

Ramniwas Kushwaha vs The State Of Madhya Pradesh on 19 February, 2025

Author: Maninder S. Bhatti

Bench: Maninder S. Bhatti

NEUTRAL CITATION NO. 2025:MPHC-JBP:8102

1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE MANINDER S. BHATTI
ON THE 19th OF FEBRUARY, 2025
CRIMINAL REVISION No. 4835 of 2024
RAMNIWAS KUSHWAHA
Versus
THE STATE OF MADHYA PRADESH
Appearance:
Shri Sharad Verma - Advocate for applicant.
Ms. Preeti Singh - Panel Lawyer for respondent-State.

ORDER

This is a revision assailing the order dated 22.08.2024 passed by Special Judge (POCSO Act), Sirmour District Rewa in S.C. No.04/2024 by which, the charges under Sections 351 (2) & 96 of Bhartiya Nyaya Sanhita, 2023 and Section 7/8 of The Protection of Children from Sexual Offences Act have been framed against the applicant.

2. Learned counsel for the applicant contends that the present applicant is being prosecuted for the offences alleged to have been committed by him under Sections 351 (2) & 96 of Bhartiya Nyaya Sanhita, 2023 and Section 7/8 of The Protection of Children from Sexual Offences Act.

3. Vide impugned order dated 22.08.2024, the trial Court has framed charge and the order of framing of charge is being partly assailed inasmuch as, the order of framing of charge in respect of a charge under Section 96 of BNS is unsustainable and accordingly, the same deserves to be set aside.

4. Learned counsel for the applicant contends that as per the FIR, the NEUTRAL CITATION NO. 2025:MPHC-JBP:8102 2 CRR-4835-2024 victim who is student of Class-VIII complained that the present applicant who was working as Driver of Principal of the School came to fill the water in a container and the victim who was also standing there was molested by the present applicant and thereafter, the present applicant persuaded the victim to come to the room of the applicant, however

the victim ran away. It is contended by the counsel that the allegations in the FIR are that the present applicant molested the victim and had also intention to sexually exploit the victim by compelling the victim to go to the applicant's room.

5. Therefore, the allegations even if are assumed to be true, it cannot be said that any offence under Section 96 of BNS has been committed by the applicant. It is contended by the counsel that Section 96 of BNS provides for procurement of child and to bring an Act within the scope of Section 96 of BNS, there has to be an Act compelling the child to go from any place to any other place for the purposes of intended illicit intercourse with another person. In the present case, no such allegations are there against the applicant that he had persuaded the child to go to any other place and as such, considering the allegations so levelled, by no stretch of imagination, charges could have been framed under Section 96 of BNS.

6. Learned counsel for the State has opposed the prayer and submitted that there are direct allegations against the present applicant and the allegations clearly reflect that the present applicant molested the victim and thus, the charge under Section 96 of BNS has been rightly framed as the applicant was making an attempt to take the victim to a room with intention to molest the victim, hence the revision deserves to be dismissed.

NEUTRAL CITATION NO. 2025:MPHC-JBP:8102 3 CRR-4835-2024

7. No other points is pressed or argued by the parties.

8. Heard the submissions and perused the record.

9. In the present case, the impugned order is being partly challenged as the grievance of the applicant only in respect of the charge framed under Section 96 of BNS. The contention of the counsel that Section 96 of BNS is not made out in the present case, in view of the allegations levelled against the present applicant.

10. To deal with the aforesaid contention, it is first apposite to appreciate the provisions of Section 96 of BNS, which provides as under:

Procurement of child: Whoever, by any means whatsoever, induces any child below the age of eighteen years to go from any place or to do any act with intent that such child below the age of eighteen years may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

11. A perusal of Section 96 of BNS stipulates that whosoever induces any child to go from any place or to do any Act with intend that such child may be, or knowing that it is likely that such child will be forced or seduced to illicit intercourse with another person shall be punishable with imprisonment.

12. The language of Section 96 of BNS, thus reveals that firstly there has to be a person who induces a child and the said inducement has an intention that the said child shall be forced to have intercourse with another person. The FIR lodged against the present applicant reflects that there are allegations that the present applicant molested the child and thereafter, asked NEUTRAL CITATION NO. 2025:MPHC-JBP:8102 4 CRR-4835-2024 him to accompany the applicant to applicant's room. It is nowhere stated in the entire FIR that the present applicant was forcing the victim to go to room as some other person had any intention to commit illicit intercourse with the victim. There are no such allegations in the FIR or in the statement of the witness.

13. To bring an Act within the four corners of Section 96 of the BNS, there has to be a third person to whom the child is being taken or to a place where a third person shall have illicit intercourse with the victim. In the case in hand, there is no mention of any third person in the entire case and the entire allegations are solely against the present applicant only.

14. Therefore, this Court finds force in the submission of the counsel for the applicant that no charge under Section 96 of BNS could have been framed.

15. Resultantly, the revision stands partly allowed. The impugned order of framing of charge so far as it relates to Section 96 of BNS stands set aside. It is clarified that the applicant shall be continued to be prosecuted for the charges framed under Section 351(2) of BNS and Section 7/8 of POCSO Act.

(MANINDER S. BHATTI) JUDGE mn