

HIGH COURT OF SIKKIM
Record of Proceedings**Crl. A. No.14 of 2024**

STATE OF SIKKIM

APPELLANT

VERSUS

LALL BAHADUR RAI

RESPONDENT

Date: 30.10.2024

CORAM:

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Applicant Mr. Yadev Sharma, Additional Public Prosecutor.

For Respondent Mr. Karma Thinlay, Senior Advocate.
Mr. Yashir N. Tamang, Advocate.
Mr. Zamyang Norbu Bhutia, Advocate.
Mr. Chetan Sharma, Advocate.**ORDER**

- 1.** The matter is to be taken up for hearing on Sentence today.
- 2.** This Court in Paragraph 11(i) of the Judgment dated 28-10-2024 had *inter alia* observed that the offence not being penetrative sexual assault, would be one under Section 7 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, "POCSO Act, 2012"), punishable under Section 8 of the same Act and thereafter invoking provisions of Section 222(2) of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C.") had convicted the Respondent of the said offence.
- 3.** In view of the age of the victim child, the correct provision to convict the Respondent would be under Section 9(m) of the POCSO Act, 2012, punishable under Section 10 of the same Act, which thereby does not require invocation of the provisions of Section 222(2) of the Cr.P.C. as charges framed against the Respondent were under Section 9(m) and Section 9(n) of the POCSO Act, 2012, along with Section 354 of the Indian Penal Code, 1860 (hereinafter, the "IPC").
- 4.** It is now settled law that the High Court can exercise its inherent jurisdiction under Section 482 of the Cr.P.C., both in relation to

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substantive and procedural matters, irrespective of the nature of the proceedings. In **Popular Muthiah vs. State represented by Inspector of Police**¹, the Supreme Court observed that power under Section 482 of the Cr.P.C. is not trammelled by procedural restrictions and can be exercised *suo motu* in the interest of justice, concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor. The Court acts *ex debito justitiae* to do real and substantial justice for which it alone exists. It is also to be exercised where it is absolutely necessary for serving the ends of justice and overrides other provisions of the Cr.P.C. but cannot be exercised in violation/contravention of a statutory power created under any other enactment.

5. On the bed rock of the said principles propounded by the Supreme Court and in order to secure the ends of justice, Paragraphs 11(i) and (ii) of the Judgment dated 28-10-2024 are replaced as hereinbelow convicting the Respondent of the relevant offence;

"11.

(i) The Respondent is convicted of the offence under Section 9(m) punishable under Section 10 of the POCSO Act.

(ii) He is acquitted of the offence under Section 9(n) of the POCSO Act. In view of the provision of Section 71 of the IPC, it is not necessary to convict the Respondent under Section 354 of the IPC."

6. The same is pronounced in the open Court in the presence of Learned Additional Public Prosecutor and Learned Senior Counsel for the Respondent. Learned Senior Counsel for the Respondent has no objection to the application of the correct provision of law.

¹ 2006 7 SCC 296

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7. In view of the above circumstance to ensure that no prejudice is caused to the Respondent, the matter be posted for hearing on Sentence later.

LATER: 8. Heard on Sentence.

9. It is submitted by Learned Senior Counsel for the Respondent that the Respondent is aged about fifty-five years, has an unemployed wife, one son working on *ad hoc* basis in the Government, an unemployed son and his daughter lives separately. Thus, his family is entirely dependent on the Respondent's earnings. He was working as a Safaikarmachari in the School near his home and was earning a little above ₹ 25,000/- (Rupees twenty five thousand) only, per month, from which he was repaying two educational loans that he had availed of for his children. That, these being the mitigating circumstances, the minimum penalty prescribed by law, i.e., five years only be imposed on the Respondent.

10. Learned Additional Public Prosecutor has no objection to the submissions advanced and submitted that five years of imprisonment would suffice to meet the ends of justice.

11. Having given due consideration to the submissions, I am of the considered view that the ends of justice would be met by sentencing the Respondent as follows; to undergo simple imprisonment of five years for the offence under Section 9(m) of the POCSO Act, 2012, punishable under Section 10 of the same Act and to pay a fine of ₹ 1,000/- (Rupees one thousand) only, in default thereof to undergo further simple imprisonment of one month.

12. Appeal disposed of accordingly.

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13. Copy of this Order be forwarded to the Learned Trial Court for information along with its records.

14. A copy of this Order also be made over to the Respondent/Convict through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority at the Central Prison, Rongyek, for information and appropriate steps.

15. This Order shall form part of the Judgment dated 28-10-2024.

Judge
30.10.2024

ds/sdl