

ITEM NO.9 Court 8 (Video Conferencing)

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 9552/2021
(Arising out of impugned final judgment and order dated 27-10-2021
in CRLR No. 259/2021 passed by the High Court of Judicature at
Allahabad, Lucknow Bench)

HAZRAT DEEN

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(FOR ADMISSION and IA No.160939/2021-EXEMPTION FROM FILING O.T.)

Date : 06-01-2022 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. S.G.Hasnain, Sr. Adv.
Mr. Aftab Ali Khan, AOR
Mr. R. Chaudhry, Adv.
Mr. Ali Safeer F., Adv.
Mr. Syed Imtiyaz Ali, Adv.
Mr. S.M. Afzal, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

In this special leave petition the petitioner has challenged
an order dated 27.10.2021 passed by the High Court of Judicature at
Allahabad, Lucknow dismissing the criminal revision application by
the petitioner being CRLR No. 259/2021.

The aforesaid criminal revisional application was filed
challenging an order passed by the learned Addl. Sessions
Judge/Special Judge (POCSO Act), Bahraich, hereinafter referred to
as the Trial Court, dismissing the application of the petitioner
for discharge.

The facts giving rise to these proceedings are obnoxious. The prosecutrix is the daughter of the petitioner, only 19 years of age. It is alleged that she had been sexually abused.

In the petition, it is stated that the charge sheet was filed implicating the petitioner of offences under various sections of the Indian Penal Code (IPC) including Sections 354 and 376 thereof as also Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012, hereinafter referred to as the "POCSO Act". Learned counsel appearing on behalf of the petitioner emphatically argued that the POCSO Act came into force only on 14.11.2012. The incident alleged pertain to the period prior to the enforcement of the POCSO Act.

The petitioner has not been charged only under the POCSO Act. Even assuming that the petitioner could not have been charged under the POCSO Act, the petitioner has been charged under various provisions of the IPC which were admittedly in force on the date of the alleged offence. The learned counsel for the petitioner emphatically argued that the FIR does not disclose offence under Section 376 of the IPC. The FIR is the initial document. In her statement given by the prosecutrix under Section 164 of the Code of Criminal Procedure (CrPC) after the prosecutrix attained majority, she categorically made statements which tantamount to offence under Section 376 of the IPC.

Discrepancies between the FIR and any subsequent statement under Section 164 of the CrPC may be a defence. However, the discrepancies cannot be a ground for discharge without initiation of trial.

There is no infirmity in the order of the High Court rejecting the criminal revisional application.

The special leave petition is, accordingly, dismissed.

It is, however, made absolutely clear that the observations made above are not to be construed as any finding of this Court that there has been no offence under the POCSO Act or that the prosecutrix has not been abused after commencement of the POCSO Act.

Pending applications, if any, stand disposed of accordingly.

(MANISH ISSRANI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)