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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SMT. JUSTICE ANJULI PALO
ON THE 20th OF APRIL, 2022**

CRIMINAL REVISION No. 2527 of 2021

Between:-

**HIMANSHU GANDHI
S/O SHRI ADARSH GANDHI,
AGED ABOUT 21 YEARS,
OCCUPATION: STUDENT
R/O EM-25/302, IBD HALL MARK
CITY, BHOPAL**

.....APPLICANT

**(BY SHRI AJAY MISHRA, SENIOR COUNSEL ALONG WITH MR.
ARPIT KUMAR TIWARI, ADVOCATE)**

AND

- 1. THE STATE OF MADHYA PRADESH THR. P.S.
KOLAR ROAD POLICE STATION KOLAR
ROAD, BHOPAL (M.P.) (MADHYA PRADESH)**
- 2. VICTIM "A" D/O NOT MENTION NOT
MENTION (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1 BY MS. GEETA YADAV, PANEL LAWYER)

*This revision coming on for hearing this day, the court passed the
following:*

ORDER

This revision has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure challenging the order dated 23.09.2021 passed by learned 23rd Additional Sessions Judge/Special Judge under the Protection of Children from Sexual Offences Act, 2012 in ST No.10/2021 whereby charges for offences punishable under Sections 354, 354-A (1) (i), 354-D and 504 of the Indian Penal Code and Section 9 (l)(m)/10 of the Protection of Children from Sexual Offences Act, have been framed against the applicant.

2. Learned Senior Counsel has challenged the impugned order framing charges on many grounds. The applicant and the prosecutrix are neighbours and there is enmity between the parties and the applicant had

earlier made complaints against the mother of the prosecutrix due to neighbourhood disputes. It is contended, inter alia, that the mother of the minor prosecutrix deliberately refused for her medical examination. It is vehemently contended that there is no ingredients for framing charges under Sections 504, 354 and 354D of the IPC. Learned Senior Counsel has drawn the attention of this Court to Section 3 of the Protection of Children from Sexual Offences Act and contends that no ingredients as provided in Section 3 of the Act which deals with the penetrative sexual assault, is available with the prosecution. The trial Court has committed error in law in framing charge under Section 504 of the IPC against the applicant because even in the charge-sheet offence under Section 504 of the IPC was not alleged.

3. Learned Panel Lawyer has vehemently opposed the contentions raised by learned Senior Counsel for the applicant by placing reliance on the decision of Hon'ble the Supreme Court in the case of **Attorney General for India v. Satish and Another**, Criminal Appeal No.1410 of 2021 decided on 18.11.2021.

4. Heard learned counsel for the parties and perused the record. The allegation against the applicant is that he used to forcibly kiss on the lips of the prosecutrix who is aged about seven years and nine months.

5. In this context, it is appropriate to refer to the decision in the case of **Raju Prasad v. State of Sikkim**, 2019 SCC OnLine Sikk 4 wherein in paragraph 19 it has been held as follows:

"19. The crucial question is whether forcibly kissing the minor victim a girl child of 11 years of age and hugging her amount to "aggravated sexual assault" as defined in Section 9 (m) of the POCSO Act, 2012. Whoever commits sexual assault on a child below 12 years is said to have committed aggravated sexual assault. "Sexual assault" is defined in Section 7 of the POCSO Act, 2012. Whoever, with sexual intent touches

the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. The act of forcibly kissing the minor victim, a child below 12 years of age and hugging her in the back seat of a car in the absence of her guardian by a 27 year old male cannot but be with sexual intent. The act of forcibly kissing and hugging involves physical contact although without penetration. Thus it is cogent that the said act amounts to sexual assault. As the sexual assault was committed on a child below 12 years of age it amounts to aggravated sexual assault as defined under Section 9 (m) of the POCSO Act, 2012."

6. In this context, it is appropriate to refer to the decision of Hon'ble the Supreme Court in the case of **Attorney General for India v. Satish reported** in AIR 2022 SC 13 wherein a three-Judges Bench of the Hon'ble Supreme Court considered the expression "sexual intent" used in Section 7 of the POCSO Act. It was argued on behalf of the accused in that caes that "sexual intent" having not been explained in Section 7, it cannot be confined to any predetermined form or structure and that it would be a question of fact, however, the expression physical contact used in Section 7 has to be construed skin to skin contact cannot be accepted. It was observed by the Hon'ble Supreme Court that restricting the interpretation of the words "touch" or "physical contact" to "skin to skin contact" would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. "Skin to skin contact" for constituting an offence of "sexual assault" could not have been intended or contemplated by the Legislature.

The very object of enacting the POCSO Act is to protect the children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case touching the sexual or non sexual parts of a body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault under Section 7 of the POCSO Act. The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the "sexual intent" and not the "skin to skin" contact with the child.

7. Finally the Hon'ble Supreme Court in the aforesaid decision has held that the interpretation of Section 7 on the premise of the principle of "ejusdem generis" would defeat the very legislative intent because a restrictive interpretation of the expression "any other act" taking the aid of "ejusdem generis" Rule would defeat the very legislative intent for which the POCSO Act is enacted. As per the settled legal position, if the specific words used in the Section exhaust a class, it has to be construed that the legislative intent was to use the general word beyond the class denoted by the specific words. So far as Section 7 of the POCSO Act is concerned, the first part thereof exhausts a class of act of sexual assault using in specific words, and the other part uses the general act beyond the class denoted by the specific words. In other words, whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, would be committing an offence of sexual assault. Similarly, whoever does any other act with sexual intent which involves physical contact without penetration, would also be committing the offence of "sexual assault" under Section 7 of the POCSO Act.

8. That apart, at the time of framing of charge, meticulous analysis is not necessary. At the stage of framing of charge, the Court has to see whether the material on record would reasonably connect the accused with the crime. No more is required to be enquired into. Only prima facie case is

to be seen. The question, whether the charges have been proved or not can be determined only after the evidence is recorded in the case. Whether the case is beyond reasonable doubt is not to be seen at this stage. If the Court comes to the conclusion that commission of offence is of probable consequence, a case for framing of charge exist. Probative value of material on record cannot be gone into at this stage. The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court has to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. [See: **Sanghi Brothers Indore Private Ltd. v. Sanjay Choudhary**, AIR 2009 SC 9; **Hemchand v. State of Jharkhand**, AIR 2010 SC 1903; **State of Orissa v. Devendra Nath Paadi** (2005) 1 SCC 568; **Sajjan Kumar v. CBI**, (2010) 9 SCC 368; **State through Central Bureau of Investigation v. Dr. Anup Kumar Srivastava**, AIR 2017 SC 3698; **State of Inspector of Police, Chennai v. S. Selvi and another**, 2018 (1) SCALE 5]

9. The grounds raised by learned Senior Counsel including the ground of false implication of the applicant due to previous enmity because of neighbourhood disputes, are the matter of evidence which can be availed by him at the time of his defence in trial. Therefore, the impugned order framing charges against the applicant does not suffer from any illegality or infirmity warranting interference by this Court in exercise of its revisional jurisdiction.

10. Accordingly, the **revision is dismissed.**

(SMT. ANJULI PALO)
JUDGE

