Reserved on : 02.06.2025
Pronounced on : 10.06.2025

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2429 OF 2022

BETWEEN:

SRI AVIK BID
S/O MALOY KUMAR BID
AGED ABOUT 44 YEARS
RESIDING AT NO.4023
PRESTIGE WELLINGTON PARK
JALAHALLI, BENGALURU - 560 013.

... PETITIONER

(BY SRI C.V.NAGESH, SENIOR ADVOCATE A/W.,
SRI PRITHVEESH M. K., ADVOCATE)

AND:

1. THE STATE BY JALAHALLI POLICE STATION
REPRESENTED BY ITS INSPECTOR OF POLICE
HMT MAIN ROAD, JALAHALLI VILLAGE
JALAHALLI, BENGALURU - 560 013.

2. XXXX
XXXX
XXXX
XXXX

AMENDMENT CARRIED OUT VIDE COURT ORDER

DATED 24.06.2022.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1;
R2 IS SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE IMPUGNED CHARGE SHEET DATED 10.11.2018 FILED BY THE RESPONDENT FOR OFFENCES P/U/S 7 AND 8 OF POCSO ACT, 2013 IN SPL.C.C.NO.880/2018 (ANNEXURE-A) THE IMPUGNED ORDER DATED 17.12.2018 PASSED IN SPL.C.C.NO.880/2018 PASSED BY THE HON'BLE LIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-55) (ANNEXURE-B) AND ALL FURTHER PROCEEDINGS IN SPL.C.C.NO.880/2018 NOW PENDING ON THE FILE OF THE HON'BLE ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, FTSC-1, BENGALURU (ANNEXURE-B) HAVING BEEN TRANSFERRED FROM THE HON'BLE LIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-55 TO THE ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU FTSC-1.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 02.06.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question proceedings in Special C.C.No.880 of 2018 registered for offences punishable under Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act' for short).

2. *Sans* details, facts in brief germane, are as follows: -

The petitioner is said to be an Assistant Professor in the Indian Institute of Science, Bangalore in the Department of Physics. The issue triggered on 30-09-2018 when his daughter aged 9 years wanted to celebrate her birthday and, in that connection, called all the neighbouring apartment residents at Prestige Wellington Park complex, Jalahalli. During the birthday party some children preferred to play in dark room and one child is said to have poked into the eye of another. The situation resulted in panic and, therefore, the averment in the petition is that the petitioner goes inside the room to bring the children out of dark room. After the party was over, the children are said to have dispersed and go to their respective houses. On the same day at about 9.30 p.m. the de-facto complainant, father of one of the children who had attended the birthday celebrations comes to the residence of the petitioner along with other men and women accusing the petitioner of having touched the girl children during the birthday party inappropriately. The petitioner is said to have refused to accept any of the allegations of the kind that is made against him. The

complainant then, on the next day, registers a complaint before the jurisdictional Police, on the aforesaid allegation of the petitioner having touched the complainant's daughter inappropriately. This becomes a crime in Crime No.127 of 2018. The petitioner is said to have been taken into custody and then released on bail later. These factors are not relevant to be noticed in the case at hand. The Police, after investigation, file a charge sheet against the petitioner for the offences afore-quoted. Trial commenced and 13 witnesses are examined. During the pendency of trial, the petitioner is before this Court calling in question filing of charge sheet, order of taking cognizance and large-scale violation in the procedure adopted by the concerned Court *qua* the Act.

3. Heard Sri C.V. Nagesh, learned senior counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional State Public Prosecutor appearing for the State/1st respondent.

4. The learned senior counsel Sri C.V. Nagesh would vehemently contend that no such incident has ever happened. It was the children who were playing a dark room game in which

there was some commotion. Therefore, the petitioner had to intervene to assuage anguish. He would contend that the de-facto complainant has an axe to grind and, therefore, he has registered the complaint only to harass the petitioner. The learned senior counsel would submit that the statements recorded by the concerned Court of all the witnesses or victim children are verbatim similar and it runs contrary to Section 25 of the Act. He would further contend that the procedure adopted by the concerned Court is contrary to Section 26(1) and (4) of the Act. He would contend that the order of taking cognizance is in blatant violation of Section 190(1)(b) of the Cr.P.C., as the concerned Court has not examined crucial documents. There is no order issuing summons to the petitioner upon taking of cognizance. Section 27 of the Act is violated, as there is no medical examination of any of the victims. Section 35 of the Act is violated as the evidence of the victims is not recorded within 30 days of taking of cognizance and the trial has not concluded despite lapse of four years. The learned senior counsel seeks to place reliance upon several judgments of the Apex Court, which would all bear consideration in the course of the order *qua* their relevance.

5. The de-facto complainant though served long ago has remained unrepresented.

6. The learned Additional State Public Prosecutor would vehemently refute the submissions of the learned senior counsel to contend that all the contentions of the petitioner are a matter of trial. The trial has commenced. There is an allegation of the petitioner not touching one but touching several children misusing darkness in the room, inappropriately. He would contend that if one child has said so, it would have been a different circumstance. There are about eight children who have alleged of the petitioner having touched them inappropriately. He would, therefore, contend that the petition under Section 482 of the Cr.P.C., should not be entertained and it is for the petitioner to come out clean in a full-blown trial. Insofar as the order of taking cognizance or statutory violation of the Act is concerned, the learned Additional State Public Prosecutor would submit that, that would not vitiate the entire proceedings. The petitioner can always urge all these contentions in an appeal in the event it becomes necessary to file. He would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are a matter of record. The incident in question revolves round a birthday party on 30-09-2018, a day meant for joy, now enshrouded with grave impropriety. The daughter of the petitioner who lives in an apartment complex of Prestige Wellington Park, Jalahalli celebrates her birthday. For such celebration the children of the neighbouring apartments are invited. During the birthday celebration, the children indulge in playing a game of dark room, the game of dark room innocuous in appearance, allegedly becomes the backdrop of serious misconduct. The petitioner is said to have entered the room when one child had poked into the eye of another child. This is the explanation of the petitioner. On the same day, after dispersement of all the invitees, the father of the complainant at about 9.30 p.m. knocks at the doors of the petitioner along with others. The celebration turned into site of suspicion culminating in accusations of sexual assault. The allegation is that the petitioner has touched his daughter and

other children inappropriately. The petitioner denies the said fact. The complaint comes to be registered by the de-facto complainant against the petitioner on the next day. The complaint so registered reads as follows:

> "Date: 01/10/2018
> Place: Bengaluru
>
> From,
> xxxx
> xxxx
> xxxx
> xxxx
>
> Sub: Case of child abuse
>
> Respected Sir/Madam,
>
> **With respect to the subject matter, I would like to bring to your kind notification that the resident of 4023, Prestige Wellington Park, Jalahalli Mr. Avik, whose daughters birthday party was organized at his residence, got indulged in touching the kids private parts in the pretext of playing some games with lights switched off, causing severe discomfort. After returning home some kids informed about this incident to their individual parents.**
>
> **All of the girls are aged between 7-10 years. My daughter Ms. xxxx aged 10 years was one of the kids who has been affected with this act of child abuse. With our limited knowledge we understand that this kind of child abuse will attract a legal action under the POSCO act. Please do the needful.**
>
> The other parent whose kid has been impacted by this abuse is Mrs. xxxx.
>
> Events are as follows:

The incident happened on 30th September 2018, between 6:30-8 pm at No: 4023, Prestige Wellington Park.

- One of the parents reported the incident to other parents.
- My daughter Ms. xxxx told us about the incident at 9:30 pm. She said "uncle, tickled me and touched me in my private parts".
- We immediately called police control 100 and reported the incident.
- We discussed with family and filing a complaint on 1st October 2018.

Yours faithfully,
Sd/-
01/10/2018
1:40 PM

ದಿನಾಂಕ: 01/10/2018 ರಂದು ಸಮಯ 14-00 ಗಂಟೆಯಲ್ಲಿ ಪಿರ್ಯಾದುದಾರರು ನೀಡಿದ ದೂರನ್ನು ಸ್ವೀಕರಿಸಿ ಠಾಣಾ ಮೊ.ಸಂ. 127/2018 u/s 7 & 8 of POCSO Act - 2012 ಪ್ರಕಾರ ಪ್ರಕರಣ ದಾಖಲಿಸಿದೆ.

Sd/-
Police Sub-Inspector
Jalahalli Police Station
Bangalore City."

(Emphasis added)

The complaint becomes a crime in Crime No.127 of 2018 for offences punishable under Sections 7 and 8 of the Act. The Police conduct investigation and file a charge sheet. The summary of the charge sheet as obtaining in column No.7 reads as follows:

"ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯ ಕಾಲಂ 4 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಆರೋಪಿಯು ಜಾಲಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿಗೆ ಸೇರಿದ ಗಂಗಮ್ಮ ಸರ್ಕಲ್ ಬಳಿ ಇರುವ ಪ್ರೆಸ್ಟೀಜ್ ವೆಲ್ಲಿಂಗ್‌ಟನ್ ಪಾರ್ಕ್ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ಸ್‌ನ ಟವರ್ ನಂ. 4 ರ 2ನೇ ಮಹಡಿಯಲ್ಲಿರುವ ಮನೆ ನಂ. 4023 ರಲ್ಲಿ ಸಂಸಾರ ಸಮೇತ ವಾಸವಿರುತ್ತಾನೆ.

ದಿನಾಂಕ 30/09/2018 ರಂದು ಆರೋಪಿಯ ಮಗಳು ಮಾಯಾ 9 ವರ್ಷದವಳ ಹುಟ್ಟಿದ ಹಬ್ಬದ ಸಮಾರಂಭವಿದ್ದು, ಆಕೆಯು ಹುಟ್ಟಿದ ಹಬ್ಬದ ಸಮಾರಂಭಕ್ಕೆ ಬರುವಂತೆ ಅದೇ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ಸ್ನ ನಿವಾಸಿಗಳಾದ ಸಾಕ್ಷಿ-1 ರವರ ಮಗಳು ಸಾಕ್ಷಿ-4 ಮತ್ತು ಇತರೆ ಮಕ್ಕಳಾದ ಸಾಕ್ಷಿ-5 ರಿಂದ ಸಾಕ್ಷಿ-10 ರವರೆಗಿನವರು ಹಾಗೂ ಇನ್ನಿತರೆ ಮಕ್ಕಳನ್ನು ಸಹಾ ಆಹ್ವಾನಿಸಿದ್ದಳು. ಆ ದಿನ ಸಂಜೆ ಸುಮಾರು 06-30 ಗಂಟೆಗೆ ಸಾಕ್ಷಿ-5 ರಿಂದ ಸಾಕ್ಷಿ-10 ರವರೆಗಿನ ಮಕ್ಕಳು ಸೇರಿದಂತೆ. ಸುಮಾರು 20-25 ಮಕ್ಕಳು ಆರೋಪಿಯ ಮನೆಗೆ ಹೋಗಿ ಮಾಯಾಳ ಹುಟ್ಟು ಹಬ್ಬದ ಆಚರಣೆಯಲ್ಲಿ ಪಾಲ್ಗೊಂಡಿದ್ದರು. ಅಲ್ಲಿ ಮಕ್ಕಳು ಮೊದಲು ಕೆಲವು ಆಟಗಳನ್ನಾಡಿ, ನಂತರ ಕೇಕ್ ಕಟ್ ಮಾಡಿಸಿ ಎಲ್ಲರಿಗೂ ಹಂಚಲಾಯಿತು. ಅಲ್ಲಿ ಮಕ್ಕಳು ತಿಂಡಿ ತಿಂದು, ನಂತರ ಆ ಮನೆಯ ಮಾಸ್ಟರ್ ಬೆಡ್ ರೂಮಿನಲ್ಲಿ ಲೈಟ್ ಸ್ವಿಚ್‌ಆಫ್ ಮಾಡಿಕೊಂಡು ಸೇರಿ ಹೌಸ್/ಗೋಸ್ಟ್ ಹೌಸ್ ಎಂಬ ಆಟವಾಡುತಿದ್ದರು.

ಆ ಸಮಯದಲ್ಲಿ ಆರೋಪಿಯು ರೂಮಿನೊಳಗಡೆ ಹೋಗಿ ಕತ್ತಲಲ್ಲಿ ಸಾಕ್ಷಿ-5 ರಿಂದ 10 ರವರೆಗಿನ ಮಕ್ಕಳಿಗೆ ಬಟ್ಟೆ ಮೇಲಿಂದ ಕುಂಡಿ, ಎದೆ ಮತ್ತು ಗುಪ್ತಾಂಗ ಇತ್ಯಾದಿ ಕಡೆಗಳಲ್ಲಿ ಮುಟ್ಟಿ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯವೆಸಗಿರುತ್ತಾನೆಂದು ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿ,

ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಕಲಂ ರೀತ್ಯಾ ಆರೋಪಿಯು ಶಿಕ್ಷಾರ್ಹನಾಗಿರುತ್ತಾನೆಂದು ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿ."

(Emphasis added)

The finding in the charge sheet is that the petitioner is *prima facie* guilty of the offence punishable under Sections 7 and 8 of the Act. The concerned Court, upon filing of the charge sheet, takes cognizance of the offence. The order of taking cognizance reads as follows:

"**COGNIZANCE**

> Perused police report and the documents submitted along with the said report. On being satisfied, exercising power under Section 190(1)(b) and 193 of Cr.P.C., cognizance is taken for the offences punishable under Sections 7 and 8 of POCSO Act, 2012.
>
> Office is directed to register the case in Spl.C.C., register, with due conversion of Crime No.1123 of 2018 in CTS.
>
> Office to attend regarding compliance under Section 35(1) of POCSO Act i.e., securing of statement U/s 164 of Cr.P.C., Medical Report, FSL Report, Property from the complainant police."
>
> Sd/-
> 17/12/2018
> LIV ACC & SJ (CCH-55)
> Sitting in Child Friendly Court,
> Bangalore Urban."

The trial progresses. Four years passed by after the order of taking cognizance. The petitioner prefers the subject petition only on 16-03-2022. The learned Senior Counsel assails the proceedings on statutory aberrations. I therefore, deem it appropriate to notice, the contention of the petitioner, contentionwise.

THE ALLEGED VIOLATIONS OF THE ACT:

9. The learned senior counsel has projected violation of Section 25 of the Act. Section 25 of the Act reads as follows:

> "**25. Recording of statement of a child by Magistrate**.—(1) If the statement of the child is being

recorded under Section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to sub-section (1) of Section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under Section 207 of the Code, upon the final report being filed by the police under Section 173 of that Code."

Section 25 mandates that recording of statement by the Magistrate under Section 164 of the Cr.P.C., should be as spoken by the child. The statements are appended to the petition. The statements are alleged to be verbatim similar. **It is true that the statements rendered under Section 164 of Cr.P.C appear startlingly uniform.** One of the statements so recorded is as follows:

"**ಜಾಲಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ ಸಂ 127/2018 ಕಲಂ 7 & 8 ಆಫ್ ಪೋಕ್ಸೋ ಆಕ್ಟ್-2012**

ನೊಂದ ಬಾಲಕಿಯ ಹೇಳಿಕೆ ;

ಕು॥ xxxx ತಂದೆ xxxx ವಯಸ್ಸು XX ವರ್ಷ xxxx.

ದಿನಾಂಕ: 01/10/2018

ನಾನು ಮೇಲೆ ತಿಳಿಸಿದ ವಿಳಾಸದಲ್ಲಿ ತಂದೆ ತಾಯಿ ಜೊತೆ ವಾಸಿಸುತ್ತಾ xxxx ಇಂಗ್ಲೀಷ್ ಸ್ಕೂಲ್‌ನಲ್ಲಿ 5ನೇ ತರಗತಿಯಲ್ಲಿ ವ್ಯಾಸಂಗ ಮಾಡುತಿದ್ದೇನೆ. ನಮ್ಮ ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ನ ಫ್ಲಾಟ್ ನಂ. 4023 ರಲ್ಲಿ ಮಾಯ ಎಂಬ ಹುಡುಗಿ ತಂದೆ ತಾಯಿ ಜೊತೆ ವಾಸವಿರುತ್ತಾಳೆ. ದಿನಾಂಕ 30/09/2018

ರಂದು ಮಾಯಾಳ ಬರ್ತಡೇ ಇದ್ದು, ಈ ಬರ್ತಡೇ ಪಾರ್ಟಿಗೆ ಮಾಯಾ ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ನ ಕೆಲವು ಮಕ್ಕಳನ್ನು ಇನ್‌ವೈಟ್ ಮಾಡಿದ್ದಳು. ಅದೇ ರೀತಿ ನನ್ನನ್ನೂ ಸಹಾ ಬರ್ತಡೇ ಪಾರ್ಟಿಗೆ ಇನ್‌ವೈಟ್ ಮಾಡಿದ್ದಳು.

ಆ ದಿನ ಸಂಜೆ ಸುಮಾರು 6-30 ಗಂಟೆಗೆ ನಾನು ಮಾಯಾಳ ಫ್ಲಾಟ್ ನಂ. 4023ಗೆ ಹೋದೆನು. ಅಲ್ಲಿ ಬರ್ತ್‌ಡೇ ಪಾರ್ಟಿಗೆ xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx ಹಾಗೂ ಇನ್ನು ಹಲವಾರು ಸುಮಾರು 20-25 ಜನ ಮಕ್ಕಳು ಒಟ್ಟಿಗೆ ಸೇರಿಕೊಂಡಿದ್ದೆವು. ನಾವೆಲ್ಲಾ ಸೇರಿ ಅವರ ಮನೆಯ ಹಾಲಿನಲ್ಲಿ ಮೊದಲು ರಿಷಬ್ ಜೊತೆ ಬಿಂಗೋ ಗೇಮ್ಸ್ ಆಟವಾಡಿದೆವು. ನಂತರ ಅವರ ತಂದೆ ತಾಯಿಗಳು ಮಾಯಾಳಿಂದ ಕೇಕ್ ಕಟ್ ಮಾಡಿಸಿ ಹಂಚಿ, ಜೊತೆಗೆ ಎಲ್ಲರಿಗೂ ಫಿಜ್ಜಾ, ಸ್ಯಾಂಡ್‌ವಿಚ್, ಜೂಸ್ ಕೊಟ್ಟರು. ನಾವೆಲ್ಲರೂ ಅದನ್ನೆಲ್ಲಾ ತಿಂದು ಕುಡಿದು, ನಂತರ ಅವರ ಮನೆಯ ಮಾಸ್ಟರ್ ಬೆಡ್ ರೂಮಿನಲ್ಲಿ ಲೈಟ್ ಆಫ್ ಮಾಡಿ, ಸ್ಕೇರಿ ಹೌಸ್ ಆಟ ಆಡುತಿದ್ದೆವು. ನಂತರ ಅವೀಕ್ ಅಂಕಲ್ ರೂಮಿನೊಳಗೆ ಬಂದು, ನೀವೆಲ್ಲಾ ಆಟ ಆಡುತ್ತಾ ಇರಿ, ನಾನು ರೂಮಿನ ಮೂಲೆಯಲ್ಲಿ ನಿಂತಿರುತ್ತೇನೆಂದು ಹೇಳಿ, ವಿಂಡೋ ಸ್ಕ್ರೀನ್ ಹಿಂದೆ ನಿಂತಿದ್ದರು.

ಸ್ವಲ್ಪ ಸಮಯದ ನಂತರ ಅಂಕಲ್ ನನ್ನ ಹಿಂದಿನಿಂದ ಬಂದು ನನ್ನ ಬಟ್ಟೆ ಮೇಲಿಂದ ಹಿಪ್ಸ್ ಮುಟ್ಟಿದರು. ಆಗ ನಾನು ಯಾರೋ ಮಕ್ಕಳು ನನ್ನ ಹಿಂದಿನಿಂದ ಹೋಗುವಾಗ ಟಚ್ ಆಗಿದೆ ಎಂದು ಸುಮ್ಮನಾದೆನು. ನಂತರ ಅಂಕಲ್ ನನ್ನ ಬಟ್ಟೆ ಮೇಲಿಂದಲೇ ಗುಪ್ತಾಂಗವನ್ನು ಮುಟ್ಟಿ ಪ್ರೆಸ್ ಮಾಡಿದರು. ನಂತರ ನನ್ನ ಚೆಸ್ಟ್ ಮೇಲೆ ಕೈಯಿಂದ ಮುಟ್ಟಿ ಪ್ರೆಸ್ ಮಾಡಿದರು. ನಾನು ಈ ವಿಚಾರವನ್ನು ಯಾರಿಗೂ ಹೇಳದೇ ಸುಮ್ಮನಿದ್ದು, ಬರ್ತ್‌ಡೇ ಪಾರ್ಟಿ ಮುಗಿದ ನಂತರ ಮನೆಗೆ ವಾಪಸ್ ಬಂದೆನು. ಇದಾದ ನಂತರ ಯಾರೋ ನಮ್ಮ ತಂದೆ ತಾಯಿಗೆ ಫೋನ್ ಮಾಡಿ ವಿಚಾರ ತಿಳಿಸಿದ್ದು, ನಮ್ಮ ತಂದೆ ತಾಯಿಗಳು ನನ್ನನ್ನು ವಿಚಾರ ಮಾಡಿದಾಗ ನಾನು ಬರ್ತಡೇ ಪಾರ್ಟಿಯಲ್ಲಿ ನಡೆದ ವಿಚಾರವನ್ನು ಅವರಿಗೆ ತಿಳಿಸಿದೆನು.''

The afore extracted statement is of CW-1, the daughter of de-facto complainant. The allegation is that the daughter was playing and the petitioner was standing behind the window screen. After some time, the petitioner comes and touches hips of the daughter and has further touched the private parts of the daughter with the clothes on. This is one statement. The daughter of the complainant is 10 years old. The other statements are identical that the

petitioner has touched them in the same manner that he has touched the daughter of de-facto complainant. Reproducing those statements would only bulk the subject order. They are undoubtedly similar. The law is well settled that even one credible statement - if sufficient - can call for a trial. The contention is violation of the statute. No doubt the statute mandates that the statements recorded under Section 164 of the Cr.P.C., should be as deposed by the victims, non recording of statements 'as spoken' will not *ipso facto* invalidate the proceedings, leading to exercise of jurisdiction under Section 482 of the Cr.P.C. One statement is enough for the petitioner to be directed to face trial. Therefore, the submission that statements recorded are contrary to Section 25 of the Act and, therefore, the entire proceedings get vitiated is a submission that is noted only to be rejected.

10. The next submission is, violation of Section 26(1) and (4) of the Act. Section 26 reads as follows:

> "**26. Additional provisions regarding statement to be recorded**.—(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

> (2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.
>
> (3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.
>
> **(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means**."
>
> (Emphasis supplied)

Section 26(1) mandates that the Magistrate or the Police Officer shall record the statement as spoken by the child, the answer is already rendered *supra*. Sub-section (4) mandates that it should be recorded by audio-video electronic means, this is undoubtedly desirable, if omitted, such omission cannot derail the proceedings at this stage. It is for the petitioner to take up this issue at the stage of trial. On the said non-recording, this Court would not exercise its jurisdiction under Section 482 of the Cr.P.C., to obliterate the proceedings.

11. The other violation is Section 27 of the Act. Section 27 of the Act reads as follows:

> "**27. Medical examination of a child**.—(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with Section 164-A of the Code of Criminal Procedure, 1973 (2 of 1974).
>
> (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
>
> (3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
>
> (4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution."

It deals with medical examination of the child. No doubt the girl children who have been victims in the case at hand have not offered themselves for medical examination, this again is not fatal. Law is settled that medical evidence though desirable, is not *sine qua non*, where other credible ocular evidence exits.

12. The other violation is, violation of Section 35 of the Act. Section 35 reads as follows:

> "**35. Period for recording of evidence of child and disposal of case**.—(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.
>
> (2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence."

Section 35 mandates that the evidence of the child should be recorded within 30 days of taking of cognizance and the trial should complete within one year from the date of taking cognizance. The constitutional Courts all over the country have held that the procedure under Section 35 of the Act is directory and not mandatory, as there can be manifold factors which result in delay of taking cognizance or completion of trial within one year. This contention will not merit entertainment of the petition under Section 482 of the Cr.P.C. Therefore, the alleged violation of the provisions of the Act are all submissions which are noted only to be rejected, as the petitioner can always urge those contentions before the trial Court or in the event of necessity by filing an appeal before the appellate Court.

13. The other submission is, that the order of taking cognizance does not bear application of mind. To buttress this submission reliance is placed on several judgments of the Apex Court. The judgment rendered by the Apex Court in 2025 would answer the contention of the learned senior counsel with regard to taking of cognizance. In the case of **PRAMILA DEVI v. STATE OF JHARKHAND**[1] the Apex Court holds as follows:

> "…. …. ….
>
> **13.** We have considered the matter in its entirety. Two basic issues arise for consideration.
>
> **14.** *Firstly*, whether the Additional Judicial Commissioner while taking cognizance has to record detailed reasons for taking cognizance? *Secondly*, whether the FIR itself was instituted with *mala fide* intention and was liable to be quashed?
>
> **15.** Coming to the first issue, we have no hesitation to record that the approach of the High Court was totally erroneous. Perusal of the Order taking cognizance dated 13.06.2019 discloses that the Additional Judicial Commissioner has stated that the '*case diary and case record*' have been perused, which disclosed a *prima facie* case made out under Sections 498(A), 406 and 420 of the IPC and Section 3 (1)(g) of the SC/ST Act against the accused including appellants. Further, we find the approach of the Additional Judicial Commissioner correct inasmuch as while taking cognizance, it firstly applied its mind to the materials before it to form an opinion as to whether any offence has been committed and thereafter went into the aspect of identifying the persons who appeared to have committed the offence. Accordingly, the process moves to

[1] **2025 SCC OnLine SC 886**

the next stage; of issuance of summons or warrant, as the case may be, against such persons.

16. In the present case, we find that the Additional Judicial Commissioner has taken cognizance while recording a finding that - from a perusal of the case diary and case record, a *prima facie* case was made out against the accused, including the Appellants. In *Bhushan Kumar* v. *State (NCT of Delhi)*, (2012) 5 SCC 424, this Court held that an order of the Magistrate taking cognizance cannot be faulted only because it was not a reasoned order; relevant paragraphs being as under:

> `***14.*** *Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.*
>
> ***15.*** *In* Kanti Bhadra Shah *v.* State of W.B. *[(2000) 1 SCC 722 : 2000 SCC (Cri) 303] the following passage will be apposite in this context : (SCC p. 726, para 12)*
>
> > ***"12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody,***

framing of charges, passing over to next stages in the trial.”

(emphasis supplied)

16. *In* Nagawwa *v.* VeerannaShivalingappaKonjalgi *[(1976) 3 SCC 736 : 1976 SCC (Cri) 507] this Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that : (SCC p. 741, para 5)*

> *“5. … Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.”*

17. *In* Chief Controller of Imports &Exports *v.* Roshanlal Agarwal *[(2003) 4 SCC 139 : 2003 SCC (Cri) 788] this Court, in para 9, held as under : (SCC pp. 145-46)*

> ***“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.*** *This question was considered recently in* U.P. Pollution Control Board *v.* Mohan Meakins Ltd. *[(2000) 3 SCC 745] and after noticing the law laid down in* Kanti Bhadra Shah *v.* State of W.B. *[(2000) 1 SCC 722 : 2000 SCC (Cri) 303] it was held as follows:* (U.P. Pollution case *[(2000) 3 SCC 745], SCC p. 749, para 6)*

> ***'6. The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to the accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.'"***

18. *In* U.P. Pollution Control Board *v.* Bhupendra Kumar Modi *[(2009) 2 SCC 147 : (2009) 1 SCC (Cri) 679] this Court, in para 23, held as under : (SCC p. 154)*

> ***"23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused."***
>
> ***19. This being the settled legal position, the order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned order.'***
>
> **(emphasis supplied)**

17. The view in *Bhushan Kumar* (supra) was reiterated in *Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 and *State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539. This Court in *Rakhi Mishra* v. *State of Bihar*, (2017) 16 SCC 772 restated the settled proposition of law enunciated in *Sonu Gupta* v. *Deepak Gupta*, (2015) 3 SCC 424, as under:

> *'**4.** We have heard the learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondents 2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR would clearly show that the appellant alleged cruelty against Respondents 2, 4, 5, 6, 7, 8, 9 and 10. This Court in* Sonu Gupta *v.* Deepak Gupta [Sonu Gupta *v.* Deepak Gupta, *(2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] held as follows : (SCC p. 429, para 8)*

> ***"8. … At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence … to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not."***
>
> ***5.*** *The order passed by the trial court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under Section 482 CrPC is exercised by the High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.'*
>
> (emphasis supplied)

18. Coming to the second point which the Appellants canvassed before this Court *viz*. the background of lodging of the FIR to impress that the same is *mala fide*, an afterthought and at best, a civil dispute being tried to be settled through criminal proceedings by way of arm-twisting. On this point, need for a detailed discussion is obviated in view of our answer on the first point *supra* and the paragraphs *infra*.

19. Perusal of the entire gamut of the pleadings of the Appellants does not disclose any categorical statement to the effect that during investigation by the police, no evidence has emerged to warrant taking of cognizance, much less against the Appellants. The only averment which has been made is that the Trial Court had not recorded the *prima facie* material against the Appellants because it does not exist. This is too simplistic an argument and does not shift the burden from the Appellants of taking a categorical stand that no material whatsoever for taking

cognizance is available in the police papers/case diary against the Appellants. Be it noted, the State has argued that sufficient material warranting cognizance has been unearthed during the course of investigation.

20. Here, the Court would pause to delve on what is the scope of the exercise of application of mind on the police papers/case diary for deciding as to whether to take cognizance or not - it has only to be seen whether there is material forthcoming to indicate commission of the offence(s) alleged. The concerned Court is not empowered to go into the veracity of the material at that time. That is why, the law provides for a trial where it is open to both the parties i.e., the prosecution as well as the defence to lead evidence(s) either to prove the materials which have come against the accused or to disprove such findings. This Court *vide* Order dated 13.09.2024 directed the Appellants to file a translated copy of the charge sheet, as the State filed the charge sheet in Hindi along with an application seeking exemption from filing official translation (I.A. No. 198073/2024). As this Court [Coram: Sudhanshu Dhulia and Ahsanuddin Amanullah, JJ.] is well-conversant with Hindi, the language in which the charge sheet is and which has been brought on record, we have examined the same. However, the Appellants failed to comply with the specific direction issued on 13.09.2024. Be that as it may, we find that charge sheet mentions that on the basis of investigation, site inspection and statements of the complainant, the police has found the allegations true against all the accused including appellants."

(Emphasis supplied)

The Apex Court holds that unreasoned order of taking cognizance will not vitiate entire proceedings. The Apex Court was following a three Judge Bench judgment in the case of **PRADEEP S.WODEYAR**

V. STATE OF KARNATAKA[2] wherein the Apex Court deduces the principles after analysing entire spectrum of law and the principle so deduced reads as follows:

"…. …. ….

> **82.** Sikri, J. observed that while the Magistrate is empowered to issue process against a person who has not been charge-sheeted, there has to be sufficient material in the police report showing his involvement. The Court in *Sunil Bharti Mittal case* [*Sunil Bharti Mittal* v. *CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] held that no such exercise was carried out by the Special Judge and in its absence, the order summoning the appellants could not be sustained. The decision in *Sunil Bharti Mittal* [*Sunil Bharti Mittal* v. *CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] arose out of a police report but clearly involved a situation where the appellants had not been arraigned as accused in the charge-sheet. The Magistrate had issued summons to them merely treating them to be an alter ego of the company. This Court held that it was a wrong (and a "reverse") application of the principle of alter ego and that the order summoning them could not be sustained.
>
> **83.** In *Mehmood Ul Rehman* [*Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , a complaint was filed by the respondent under Section 500 of the Ranbir Penal Code (in parimateria to Section 500IPC). The Magistrate passed the following order : (SCC p. 424, para 4)
>
> > "*4*. … 'Perused the complaint, and the statements recorded. In the first instance of proceedings, let bail warrant to the tune of Rs 15,000 be issued against the alleged accused persons, with direction to the accused persons to cause their appearance before this Court on 22-4-2007, to answer the material questions' ."

[2] **(2021) 19 SCC 62**

The respondent filed a petition before the High Court seeking to quash the proceedings initiated by the Magistrate. The High Court rejected the petition. Before this Court, a contention was raised that the Magistrate had not applied his mind to the complaint to form an opinion on whether the allegations would constitute an offence.

84. Relying on *Pepsi Foods Ltd.* [*Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749 :1998 SCC (Cri) 1400] , it was observed in *Mehmood Ul Rehman case* [*Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] that the Magistrate ought to have applied his mind to the allegations and must be satisfied that the facts alleged would constitute an offence. The order of the Magistrate was set aside by this Court on the ground that the order did not indicate an application of mind by the Magistrate. The facts in this case fall squarely within Section 190(1)(*a*)CrPC since the Magistrate was only guided by the complaint before him.

85. Moreover, Kurian Joseph, J. writing for the two-Judge Bench has clearly taken note of the difference between Sections 190(1)(*a*) and 190(1)(*b*) : (*Mehmood Ul Rehman case* [*Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , SCC p. 430, para 21)

> "*21*. Under Section 190(1)(*b*)CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(*c*)CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(*a*)CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(*a*)CrPC. The complaint is simply to be rejected."

86. In *Fakhruddin Ahmad* [*Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157 : (2010) 4 SCC (Cri) 478] , a complaint was lodged before the Judicial Magistrate alleging commission of offences under Sections 240, 467, 468 and 471IPC. The Magistrate directed the police to register the case and investigate it. The Magistrate thus,

instead of following the procedure laid down under Section 200 or 202CrPC, ordered that the matter be investigated and a report be submitted under Section 173(2) of the Code. Based on the police report, cognizance was taken by the Magistrate. A two-Judge Bench of this Court observed that the Magistrate must apply his mind before taking cognizance of the offence. However, no observation was made that the cognizance order based on a police report needs to be "well-reasoned". On the facts of the case, the Court held that since the cognizance order was not placed before the High Court, it did not have the opportunity to review if the Magistrate had applied his mind while taking cognizance. The matter was thus remanded back to the High Court for it to peruse the documents and then decide the Section 482 petition afresh.

87. It must be noted that the decisions in *Pepsi Foods Ltd.* [*Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] and *Mehmood Ul Rehman* [*Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] arose in the context of a private complaint. Though the decision in *Sunil Bharti Mittal* [*Sunil Bharti Mittal* v. *CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] arose from a police report, it is evident from the narration of facts in the earlier part of this judgment that in that case, the charge-sheet had not named the Chief Executive Officers of the Telecom Companies as accused. The Magistrate, however, furnished the reason that the CEO was an alter ego of the Telecom Company which, as this Court noted in its judgment was a "reverse application" of the alter ego doctrine.

88. Similarly, the cognizance order in *Fakhruddin Ahmad* [*Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157 : (2010) 4 SCC (Cri) 478] was based on a police report. However, this Court remanded the case back to the High Court for fresh consideration of the validity of the cognizance order and did not review the Magistrate's satisfaction before issuing the cognizance order. Therefore, none of the above judgments referred to support the contention of the appellant. Though all the above judgments mention that the Magistrate needs to apply his mind to the materials placed before him before taking cognizance, they have been differentiated on facts from the present case as

unlike the present case where cognizance was taken based on the SIT report, in those cases cognizance was taken based on a complaint. **The difference in the standard of proof for application of mind with reference to cognizance based on a complaint and police report has been briefly discussed in *Mehmood Ul Rehman* [*Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] and *Fakhruddin Ahmad* [*Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157 : (2010) 4 SCC (Cri) 478] . A two-Judge Bench of this Court in *Afroz Mohammed Hasanfatta* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] laid down the law on the difference of the standard of review of the application of mind by the Judge while taking cognizance based on a police report and a private complaint.**

89. In *Afroz Mohammed Hasanfatta* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] , a complaint was filed by the Manager of a bank against a private limited company alleging that in pursuance of a conspiracy, the Company was importing rough and polished diamonds from the foreign market and selling them in the local market. On verification, the bills of entry were found to be bogus. Based on the complaint, an FIR was registered for the offences under Sections 420, 465, 467, 468, 471, 477-A and 120-B of the Penal Code. A charge-sheet was submitted under Section 173 CrPC against two persons and the respondent was referred to as a suspect. A supplementary charge-sheet was submitted inter alia against the respondent and based on it, cognizance was taken by the Magistrate. The High Court set aside [*Afroz Mohammed Hasanfatta* v. *State of Gujarat*, 2017 SCC OnLineGuj 2468] the order of the Chief Judicial Magistrate taking cognizance.

90. Banumathi, J. speaking for the two-Judge Bench in *Afroz Mohammed Hasanfatta case* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] dealt with the issue as to whether while taking cognizance of an offence under Section 190(1)(*b*)CrPC, the Court has to record reasons for its

satisfaction before the issuance of summons. Relying upon the decision in *Pepsi Foods Ltd.* [*Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , it was urged by the accused that the order for the issuance of process without recording reasons was correctly set aside by the High Court. Moreover, it was urged that there was no application of mind by the Magistrate.

91. While distinguishing the decision in *Pepsi Foods Ltd.* [*Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] on the ground that it related to taking of cognizance in a complaint case, the Court in *Afroz Mohammed Hasanfatta case* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] held since in a case of cognizance based on a police report, the Magistrate has the advantage of perusing the materials, he is not required to record reasons : (*Afroz Mohammed Hasanfatta case* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] , SCC p. 552, para 23)

> **"*23*. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. *Under Section 190(1)(b)CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the***

> ***police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused*. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."**
>
> **(emphasis supplied)**
>
> **92. The Special Judge, it must be noted, took cognizance on the basis of a report submitted under Section 173CrPC and not on the basis of a private complaint. Therefore, the case is squarely covered by the decision in *Afroz Mohammed Hasanfatta* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539: (2020) 3 SCC (Cri) 876] . The Special Judge took note of the FIR, the witness statements, and connected documents before taking cognizance of the offence. In this backdrop, it would be far-fetched to fault the order of the Special Judge on the ground that it does not adduce detailed reasons for taking cognizance or that it does not indicate an application of mind. In the facts of this case, therefore, the order taking cognizance is not erroneous."**
>
> (Emphasis supplied)

The Apex Court holds that when cognizance is taken based on a report submitted under Section 173 of the Cr.P.C., and not on the

basis of a private complaint, the unreasoned order of taking cognizance would not vitiate the proceedings. Thus, tumbles down the submission of the learned senior counsel *qua* cognizance. The contentions so advanced by the petitioner are all in the realm of seriously disputed questions of fact, for which a full-blown trial is imperative, as the statements recorded would indicate that the petitioner has touched the private parts of children taking advantage of darkness in the room, therefore, the offences under Sections 7 and 8 of the Act.

14. Sections 7 and 8 of the Act read as follows:

> "**7. Sexual assault**.—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.
>
> **8. Punishment for sexual assault**.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine."

Section 7 deals with sexual assault and Section 8 deals with punishment for sexual assault. **The statute speaks in**

unambiguous terms that whoever touches private parts of the child is said to be committing sexual assault. There is an allegation against the petitioner, if true, squarely falls within the statutory compass. The Police after investigation have filed the charge sheet. It may be that the statements recorded of the children by the leaned Magistrate are similar with each other. This at best is a factor for appreciation of evidence, not a ground for pre-trial exoneration, as it would not mean that the children have not deposed before the learned magistrate under Section 164 of the Cr.P.C. The manner of recording of evidence by the learned Magistrate would not take away the rigour of the allegation of every child alleging that the petitioner has touched their private parts.

15. Therefore, finding no merit to entertain the petition in exercise of my jurisdiction under Section 482 of the Cr.P.C., the petition deserves to be rejected, *albeit* with one direction that the concerned Court should conclude the trial within 3 months from the date of receipt of a copy of this order, as considerable time has

already passed by. The trial shall be conducted strictly in consonance with law.

16. With the aforesaid observations, the petition stands ***rejected.***

Interim order of any kind operating, shall stand dissolved.

Sd/-
(M.NAGAPRASANNA)
JUDGE

Bkp
CT:SS