

Devender K. Sharma
Addl. Chief Magistrate
(North West District Court)
Rajasthan

194/13

S. Bharat Nagar

U/s 363/376/511 IPC & Section 8/10/12 of POCSO Act

03.08.2013

Pr: Ld. APP for the State.

Accused Om Prakash not produced from judicial custody.

Dr. Kullen Dass Medical Suptt. BJRM hospital.

Dr. Latika Phogat and Dr. Manas Dubey examining doctors from BJRM hospital are present in person.

Both the examining doctors are present in the Court in view of the direction given by the Court vide order dt. 26.07.13. On 26.07.13 this Court had perused the MLC of victim child prepared at BJRM hospital by the examining doctor. In the MLC of victim child, the examining doctor has given the opinion that "no sign suggestive sexual abuse". The perusal of this opinion reveals that same is in contradiction with the provision of "The Protection of Children from Sexual Offences Act 2012" and Section 375 of IPC. It appears that the medical opinion was given only on assumption of penetrative sexual assault which is contrary to the new definition of sexual abuse/assault as incorporated under the provision of POCSO Act and Section 375 of IPC. The definition of sexual abuse/assault has been changed by the latest introduced POCSO Act and Section 375 of IPC. As per definition of sexual assault/abuse/harassment in Section 3,7 and 11 of POCSO Act even the touch of the accused to the private part of the victim child or vice versa is sexual abuse/assault.

It is submitted by Dr. Latika Phogat and Dr. Manas Dubey medical officers/examining doctors from BJRM hospital that they were not aware about the latest (amendment/introduced definition of sexual abuse/assault as per provision of law. It is fairly



FIR No. 194/13

P.S. Bharat Nagar

U/s 363/376/511 IPC & Section 8/10/12 of POCSO Act

-2-

conceded by both the examining doctors that they have given the opinion merely on the basis of assumption of penetrative sexual assault. It is submitted that the report was given keeping in view the penetrative sexual assault, whereas in view of the latest amended provision, their report is contradictory. It is also submitted by Medical Suptt. BJRM Hospital that he will also ensure to provide necessary refresher training/sensitization of the doctors under his jurisdiction regarding the newly incorporated provision of POCSO Act and Section 375 of IPC.

In the present case, the examining doctor has given report "no sign suggestive of sexual abuse". ~~The report as told by examining doctor was given after examination of the~~ victim as no injury marks on the private parts were found. The report was given just to negate the injury mark on the private part of the victim but the perusal of this report gives impression that the same is negating even the simple touch on the private part of the victim child. The report on the face of it is giving a clean chit to the accused for commission of the offence defined under POCSO Act and u/s 375 IPC in which even the simple touch on the private part is amounts to sexual abuse/assault.

The medical officers/examining doctors are the integrated part of criminal justice administration system. The examining doctor and his report plays a vital role in the criminal trial. The report of examining doctor is very vital in criminal trial because in certain cases it become clinching evidence to convict or acquit a person for commission of the alleged offence. The definition of offence of sexual assault as existed earlier has now been changed in relation to the children by incorporating the POCSO Act. As per definition of

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No. 194/13

P.S. Bharat Nagar

U/s 363/376/511 IPC & Section 8/10/12 of POCSO Act

-3-

sexual assault/abuse/harassment given in Section 3,7 and 11 of POCSO Act, even touch of the accused to private part of the victim child or vice versa is sexual abuse/assault. As per amended definition of rape u/s 375 of IPC, now apart from penetration even the oral or other form of sexual act comes within the definition of rape. The concept of 'penetration' earlier used to prove sexual assault has now been done away. It has come in the notice of the court that doctors despite being the stake holders in criminal justice system the doctors are not sensitized or made aware about the latest amended provision of POCSO Act or definition of rape amended u/s 375 of IPC. The doctors are playing the important role and are stake holder in criminal justice administration system, therefore, there is imminent need to sensitize all the doctors regarding the newly amended provision of law.

Therefore, in the present facts and circumstances, copy of this order be sent to Principal Secretary (Health), Govt. of NCT of Delhi for information and necessary action. The Principal Secretary (Health), Govt. of NCT of Delhi is impressed upon to sensitize all the doctors within his jurisdiction regarding the newly incorporated provision of POCSO Act and definition of rape as changed u/s 375 of IPC for the better and effective implementation of the provision of law. The report by the Principal Secretary (Health) Govt. of NCT of Delhi be filed on or before 29.08.2013.

Put up on 29.08.2013.

(D.K.JANGALA)

ACMM(NW)ROHINI COURTS, DELHI

03.08.2013

ACMM(NW)
Rohini Courts, Delhi

Attached to copy

D. Jangala

29/8/13
M/mad

