



Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO.3 OF 2022

The State of Goa thr.

Women Police Station, Panaji

... Applicant

Versus

... Respondent.

Mr. Pravin N. Faldessai, Additional Public Prosecutor *for the Applicant.*

CORAM: BHARAT P. DESHPANDE, J.

DATE: 10th September, 2024.

P.C.

1. Heard Mr Pravin Faldessai, learned Additional Public Prosecutor for the Applicant State.
2. Even though the respondent is duly served, he failed to appear in the present matter.
3. On 28.07.2022, this Court has recorded as under:-

`P.C.

1. Advocate Ryan Menezes submits that he has instructions to appear on behalf of the Respondent and seeks time of two weeks to file Vakalatnama.

2. Time granted. Stand over to 29.08.2022.'

4. However, till date, no one appears on behalf of the respondent.
5. The challenge in the present revision is to the order dated 21.09.2021 passed by the learned Children's Court whereby the respondent was discharged from the offence punishable under Section 8(2) of the Goa Children's Act only on the ground that the victim was 16 years 4 months old on the day of the alleged incident which occurred on 14.02.2021.
6. Mr Faldessai would submit that, first of all, such findings are perverse to the record itself and, more specifically, to the statement of the victim. He submits that though a complaint was filed on 16.02.2021, the alleged incident was much prior to that day and even continued when the victim was minor, i.e. below the age of 16 years.
7. Mr Faldessai, while pointing out to the statement of the victim would submit that the learned Children's Court completely lost sight of such statement which would clearly go to show that the overt act of the accused started much prior to the date when the complaint was lodged and which actually started when the victim was in the Seventh Standard and probably about a year or so before the alleged incident. The chargesheet came to be filed by the Women Police Station, Panaji, against the respondent for various offences under IPC along with Section 8(2) of Goa Children's Act and Sections 4, 5, 6, 8, 9, 10, 11 and 12 of POCSO Act.

8. The chargesheet was presented before the Children's Court on the premise that the victim was minor and even below 16 years of age at the time of alleged offence, thereby giving jurisdiction to the Children's Court to try the offences including the offences under the IPC as well as under POCSO Act.

9. During the investigation, the statement of the victim was recorded and that too, in the presence of Victim Assistance Unit. Medical examination of the victim was carried out and the report is placed on record.

10. The report clearly shows that the victim is the daughter of the accused. There are serious allegations against the accused by his own daughter. The statement recorded by the investigating agency on 16.02.2021 would clearly reveal that the last such act was committed on 14.02.2021. However, thereafter, the victim has narrated that such acts were performed on her forcibly by the accused even on earlier occasions. She has narrated the details and stated that such overt acts started when she was in the Seventh Standard. She also disclosed that she left school about a year back.

11. The impugned order would show that the trial Court has only considered the alleged incident which occurred on 14.02.2021 and not the statement of the victim which discloses some acts performed by the accused on earlier occasions, spanning over a period of around one year prior to 14.02.2021.

12. The learned trial Court failed to consider such aspects and observed that on 14.02.2021, the victim was above 16 years.

13. As per the birth certificate, the date of birth of the victim is 30.09.2004. It may be correct that on 14.02.2021 the victim was above 16 years of age. However, that is not the sole incident which the victim has disclosed in the statement. Such overt acts were performed by the accused even prior to 14.02.2021, which are found in the statement of the victim. She has clearly disclosed that such acts started somewhere when she was in Seventh Standard, which means, around a year prior to 14.02.2021. Thus, if said statement is taken into account as the date of starting of such acts which is required to be taken into account as offences under the Children's Act, the victim was certainly below the age of 16 years. Thus, the observations of the learned Children's Court in the impugned order are found to be perverse and incorrect.

14. The impugned order, therefore, needs to be interfered with. Accordingly, the order dated 21.09.2021 in Sp. Case No.29/2021, thereby discharging the accused/respondent for the offence punishable under Section 8(2) of the Goa Children's Act, 2002, is hereby quashed and set aside. The matter is, therefore, remanded back to learned Children's Court since it is reported that the chargesheet was returned to the Investigating Officer for presenting it before the learned Sessions Court/POCSO Court.

15. The concerned Sessions Court/POCSO Court is, therefore, directed to hand over the chargesheet to the Children's Court. The case which was registered before the Children's Court bearing Sp. Case No.29/2021 is, accordingly, restored.
16. The respondent to appear before the Children's Court on 23.09.2024 at 10:00AM. In the meantime, the file shall be transferred to the Children's Court.
17. Copy of this order be forwarded to the learned Principal District & Sessions Judge, North Goa, for issuing necessary directions to the concerned Court.
18. Revision Application stands disposed of.

BHARAT P. DESHPANDE, J.