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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 21.04.2025*+ **CRL.REV.P. 247/2024 & CRL.M.A. 5586/2024**

MOTHER X OF VICTIM APetitioner

Through: Mr. Anuj Kapoor and Mr.
Shivom Sethi, Advocates

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****Index to the Judgment**

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DR. SWARANA KANTA SHARMA, J

1. The issue in this case requires this Court to appreciate – not just the facts in isolation – but also the social and familial context in which the alleged offences occurred. Cases involving sexual abuse, particularly against children, cannot be adjudicated by the Courts in a vacuum, divorced from the lived realities of those involved. Law, while often written in black and white, must be applied with sensitivity to the hues of human experience.

2. The petitioner, who is the mother of the minor victim in this case, has assailed – by way of this revision petition – the orders dated 23.11.2023 and 05.12.2023 [hereafter also referred to as ‘the *impugned orders*’] passed by learned Additional Sessions Judge, Special Court (POCSO), South District, Saket Courts, New Delhi [hereafter ‘*the Sessions Court*’] in SC No. 167/2020, vide which charges were framed against her for offence punishable under Section 21 of the Protection of Children from Sexual Offences Act, 2012 [hereafter ‘*POCSO Act*’].

FACTUAL BACKDROP

3. The case arises out of the following factual background: A PCR call was received on 20.01.2020 vide DD No. 36A at Police Station (P.S.) Malviya Nagar at 03:52 PM, wherein the petitioner herein had reported that she had been physically assaulted by her in-laws. Later, the petitioner, on the same day, had dialed the helpline number of Delhi Commission for Women [hereafter ‘*DCW*’] at 04:52 PM reporting sexual assault of her 10-year-old minor daughter by her



husband and the two sons of her sister-in-law. Additionally, she also reported that she was physically assaulted by her in-laws.

4. Thereafter, the petitioner herein, along with the victim i.e. her daughter, had gone to P.S. Malviya Nagar, wherein the victim disclosed that about five-six months ago, the accused MDN i.e. her father, had touched her private parts inappropriately. She further disclosed that when she was alone at her home about four-five months ago, her father had shown her obscene videos on his mobile phone. She further stated that subsequent to the aforesaid incident, her cousin 'DS' had also subjected her to sexual assault, and two-three months thereafter, the younger brother of DS, i.e. CCL 'A', aged 12 years, on the pretext of playing with her, had also sexually assaulted her. On the basis of the victim's statement, the FIR bearing no. 24/2020, dated 21.01.2020, was registered at P.S. Malviya Nagar, Delhi for offence under Sections 354/376DB of the Indian Penal Code, 1860 [hereafter '*IPC*'], and Sections 6/10/12 of the POCSO Act.

5. On the same day, the minor victim was medically examined at AIIMS Hospital, Delhi wherein she reiterated the alleged history of sexual assault. Thereafter, her statement was recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*']. In the said statement, the victim narrated the incidents of sexual assault by accused persons namely MDN (her father), and DS and CCL 'A' (cousin-brothers), wherein she reiterated that four-five months ago, when she was alone



at home, her father had sexually assaulted her, and three-four months ago, the father had shown her obscene videos on his phone, and that four-five months ago, her cousin 'DS' had sexually assaulted her more than two-three times. She also mentioned about CCL 'A' had tried to misbehave with her three months ago but had failed to do so since her mother (i.e., the petitioner) had intervened.

6. Thereafter, on 10.09.2020, chargesheet was filed before the learned Sessions Court, including against the petitioner herein for offence under Section 21 of POCSO Act. The learned Sessions Court vide order dated 05.11.2020, had directed the concerned Investigating Officer (I.O.) to verify the facts as to whether the petitioner herein had made any complaint regarding sexual assault upon the minor victim. In light of the same order, the I.O. had submitted a report wherein it had been reported that the petitioner had previously made three PCR calls dated 16.01.2020 (DD no. 31A), 18.01.2020 (DD no. 36A) and 20.01.2020 (DD no. 36A) wherein she had only reported physical assault by her in-laws and nowhere mentioned about the sexual assault faced by the minor victim.

7. Eventually, the learned Sessions Court, by way of the impugned order on charge dated 23.11.2023, found the present petitioner liable to face trial for offence under Section 21 of POCSO Act. Formal charges were framed against the petitioner vide order dated 05.12.2023.

8. The relevant findings of the learned Sessions Court in order dated 23.11.2023, insofar as the role of present petitioner is



concerned, are set out below:

“...15. Having heard the rival submissions of parties and after perusal of record, it is clear from the statement of the victim and other witnesses u/s 161 & 164 of CrPC including the alleged history given at the time of medical examination that 5-6 months prior to the registration of present FIR, when the victim was sleeping at her house, accused "MDN" who happens to be her father touched her perineum and breast inappropriately. Further, accused "DS" who happens to be the cousin brother of the victim after swinging the victim in his lap had touched her breast and inserted his finger in her vagina and this wrong act was being committed repeatedly about two years prior to the present case. Furthermore, around 4-5 months ago, when the victim was alone in her house, accused "MDN" showed her obscene videos and she informed about all the said incident to her mother accused who did not bother to inform about the incident to the police. By the aforesaid acts, accused "MDN" had outraged the modesty of the victim, had physical contact with the victim and sexually harassed her by making advances involving unwelcome and explicit sexual overtures and also sexually assaulted the victim by touching her breast and vagina. It is also clear that the accused "DS" had committed repeated penetrative sexual assault/ rape upon the victim. The accused despite having knowledge of the said acts, had not approached any competent authority. Thus, the arguments that to offence is made out has no leg to stand at this stage of prima facie case. Further, with due respect, the case laws relied upon on behalf of the accused have no application to the facts of the present case as in the present case, one and incident is stated to have happened in front of the accused even that event was not reported. Further, there was no reason to disbelieve the version of the victim and the defence raised by the accused is a matter of trial and the case laws relied upon on behalf of the accused have no application to the facts and circumstances of the present case as those are related to the cases after full fledged trial while the present case is at the stage of framing of charge. Further, the defence of the accused "MDN" that he is not mentally fit is also a matter of trial. Otherwise also the accused will have full opportunity to rebutt the veracity of the facts after full fledged trial.

18. In view of the aforesaid discussions, law laid down in the aforesaid cases and in view of the statement of complainant and other witnesses, prima facie, there are sufficient materials available on record to frame charges against accused as under-



- (i) Accused "MDN" for offence punishable u/s 354/354A of IPC & section 10 of POCSO Act;
 - (ii) Accused "DS" for offences punishable u/s 376AB of IPC & section 6 of POCSO Act;
 - (iii) Accused XXXX for offence punishable u/s 21 of POCSO Act.
19. Be put up for framing of formal charge on 05.12.2023.”

SUBMISSIONS BEFORE THE COURT

9. The learned counsel appearing for the petitioner argues that the petitioner herself has been a victim of domestic violence at the hands of her husband and in-laws. It is contended that the petitioner herein, being illiterate, was unaware of the remedies available to her and she had tried multiple times to inform her in-laws about the abuse she and the victim had suffered in the house; however, they had not believed her and, instead, had questioned their character, and further subjected the petitioner to both physical and emotional cruelty, and had blamed her for attempting to break the family bonds. It is also submitted that the social circumstances surrounding the petitioner also had not allowed her to report the matter. It is contended by the learned counsel that it is not a case of failure to report or non-reporting of offence, but a case of slight delay in doing so. It is also argued that the learned Sessions Court could not have ignored the fact that it was the petitioner only who had called the police, DCW and taken the minor victim to the police station to lodge the complaint. It is further submitted that in the statement of the victim, the victim herself had acknowledged the efforts made by the petitioner herein after the incident of sexual assault; however, the



learned Sessions Court ignored the victim's statements while passing the impugned order. Therefore, it is prayed that the impugned orders, framing charge against the petitioner under Section 21 of POCSO Act, be set aside.

10. The learned APP for the State, on the other hand, argues that the allegations in the present case are serious in nature. He, however, fairly submits that initially the police had not arrayed the petitioner as an accused since she had approached the police station along with the victim to lodge the complaint.

11. This Court has **heard** arguments addressed by both the parties and has perused the material placed on record.

ANALYSIS & FINDINGS

The Issue

12. The primary issue that arises for consideration is whether the charge under Section 21 of the POCSO Act can be sustained against the petitioner, who is the mother of the victim and the initial informant of the offence.

Understanding Section 19 and 21 of POCSO Act

13. Section 19 of the POCSO Act pertains to 'Reporting of offences' under the POCSO Act. Section 21 provides for the 'Punishment for failure to report or record a case'. The relevant extract of these provisions is set out below:



“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.

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. (3) The provisions of sub-section (1) shall not apply to a child under this Act.”

14. Section 19 of POCSO Act imposes a mandatory duty on any person, including the child, who either apprehends the likelihood of an offence under the Act being committed or has knowledge of its commission, to report the same to the local police or the Special Juvenile Police Unit. The provision creates a legal obligation to report and prescribes the procedural steps to be followed once such a report is made. Section 21 of POCSO Act, in turn, stipulates the consequences of non-compliance with this obligation. It provides that



any person who fails to report such an offence, or fails to record the same as required, shall be liable for punishment, which may include imprisonment, fine, or both. Thus, read together, Sections 19 and 21 of POCSO Act seek to ensure that offences against children under the Act are brought to the notice of law enforcement authorities and are not concealed or ignored by any person having knowledge thereof.

Assessment of the factual matrix and circumstances

15. In the present case, at the outset, it must be noted that the petitioner before this Court is not an outsider or a silent bystander to the commission of sexual offences against the minor child. She is the mother of the child victim and, as per the material on record, she herself had been a victim of domestic violence at the hands of her in-laws, including her husband who is the main accused in the present case.

16. The FIR and the statement of the victim under Section 164 of Cr.P.C. reveal a deeply disturbing environment in the domestic household, marked not only by repeated incidents of sexual abuse of the minor child by close family members, but also by the physical victimisation of the petitioner.

17. The statement of the victim recorded under Section 164 of Cr.P.C. paints a clear picture of the mother's own vulnerability and the hostile circumstances in which she lived. The victim disclosed that, shortly before the lodging of the complaint, she had returned from school and witnessed her maternal uncle (chacha) physically



assaulting her mother, pushing her to leave the house, and causing visible injuries upon her.

18. Moreover, the victim's statement recorded before the Court on 07.10.2023 further corroborates the petitioner's position. The victim child narrated that her mother had, at one point, slapped her cousin/accused DS upon seeing him inappropriately touch her. The petitioner had not only confronted the cousin but also informed her mother-in-law i.e. victim's grandmother about the incident. However, instead of support, the grandmother had discouraged the petitioner from escalating the matter, citing familial harmony and fear of tension with her daughter-in-law. It was also stated by the victim that the petitioner herein had lodged multiple complaints against her husband, brother-in-law, and in-laws, indicating that she had been trying to resist the violence and abuse in whatever ways were accessible to her within the constraints of her social and domestic environment.

19. It is therefore evident that the petitioner was not complicit in shielding the accused, but was herself suffering at the hands of the very persons she was expected to report. Despite being a victim of physical abuse and emotional isolation, she eventually became the first person who took the crucial step of contacting the Women's Cell, dialling the DCW helpline, and accompanying her daughter to the police station to lodge the FIR in question. The medical examination of the minor victim and the initiation of legal proceedings only occurred due to the petitioner's intervention.



20. The prosecution's allegation – that the petitioner had failed to report the offence in a timely manner, and was thus liable to face charge under Section 21 of POCSO Act – must be examined in this socio-psychological and factual context. The statements of the minor victim reveal that while her mother did not believe her immediately when she first made the disclosure, this scepticism may have stemmed from the child's additional statement that her father was of unsound mind. In this Court's view, the petitioner's initial doubt in believing such allegations may not reflect wilful neglect on her part, but rather a complex psychological response shaped by years of abuse, dependency, and survival within a hostile matrimonial environment.

21. Furthermore, the petitioner's statement was also recorded under Section 164 of Cr.P.C. wherein she had revealed her uncertainty regarding the course of action she could take after discovering the commission of offence against her daughter. She stated that once she became aware of the women's helpline, she had promptly contacted it and took her daughter to the police station. She also admitted to being ridiculed and dismissed by her in-laws when she had tried to raise concerns about the safety of her daughter in the house, which would have further compounded her hesitation and fear.

22. In similar facts and circumstances, the Coordinate Bench of this Court, in case of *Rupi Babbar v. State (NCT of Delhi): 2024 SCC OnLine Del 6485*, after taking note of the intent of Section 21 of POCSO Act and worldwide guidelines for failure to report and/or



delay in reporting sexual offences, had discharged the petitioner therein, who was the mother of the minor victim, who herself was a victim of domestic violence at the hands of her husband i.e. the accused therein. The relevant observations of the said decision are extracted hereunder:

“25. The narrative provided, by both the mother and the child, in the complaint, and the Section 164CrPC statements recorded before the learned 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.

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 defence 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 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 2 has reported the case to the authorities concerned, in pursuance of which, the present FIR was registered.”

(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.

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 of 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 the Pocso.

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.”

23. Significantly, the material on record in the present case shows that the police itself did not consider the petitioner an accused at the initial stages. She was considered as a witness in the early part of the investigation and even named in the list of witnesses, and it was only



later, that the investigating agency had chosen to arraign her as an accused for commission of offence under Section 21 of POCSO Act. No explanation is forthcoming as to what change in evidence or circumstance prompted this shift.

24. In the considered opinion of this Court, the mother in the present case could have served as a valuable and credible witness, and in fact – the best witness in this case – since she had directly witnessed one of the alleged incidents and was the person in whom the minor victim had first confided.

Non-reporting vs. delayed reporting of offence

25. It is well-settled that Section 21 of POCSO Act is intended to ensure reporting of sexual offences against children. However, the law must be applied with sensitivity to the lived realities. The object of this provision is not to criminalise delayed reporting in circumstances of duress, especially by individuals who are themselves survivors of violence. In the present case, the delay, if any, is explained by the abuse the petitioner herself endured in her matrimonial home, the absence of social and familial support, and the initial disbelief in such allegations that understandably would have clouded her perception. But it cannot be ignored that eventually, it was the petitioner only who ensured that the offence committed against her daughter came to light and legal action was initiated.

26. The distinction between non-reporting and delayed reporting is of critical importance here. Clearly, Section 21 of POCSO Act deals



with ‘non-reporting’ and not ‘delay in reporting’ of offence. This is not a case where the petitioner had actively concealed the offence or attempted to shield the perpetrators. On the contrary, her conduct – though delayed – is marked by eventual courage, initiative, and the instinct to protect her child, even at great personal risk. The mother in the present case did not suppress the offence indefinitely. Once she gathered the courage, it was she who contacted the authorities, took her child to the police station, and in fact, became the first witness in her daughter’s journey to justice. Such conduct, emerging from a background of cumulative trauma, cannot and should not be equated with criminal culpability. To prosecute the petitioner under these circumstances would amount to punishing her for the very abuse she endured. Such a reading of the law would defeat the very spirit and intent of the POCSO Act, which is to protect vulnerable children through the cooperation of equally vulnerable caregivers, not through their prosecution.

The child’s shattered trust and the role of mother

27. A child’s sense of safety, trust, and emotional strength comes primarily from two sources – his or her father and mother. When one of those sources, such as a father in this case, becomes the abuser, the child’s entire foundation of trust is shaken. In this case, the child did not have the protection of her father, and the father, who should have been a refuge, turned into a threat. That leaves only one person to whom the child could turn to, – her mother. But when the mother herself is living under constant fear, abuse, and violence inflicted by



the same man, her capacity to protect, act, or even process the truth is also deeply impaired. It is vital for the Courts to understand the state of helplessness and paralysis that may result in such a traumatic environment.

28. It is also material to consider that trauma is not confined to a single victim in case of sexual abuse especially within the close family. When a child suffers sexual abuse, the psychological wounds do not stop at her – they also extend to the mother, particularly when she discovers that the abuse had occurred within her own household. A mother may experience immense guilt, helplessness, shame, and pain in such circumstances. This secondary trauma can affect her ability to act promptly, to process legal remedies, or to even narrate the events coherently. To expect such a person to immediately report the incident without delay or confusion is to deny her empathy and sensitive humane approach crucial in such cases. The law must recognise that trauma is not linear – it affects people in complex ways, and that includes delay, silence, or hesitation in reporting.

29. The connection between a mother and her child is one of the deepest and most intuitive forms of human attachment. It does not end with the cutting of the umbilical cord – it transcends words, space, and time. The pain of the child is often felt by the mother even when it is not expressed. A mother senses what her child endures. In a society where mothers are often expected to be protectors, caregivers, and emotional anchors, the failure to act immediately is not always a reflection of neglect – it can also reflect the immense



internal struggle she is going through, especially when the threat lies within the very walls of her home.

The complexities of reporting sexual abuse: A mother's dilemma

30. The socio-economic status, education, gender, and cultural background of the person accused must be considered when assessing their conduct. In India, stigma around reporting sexual violence – particularly incest – is profound. Many families fear social ostracisation, damage to their daughter's future prospects, or being labelled dishonourable. For a mother, reporting the sexual abuse of her daughter by her husband or his relatives can be emotionally and socially devastating. The fear is not abstract, but real. Many such women may hesitate, delay, or struggle to decide what to do. The law must recognise this hesitation not as guilt, but as a human response to a deeply complex situation. Courage does not always come instantly, it sometimes takes time to build, and the fact that she eventually stood up must be honoured, not punished.

Importance of social context in criminal adjudication

31. It is often said that justice must not only be done but must also be seen to be done. However, justice can never be complete if it is blind to the social realities in which people live. In criminal cases, especially those involving sexual offences within families, it becomes important for courts to look beyond the law as it is written in black and in white. A mechanical reading of statutes may result in identifying a person as an "accused", but without understanding the



lived experience and vulnerabilities of that person, such identification may amount to grave injustice. For instance, as in the present case, where a child is sexually abused by her father, the mother of the child is not merely a bystander – she is also a victim in her own way. The pain of the child travels to the mother. In such complex and sensitive scenarios, the black-and-white text of the law must be interpreted through the lens of human reality, otherwise we risk losing the very thread by which justice is served to the people it is meant to protect.

Where law meets life: A judge's daily encounter with humanity

32. While judges are definitely not lawmakers, they are uniquely placed to see the real-life consequences of legal provisions on ordinary people. Every day, courts become the space where the law meets the human condition. Judges see, hear, and understand the struggles, fears, and vulnerabilities of those who seek justice. It is for this reason that judicial discretion must be exercised with compassion and contextual understanding. In applying any legal provision, especially those dealing with sexual offences and reporting obligations, the judge must ask: What were the actual circumstances? What could reasonably be expected of this person? What is real justice in this specific case?

33. In this Court's view, judges are not mere executors of the statute, but also the interpreters of law in its fullest sense. The role of a judge is not just to apply provisions, but to interpret them in light of the intent behind their enactment, more so, since Parliament which is the lawmaker in our country, enacts laws on the basis of the needs of



the community, and the intent behind enactment of such laws is often reflected in the debates that take place in the Parliament. The intent behind an enactment is always of crucial importance and at times, the guiding spirit for dispensing complete justice. Section 21 of POCSO Act, for instance, is intended to prevent suppression of sexual offences and ensure timely action in the best interest of the child. It is not meant to penalise those who, despite personal vulnerabilities, ultimately do report the crime. If judges begin to treat delay and silence – born out of trauma or social oppression – as criminality, we risk turning the protective intent of law into an instrument of oppression itself. Justice however cannot be sacrificed at the altar of technicalities.

The decision

34. In view of the foregoing discussion, this Court is inclined to allow the present petition since it finds no merit in the prosecution of the petitioner under Section 21 of POCSO Act. Framing charge for offence under Section 21 of POCSO Act against petitioner, in the facts and circumstances of the case, would cause grave prejudice to not just the petitioner who herself is a victim of domestic violence, but also to the minor victim who is dependent upon her mother for support. Thus, the charge framed against the petitioner for offence under Section 21 of POCSO Act, by virtue of impugned orders, is set aside.

35. The petition is accordingly disposed of, alongwith pending application, if any.



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36. The trial shall proceed ahead against other accused persons in accordance with law. The learned Trial Court will be at liberty to consider the mother as a witness and informant in whom the child has confided in and narrated her trauma to, as per law.

37. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 21, 2025/ns