittedly the entire offence was at Rajamahendravaram. As such, the competent Court to inquire and try the offence would be the Court which has territorial jurisdiction over Rajamahendravaram. Thus, filing private complaint and pursuing remedy before the Courts at Nalgonda is in apposite.

19. In this position, it has to be concluded that even for the offence under the POCSO Act the Magistrate is not barred to take cognizance and by the enabling provision, the Special Court is also empowered to take cognizance of the offence under the POCSO Act either upon the police report or on complaint within its territorial jurisdiction. Nonetheless, in the present case, as the offence and the cause of action arose in different territorial jurisdiction, the revision petitioner may avail remedies before the appropriate Court having jurisdiction.

20. With the above observations, the criminal revision case is disposed of.

As a sequel, pending miscellaneous petitions if any, stand disposed of.

N. TUKARAMJI, J

Date: 18.08.2023

Note: L.R Copy to be marked

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241

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