



2024:DHC:7124



\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
% *Reserved on: 30<sup>th</sup> July, 2024*  
*Pronounced on: 11<sup>th</sup> September, 2024*

+ CRL.M.C. 5329/2024 & CRL.M.A. 20393/2024

\*\*\*\*\*

.....Petitioner

Through: Mr. Kapil Madan, Mr. Gurmukh  
Singh Arora & Mr. Vansh Bajaj,  
Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the  
State with Ms. Prachi Bahl, Mr. Varun  
Gupta, Ms. Ritu Sharma & Mr. Gaurav  
Kaushik, Advs with SI Meena Malik,  
PS Maurya Enclave.

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

### JUDGMENT

#### ANISH DAYAL, J.

1. This petition has been filed under Section 482, Code of Criminal Procedure, 1973 [*“CrPC”*] assailing order dated 02<sup>nd</sup> May 2024 [*“impugned order”*], passed by Additional Sessions Judge-01 (POCSO), North West/Rohini [*“Ld. ASJ”*], in case arising out of FIR No. 515/2021, registered at Police Station [*“PS”*] Maurya Enclave. By way of the impugned order, Ld. ASJ *inter alia* framed charges against the petitioner under Section 19(1) POCSO punishable under Section 21 POCSO.

2. The FIR was registered basis the complaint of the complainant/prosecutrix (*daughter of the petitioner herein*) who, at the time



commission of the alleged offence, was a minor girl aged 16 years. The FIR was registered under Sections 354, 354A, 377, 323, and 376 of the Indian Penal Code, 1860 [“*IPC*”] and Sections 6 and 10 of the Protection of Children against Sexual Offences Act, 2012 [“*POCSO*”].

3. On an application dated 22<sup>nd</sup> August 2022 moved by counsel for accused, the mother of the prosecutrix i.e. petitioner was summoned to the Trial Court whereafter the impugned order was passed, framing charges under Section 21, POCSO against her for failure to report offences against her daughter/prosecutrix.

#### **Allegations in the FIR**

4. Prosecutrix had alleged that she was residing along with her mother, the petitioner herein, at a rented house since March 2021, prior to that she was residing with her entire family at her grandparents’ house at Pitampura, Delhi.

5. When prosecutrix was in 7<sup>th</sup> class, her father [“*accused*”] touched her in an inappropriate manner; followed her to the bathroom, closed the door from outside, and opened it after half an hour so that she would not complain about him. Once when she was going to washroom; her father held her from behind, touched her private parts and tried to insert his finger. She also alleged that her father had shown pornography to her on his mobile phone. Inappropriate behaviour of the accused continued. She told her mother about the incident, then a quarrel took place between her parents. Later, she alleged that she was sexually assaulted by her father on several occasions and was also beaten by her father.



6. Furthermore, the father allegedly threatened to beat the petitioner up, in case the prosecutrix complained to anyone, so as to keep an eye on her. Accused/husband is also said to have brutally beaten up the petitioner and threatened her in case she reported the alleged incidents.

7. She further complained that the father had unnatural sex with her mother as also alleged that her grandmother had beaten the petitioner as well.

8. Considering these incidents, her maternal uncle came and took her, the petitioner, and her younger brother to Kanpur, whereafter they registered the present case.

### **Investigation and Trial Court Proceedings**

9. During the course of investigation, prosecutrix's statement under Section 164 CrPC wherein she supported her earlier version. Accordingly, Sections 323 and 376 IPC, and Section 6 POCSO were also added.

10. Petitioner also examined herself and recorded her statement under Section 164, CrPC where she stated that she got married to one \*\*\*\*\* in 2003 and two children were born out of wedlock; she came to know that her husband molested her daughter/prosecutrix on several occasions where the daughter told the petitioner about the incidents.

11. Statement of petitioner was recorded under Section 164 CrPC and she corroborated her statement, where she alleged that her husband used to watch pornographic content on his phone and later, she came to know that he showed the pornographic videos to their daughter as also molested her. She further stated that she took her daughter to a psychiatrist on 05<sup>th</sup> June 2021 in order



to enable her to get help, and thereafter, the FIR was registered on 06<sup>th</sup> June 2021.

12. Accused was arrested on 07<sup>th</sup> June 2021, his mobile phone was seized and he was sent to judicial custody. On 15<sup>th</sup> June 2021, accused was granted bail by Ld. ASJ.

13. Age proof of prosecutrix was obtained and as per the record, her date of birth is 22<sup>nd</sup> November 2004.

14. Counsel for accused Rajeev Babbar filed an application to summon petitioner as an accused on 22<sup>nd</sup> August 2024. On 22<sup>nd</sup> March 2023, Ld. ASJ issued summons to the petitioner, the mother of the victim stating that there was a delay in reporting the offence as the incident was not reported till June, 2021 and on 02<sup>nd</sup> May, 2024, Ld. ASJ framed charges against the petitioner under Section 21 of POCSO Act.

### **Challenge in the Present Petition**

15. This revision petition assails the impugned order, so far as charges were framed against the petitioner (*mother of the prosecutrix*) under Section 21, POCSO on account of alleged failure to report incidents of sexual assault against the prosecutrix/daughter by the accused/father.

### **Submissions on behalf of Parties**

16. Counsel for petitioner contends that the whole issue arises in the background of marital discord between the petitioner and her husband i.e. the accused and intense victimization of the petitioner and the daughter by the



husband. It was petitioner herself who had taken the prosecutrix to report the matter to the police, both having suffered extremely depraved conduct at the hands of the accused.

17. Not only the daughter, but the petitioner herself was a victim of severe abuse; they were consistently threatened by the husband. Due to severe threats to their life and safety, they did not have the courage to come to the police earlier.

18. Essentially, it was submitted that the provision of Section 21 POCSO cannot apply to a situation like this, where the mother and the daughter are both victims of severe abuse by the husband and both have corroborated their statements. It would be evident that they only mustered up courage to report the matter to the police after leaving the marital house.

19. In any case, it was contended that there was no failure to report on part of the petitioner, but at best only delay. In this regard, reliance is placed on the decision of a co-ordinate Bench of this Court in *Jasvinder Kaur and Anr. v. State and Anr.* 2024:DHC:3677, where it was held that Section 21 of POCSO provides punishment for “*failure to report*” and not “*delay in reporting*”.

20. Counsel for petitioner further submitted that *firstly*, the summoning order of 22<sup>nd</sup> March 2023, was passed on an application moved by the accused \*\*\*\*\*on the basis that despite the victim having told her mother, she was silent for all these years; *secondly*, considering the severity of the allegations made by both the victim child and the petitioner against the husband, it was untenable that the petitioner was summoned under Section 21



POCSO at the behest of the accused, who had preferred this baseless application; *thirdly*, Ld. ASJ did not take into account that the petitioner herself took her child to a child psychiatrist on 05<sup>th</sup> June 2021, following a complete breakdown of the victim child and herself, took her to the police station the next morning; *fourthly*, both the petitioner and the prosecutrix recorded their statements under Section 164 CrPC where they reiterated these facts, as noted above; *fifthly*, that there is no period of limitation mentioned in Section 19 POCSO to report an offence; *sixthly*, on 16<sup>th</sup> October 2018, it was clarified by the Ministry of Women & Child Development through a press release that there was no limitation in reporting of sexual offences against children; *seventhly*, it was the petitioner who duly fulfilled her obligations and provided full support to the victim child despite herself and the child being sexually and physically tortured by the husband; *eighthly*, Ld. ASJ completely ignored the severe trauma that the mother and daughter had gone through, and instead at the behest of the accused sought to summon them and framed charges under Section 21 of POCSO.

### Analysis

21. When the matter was first listed before this Court on 15<sup>th</sup> July 2024, considering the circumstances, it was considered appropriate to take into account the version of the prosecutrix (*now a major*). She was asked to appear on 30<sup>th</sup> July 2024. On that day, the Court interacted with her in chambers (*taking into account the sensitive nature of allegations*) as also with the petitioner, counsel for petitioner, and Additional Public Prosecutor [“APP”] appearing for the State.



22. Aside from perusing the material placed on record, this Court had the chance to interact with the prosecutrix as well as the petitioner, as noted above. Without reproducing the entire account of the interaction, it was obvious that the reason why there was a delay on part of the petitioner to report the said offences was a threat to her own life. As per the prosecutrix herself, she first informed her grandfather and grandmother about the fact of abuse and they did not report the same and then they conditioned the victim to believe that these acts were not wrong.

23. Only when the child broke down before the psychiatrist and narrated the sordid details of sexual abuse by her father, then the petitioner realized that it is a matter which needed to be reported and ignoring severe threats by the husband and his family, she did that promptly.

24. This is a classic case, where a victim herself has become the accused, by applying a legal provision, wholly insulated from the background facts and circumstances of the case. A mother is sought to be prosecuted for delay in reporting of sexual offence on a child by her own husband, despite the fact that the mother herself was allegedly subject to severe abuse, sexual and otherwise, in her matrimonial home.

25. The narrative provided, by both the mother and the child, in the complaint, and the Section 164 CrPC statements recorded before the Ld. ASJ, point out to sordid and depraved state of affairs in that house, where consistent abuse was perpetrated by the husband. In this context, it is not impossible to take into account, the possibility that the delay in reporting was only because both the mother and the child were living under a protracted, severe, and



immense trauma, under the shroud of threat of further physical and sexual abuse, that they could not muster the courage, space, or the spirit to go and report to the police.

26. For ease of reference, the bare text of Sections 19 and 21 of POCSO is extracted as under:

**19. Reporting of offences.—**

*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) 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,—*

- (a) the Special Juvenile Police Unit; or*
- (b) the local police.*

*(2) Every report given under sub-section (1) shall be—*

- (a) ascribed an entry number and recorded in writing;*
- (b) be read over to the informant;*
- (c) shall be entered in a book to be kept by the Police Unit.*

*(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.*

*(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.*

*(5) Where the Special Juvenile Police Unit or local*





*police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.*

*(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.*

*(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).*

...

**21. Punishment for failure to report or record a case.—**

*(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.*

*(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.*

**27.** In order to determine sustenance of ‘charge’ against petitioner under



Section 21 POCSO, it may be apposite to first look at the intent of the legislature while enacting the POCSO Act as well as the discussion around it, including mandatory reporting requirements.

28. Relevant parts of the 240<sup>th</sup> Report of the Department-Related Parliamentary Standing Committee on Human Resource Development [“**240<sup>th</sup> Parliamentary Report**”] on the Protection of Children from Sexual Offences Bill, 2011 [“**POCSO Bill**”] debating the proposed Clause 21 of the POCSO Bill [now Section 21 of the POCSO Act], are extracted as under:

*“10.2 Strong objections were raised by the stakeholders on the mandatory aspect of reporting of child abuse cases. The Committee was given to understand that due to social stigma, child's emotional attachment to the abuser etc reporting of abuse was not preferred in a large number of cases. It was contended that awareness on child abuse in India was lacking. Factors like social stigma, community pressure, difficulties of navigating the Criminal justice system, total dependency on perpetrator emotionally and economically, lack of access to support systems etc inhibited children and their families to seek redressal within the legal system. Some of the stakeholders suggested deleting the clause altogether.”*

*10.3 The Committee strongly feels that given the situation prevailing at ground level, such universal mandatory reporting cannot be considered practical. It might act as counter-productive for the child victims themselves. For instance, if the parents choose not to report the matter to the police for the sake of protecting the child from social stigma, they would be seriously handicapped even to seek medical help for the victim.”*

(emphasis added)



29. Chapter 5 of POCSO provides for procedure for reporting cases, while Section 19 provides for reporting offences by anyone who has an apprehension that an offence is likely to be committed or has knowledge that such an offence has been committed. Section 20 obliges the media studio and photographic facilities to also report such cases. Section 21, therefore, is premised *inter alia* upon a failure to report an offence by anyone under Section 19 (1) or Section 20 of POCSO. This is evidently to facilitate reporting of incidents where anyone becomes aware of child abuse and Section 21 provides a deterrent.

30. In this case, to not account for the fact that the mother herself who was the victim of sexual abuse, would not care for her only child and for some *mala fide* reason, not report the offences as mentioned to her by her child, would result in sheer injustice.

#### Relevant Judicial Precedents

31. The Courts have on various occasions, particularly in cases of sexual offences, occurring within a household, have recognized this and accommodated issues, *inter alia* of delay in filing complaint or registration of FIRs.

32. Sexual abuse occurring within a household, where a perpetrator is the husband or a man, who chooses to dominate the household, can be the most heinous and degenerate. Female victims then live under a pall and swathe of fear for their life and personal liberty.



33. Section 21 of POCSO, *ex facie* is predicated upon “*failure to report*” and not a “*delay of reporting*”. To this effect, observations of a coordinate Bench of this Court in *Jasvinder Singh* (*supra*) are instructive; relevant portions are extracted under:

*“22. In the present case as noted above, respondent no. 2 had filed a complaint on the basis of which the present FIR had been registered, chargesheet was filed and the prosecution evidence stands complete. The delay in making the complaint by respondent no. 2 can be used as a defence by the petitioner during the course of the trial. It was pointed out by learned APP for the State, assisted by the learned counsel for the complainant that sufficient explanations have been given by respondent no. 2 and the survivor during their testimony to explain the delay.*

*23. This Court is not entering into the issue whether the said explanation was satisfactory or not, as the same is to be determined by the Learned Trial Court if such defense is taken by the petitioner during the course of the trial. For the purpose of this petition, it is suffice to say that the complaint filed by respondent no. 2 will not bring the case of the latter under Section 21 of the Act, which provides for punishment for “failure to report”. In the present case, respondent no. 2 has reported the case to the concerned authorities, in pursuance of which, the present FIR was registered.”*

(emphasis added)

34. It may be apposite to draw parallels and distinctions with cases wherein charge or conviction under Section 21 POCSO is considered. In *Surjeet Khanna v. State of Haryana* 2024:PHHC:023004, the Punjab & Haryana



High Court made the following observations:

*“9. In this case, the email dated 23.09.2021 (Annexure R-2/7 in CRM-M-44425 of 2023), on which the mother-Axx has relied so as to contend that she had informed the school authorities about the bullying/ sexual harassment etc. of the deceased child, would make it clear that the mother-Axx had knowledge about the commission of offences covered under POCSO Act, much prior to when the information was given to the school authorities. As such, prima facie, the mother was mandatorily required to inform the local police or the SJPU about the same as per Section 19 of the POCSO Act.*

*10. The contention of ld. senior counsel for the mother-Axx to the effect that the mother performed her duty by informing the school authorities by way of email dated 23.9.2021 as per the Child Protection Policy of School, does not appear to contain merit at this stage, having regard to the fact that statutory provision would override and will have precedence over the guidelines provided under the Child Protection Policy of School. In these circumstances, the petition moved by the mother- ‘Axx’ so as to quash the application itself, does not contain merit.*

...

*12. Having regard to the provisions of Section 19 to be read with Section 21 of the POCSO Act, though it cannot be said that the application moved by the Principal itself is bad, it will be for the Court concerned to apply its judicious mind on the application to decide whether to summon the mother as a proposed accused or not, considering the fact that application can neither be considered to have been moved under Section 319 CrPC nor under Section 190 to be read with Section 193 CrPC. At the most, the application may be treated*



to be under Section 33 of the POCSO Act, there being clear distinction in the scope of Sections 319 & 193 of the CrPC and Section 33 of the POCSO Act.

...

28. This Court does not find merit in the aforesaid contention. Every case has its own facts and circumstances, which may compel the Court concerned to adopt a procedure, not barred by law, as per the facts and circumstances. No doubt, it is true that Section 33 of the POCSO Act or Section 193 CrPC do not provide for serving a notice to the proposed accused, but at the same time, there is no such bar to serve a notice in the facts and circumstances of a particular case. Usually, a Court is not required to serve any such notice, but in the present case, the proposed accused i.e., mother Axx is the complainant of the FIR. She is also the victim, being the mother of deceased child. As is evident from the impugned order dated 18.07.2023 of the Special Court, the proposed accused i.e. mother-Axx, in her capacity as complainant of the FIR/victim was present in the Court along with her counsel at the time when application was moved.

29. In the above facts and circumstances, if the Special Court was of the view that the mother being the victim of the case, should be heard before deciding the application, this Court does not find it to be an illegality or irregularity. As has already been noticed that so far, no decision has been taken by the Court concerned on the application and only the notice of the application was served upon the proposed accused i.e. the mother 'Axx' - complainant of the FIR. The Court still has to decide the application by applying its judicious mind in accordance with law. Consequently, this Court does not find any merit in the petition CRM-



*M-36154-2023 filed by the principal Mrs. Surjeet Khanna.”*

(emphasis added)

35. Thus, in *Surjeet Khanna (supra)*, the Punjab & Haryana High Court has held that the mother of the victim is not *per se* exempt from mandatoriness of reporting incidents; however, in light of the fact that there was a delay in lodging the FIR, the Court would have to hear the mother on reasons for said delay and thereafter apply its judicial mind to conclude whether said delay was justified or not.

36. Regarding delay in lodging an FIR in sexual offences in general, time and again, Courts have been mindful to consider various factors before drawing adverse inferences from the said delays. In *Tulsidas Kanolkar v. State of Goa* (2003) 8 SCC 590, Supreme Court observed as follows:

*“5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution*



*case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle.”*

(emphasis added)

37. In *State of Maharashtra v. Savala Sagu* 1997 Cri LJ 786, the Bombay High Court attempted a peek into the psychological state of mind of a prosecutrix who has been subject to a sexual offence and the possible repercussions, the resulting trauma might have. While doing so, it observed that:

*“36. We find considerable merit in Mrs. Pawar's contention. We wish to emphasise that any unmarried girl on account of her bashfulness and the circumstance that not only her own honour but that of her family was at stake, would have been extremely reluctant and loath to disclose to the police, her traumatic experience of being raped. It is only after efflux of time, when she is able to get over a part of her trauma, will she think of lodging the F.I.R. In our view, no mathematical time limit in lodging an F.I.R. can be fixed in cases of rape. Courts in such cases should adopt a realistic approach rather than one which is unimaginative and theoretical. After all our conduct in life is governed by brass realities.”*

(emphasis added)

38. Although in the present case, facts differ from the aforesaid precedents, this Court finds it apt, appropriate, and necessary to account for not only the psyche of the prosecutrix herein, a mere child, under the threat of the father, but also of the mother, herself under the subjugation of the husband/accused.





39. In *Shreekant Sharma v. State of West Bengal* 2023 SCC OnLine Cal 1961 before the Calcutta High Court, there was a delay of 2 years in lodging the FIR. While dealing with charges under Section 21, the Court observed as under:

*“16. The prosecution argues that there was a delay in filing the FIR because the victim was not believed by her own father when she informed him about the activities of his accused uncle. As soon as the first incident occurred during the festival of Rakshabandhan, 2018, she informed her father without delay, but he accused the victim of being a liar. As a result, when she was again assaulted after Diwali, 2019, she did not tell her father. Moreover, she did not inform her mother as she was going through matrimonial disputes for a long time and she herself was a victim of domestic abuse. But eventually when the victim confided in her brother and both of them went to confront their father, he assaulted his son and filed a complaint against them. They were made to sit in the police station for long hours as they went to complain and threatened there as well. After this incident, their own father lodged a complaint against them. The victim confided in her mother only after she decided to return to her matrimonial home as the MoU failed to reach a logical conclusion. She confided in her mother as she was afraid that she would have to go back to that place where she was assaulted twice. Therefore, there are enough reasons why there was a delay in FIR.”*

(emphasis added)

40. This Court had an interaction with the prosecutrix, who has now attained majority, and it was quite evident from the interaction, that her only



source of safety and protection was the mother, who herself was the victim of severe sexual abuse by the accused/father. The young girl was categorical and emphatic in what she shared. Without prejudicing the trial proceeding in FIR No. 515/2021 where the husband is the accused, in the considered opinion of the Court and basis an evaluation of the facts and circumstances, there ought to be no reason to prosecute the mother under Section 21 of POCSO.

**41.** In this context, a press release issued by the Ministry of Women and Child Development, Government of India, on 16<sup>th</sup> October 2018 at 18:33 IST on the website of the Press Information Bureau may also be adverted to, which reads as follows:

***“A Victim of Child Sexual Abuse can file a complaint at any time irrespective of his/her present age: WCD Ministry***

*The Ministry of Women and Child Development had recently consulted Ministry of Law in view of the overriding provisions of the Protection of Children from Sexual Offences (POCSO) Act over other criminal laws and provisions of mandatory reporting of such offences. The Ministry of Law after examining the provisions of POCSO Act vis-à-vis provisions of CrPC has advised that there appears no period of limitation mentioned in Section 19 in regard to reporting of the offences under the POCSO Act, 2012. The POCSO Act does not provide for any period of limitation for reporting the child sexual offences. On receipt of the opinion of Ministry of Law, Smt. Maneka Sanjay Gandhi, Minister of WCD stated that “Now any victim, at any age, can complain the sexual abuse faced by him/her as a child”. She urged the victims to report the cases through POCSO e-Box.*



Often, children are unable to report such crimes as the perpetrator in most cases is either a family member, a relative or closely known person. Studies have also shown that the child continues to carry the trauma of sexual abuse till very late in life. In order to overcome this trauma many grown up people have started coming out to report the abuse faced by them as children.

*The Protection of Children from Sexual Offences Act(POCSO), Act 2012, came into force on 14.11.2012. It is a gender neutral Act which has been enacted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation.*

*The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography.”*

(emphasis added)

#### An International Perspective

**42.** It may be instructive, if only, for academic purposes, to refer to the international jurisprudence on protection of children from sexual offences, in order to understand the purpose and context of mandatory reporting.

**43.** The *Convention on the Rights of the Child* adopted by the United Nations General Assembly on 20<sup>th</sup> November 1989 and ratified by India in 1992, requires state parties to undertake measures to prevent the following:

- a. The inducement or coercion of a child to engage in any unlawful sexual activity
- b. The exploitative use of children in prostitution or any other unlawful



sexual practices

- c. The exploitative use of children in pornographic performances and materials.<sup>1</sup>

**44.** While most jurisdictions only have guidelines for failure to report and not delay, repercussions of the same vary from country to country. A duty of care exists in all commonwealth jurisdictions, towards the child. If she fails to report sexual abuse, duty of care has been breached when she fails to take reasonably practicable steps to avoid foreseeable and significant injury. However, considering that the mother was also a victim, a requirement to report may not fall under reasonably practicable steps. Tort law traditionally excuses the failure to report, so would excuse delay when reporting is present.<sup>2</sup>

**45.** In several Australian jurisdictions, mandatory reporting provision is present but mandatory reporters are defined, not including parents but occupations that come in contact with children. However, a voluntary report can be made. Failure to report results in fine if prosecuted. The Family Law Act 1975 envisages mandatory reporting duty for personnel from the Family Court of Australia, Federal Circuit Court of Australia, the Family Court of Western Australia, and other designated practitioners. This includes the CEO, senior registrars, registrars and deputy registrars, family consultants, family counsellors, family dispute resolution practitioners, arbitrators, and lawyers

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<sup>1</sup> Article 34, UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989, <https://www.refworld.org/legal/agreements/unga/1989/en/18815> [accessed 10 September 2024].

<sup>2</sup> Pg 406 “Breaking the Silence: Tort Liability for Failing to Protect Children from Abuse”, Mary Kate Kearney <https://core.ac.uk/download/pdf/236349395.pdf> [accessed 10 September 2024]



independently representing children's interest.

**46.** In the United States of America, the Child Abuse Prevention and Treatment Act, 2023 [“*CAPTA*”] needs each state to have provisions or procedures to report known or suspected incidents of child abuse and neglect, including a state law for mandatory reporting by individuals required to report said incidents.<sup>3</sup> Approximately 46 states have a mandatory reporting requirement for designated professions – each state is different in terms of statutes that outline the designated professions but most commonly included are health-care workers, teachers, principals and other school personnel, social workers, law enforcement officers, mental health professionals, child care providers, members of the clergy and medical examiners or coroners.<sup>4</sup>

**47.** In the United Kingdom, there is a statutory guidance, but no statutory requirement of mandatory reporting. The UK Government in 2022-2024 filed a Consultation on Mandatory Reporting of Child Sexual Abuse, detailing various suggestions including schools and persons in a position of trust (people working as care workers, youth justice staff and more) etc.<sup>5</sup> Parents are not mentioned and no particular sanction is present in law against mandatory reporting or delay in reporting.

**48.** In the Canadian jurisdiction, everyone is a mandatory reporter of child

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<sup>3</sup> 42 U.S.C. § 5106a(b)(2)(B)(i), Federal Child Abuse Prevention and Treatment Act, enacted on January 5 2023.

<sup>4</sup> Child Welfare Information Gateway. (2023). Mandatory reporting of child abuse and neglect. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/topics/systemwide/laws/policies/statutes/reporting/> [accessed 09 September 2024]

<sup>5</sup> Government Response to Consultation Paper 'Mandatory Reporting of Child Sexual Abuse', Tackling Child Sexual Abuse Unit, Home Office, UK Government published on 08<sup>th</sup> May 2024 <https://assets.publishing.service.gov.uk/media/663b38141834d96a0aa6d200/Mandatory+Reporting+Consultation+Response.pdf> [accessed 07 September 2024]



sexual abuse due to the “*Duty to Report*”<sup>6</sup> under Canadian child welfare laws.

**49.** Within the jurisdiction of South Africa, mandatory reporting legislation has been present under Section 110, Children’s Act 2005 which sets out a list of designated professions.<sup>7</sup> Reporting of a sexual offence must be done immediately according to Section 54 (1)(a) of the Sexual Offences Act, 1957.<sup>8</sup>

**50.** In Nigeria, child sexual abuse is prosecuted under the Child’s Rights Act 2003 which makes sexual intercourse with a child punishable by life imprisonment,<sup>9</sup> and other forms of sexual abuse and exploitation punishable with a term up to fourteen years<sup>10</sup>. No mention of mandatory reporting or penalties for failure to report child abuse exist under this jurisdiction, however, the enactment of the aforesaid Act establishes a duty to protect children and puts the best interest of a child to be of paramount consideration in all actions.

**51.** In Philippines, child abuse is prosecuted under the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, 1991.<sup>11</sup> Mandatory reporting requirements are set out under the Law Against Violence Against Women and their Children, 2004 which casts a duty upon designated professions being *inter alia* Barangay officials and law enforcers,<sup>12</sup> and healthcare providers<sup>13</sup>. Failure to report is punishable with a fine of not more

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<sup>6</sup> Child, Family and Community Service Act, 1996, § 14, [RSBC 1996] CHAPTER 46 (Canada).

<sup>7</sup> Children’s Amendment Act, § 110, No. 41 of 2007, Pretoria: Government Printer, 2010 (South Africa).

<sup>8</sup> Sexual Offences Act, 1957, § 54, No. 23 of 1957 (South Africa).

<sup>9</sup> Child’s Rights Act, 3003, § 31, Act No. 26 of 2003, (Nigeria).

<sup>10</sup> § 32 supra.

<sup>11</sup> Republic Act No. 7610 (Philippines).

<sup>12</sup> § 30, Republic Act No. 9262 (Philippines).

<sup>13</sup> § 31 supra.



than ten thousand pesos.<sup>14</sup>

**52.** Lastly, in New Zealand, child sexual abuse is governed under the Vulnerable Children Act 2014 which sets out specified offences for sexual conduct with a child or a young person.<sup>15</sup> However, there is no mandatory reporting requirement for child sexual abuse, but some organizations have a mandatory reporting policy for their employees.<sup>16</sup>

**53.** Perusal of laws pertaining to mandatory reporting around the world with various punitive consequences attached to it highlights that such provisions are enacted, so as to ensure deterrence against child sexual abuse and not in order to punish a victim which, unfortunately in a household with domestic violence, is at times inseparable. Mandatory reporting laws vis-à-vis child sexual abuse are designed with the intention to stop abuse against a child. There cannot be a straight-jacket formula where complex depraved conduct is involved and, as is the present case, along with the prosecutrix, the petitioner herself was under a threat from the accused person.

### **Conclusion**

**54.** Through the above discussion, this Court has endeavoured to traverse the law pertaining to mandatory reporting of child sexual abuse and the rationale behind incorporation of Section 19 and 21 of the POCSO Act.

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<sup>14</sup> Supra note 30.

<sup>15</sup> § 3 under Schedule 2, Vulnerable Children Act 2014, Public Act No. 40 of 2014 and § 128B, Crimes Act 1961, Public Act No. 43 of 1961 (New Zealand).

<sup>16</sup> “Reporting Abuse – Actual or Suspected: Frequently Asked Questions” by New Zealand Nurses Organisation <https://www.nzno.org.nz/LinkClick.aspx?fileticket=BTyMUO5JqE%3D&portalid=0> [accessed 10 September 2024].



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**55.** In light of the same, letting the charge under Section 21 POCSO against petitioner, in the facts and circumstances of this case, would cause grave prejudice to not just the petitioner who herself is a victim, but also to the prosecutrix who is solely dependent upon her mother/petitioner for support.

**56.** Accordingly, present revision petition is allowed and is disposed of, accordingly. Charges framed against the petitioner under Section 21 POCSO are hereby set aside. The trial shall proceed ahead against the main accused i.e. the husband, in accordance with law.

**57.** Pending application *CRL.M.A. 20393/2024* is also disposed of.

**58.** Judgement be uploaded on the website of this Court.

**ANISH DAYAL, J**

**SEPTEMBER 11, 2024/RK/sc**