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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr) No. 8 of 2016

Kamal Prasad Patade aged 55 yrs S/o Shri Mahadeo Rao, Principal : Kendriya Vidyalaya, Kanker, Thana : Kanker, Distt-Uttar-Bastar : Kanker (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Station House Officer, Police Station : Kanker, Distt-Uttar Baster : Kanker (CG)
2. Smt.Ayesha Bai w/o Mohd. Salim, aged 52 yrs., r/o Sanjay Nagar, Kanker, Distt-Uttar-Bastar : Kanker (CG)

---- Respondents

For Petitioner	:	Mr. Anurag Dayal Shrivastava, Advocate
For Res. No.1/State	:	Mr. D.R.Minj Dy. G.A.
For Respondent No.2	:	Mr.Azad Siddique, Advocate
For Amicus Curiae	:	Mr.Prasun Kumar Bhaduri, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

12/05/2016

1. Invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein has filed the instant writ petition seeking quashment of charge-sheet filed against him by jurisdictional police in the criminal court alleging the commission of offence under Section 21 (2) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as "P0SCO Act").

2. The aforesaid quashment has been sought by the petitioner on the following factual backdrop:-

2.1 The petitioner is Principal of Kendriya Vidyalaya (Central School). At the time of alleged incident he was posted at Kendriya Vidyalaya,

Kanker. On 20.8.2015, co-accused/peon of the school Shri Indrajeet Thakur is said to have been committed penetrative sexual assault within the meaning of Section 4 of the POSCO Act with victim/minor grandson of respondent No.2 studying in Class-III, which is offences punishable under Section 4 of the POSCO Act read with Sections 377, 506 Part-II and 511 of the IPC. Alleged incident was said to be reported to the petitioner in the capacity of Principal of the School by respondent No.2 on 21.8.2015 at about 8 a.m. Before the petitioner could complete his inquiry/investigation at his own school level, respondent No.2 lodged the F.I.R. on the same day at 10.30 a.m. to the jurisdictional Police Station Kanker for the aforesaid offences and Crime No.289/2015 was registered for the offences punishable under Sections 377 & 511 of the IPC and Section 4 of the POSCO Act. Immediately thereafter on the next day i.e. 22.8.2015 the petitioner was also arrested by Kanker Police for offence punishable under Section 21(2) of the POSCO Act alleging that he being Principal of the school failed to report the commission of offence under sub-section (1) of Section 19 of the POSCO Act in respect of the offence committed by sub-ordinate co-accused Indrajeet Thakur and sent him to jail and he was released by this Court vide order dated 9.9.2015. The jurisdictional police has thereafter filed consolidated charge-sheet against co-accused Indrajeet Thakur for offences under Sections 377, 511 & 506 Part-II of the IPC and Sections 4 & 6 of the POSCO Act and for offence under Section 21(2) of the POSCO Act against the petitioner.

2.2 Feeling aggrieved against the submission of charge-sheet against him for offence punishable under Section 21(2) of the POSCO Act, the petitioner herein has filed the instant writ petition particularly questioning initiation and continuance of the prosecution on the ground that continuance of the petitioner's prosecution is nothing but clear abuse of process of the law and would submit that he could not be tried along with co-accused, who is being tried for the principal offences alleged to be committed by co-accused. It is further case of the petitioner that unless the commission of principal/main offences by co-accused Indrajeet Thakur are established by the prosecution under Sections 377, 506 Part-II and 511 of the IPC and Section 4 & 6 of the POSCO Act beyond reasonable doubt and thereafter only on the establishment by the prosecution that the petitioner had knowledge of such an offence having been committed and he has intentionally omitted to report the information to the requisite authority as defined in Section 19(1) of the POSCO Act, he can be made criminally liable. In the present case, commission of principal offences against co-accused Indrajeet Thakur is yet to be established in pending trial and therefore, the impugned initiation and continuance of prosecution against the petitioner for offence under Section 21(2) of the POSCO Act deserves to be quashed.

3. Mr.Anurag Dayal Shrivastava, learned counsel appearing for the petitioner, would submit that initiation and continuance of the prosecution against the petitioner for offence under Section 21(2) of the POSCO Act for non-reporting the commission of offence by

co-accused Indrajeet Thakur under Section 4 of the POSCO Act as envisaged under Section 19(1) of the POSCO Act is nothing but sheer abuse of process of the law as co-accused Indrajeet Thakur is still facing trial and it has not been established beyond reasonable doubt that he has committed offences under Section 377, 506 Part-II, 511 of the IPC and Sections 4 & 6 of the POSCO Act and unless and until he is convicted for the aforesaid offences, there is no reason to implicate the petitioner for offence under Section 21(2) of the POSCO Act for non-reporting the commission of the Act under Sections 4 & 6 of the POSCO Act. He would further submit that the prosecution ought to have waited till the principal offences for which co-accused Indrajeet Thakur is charged are determined finally by the jurisdictional criminal Court/Special Judge (POSCO). He would further submit that simultaneous prosecution of the petitioner with co-accused Indrajeet Thakur, before the co-accused is held guilty for the principal offences, runs contrary to the settled law in this behalf. He would also submit that even otherwise, he was not having exclusive knowledge of offences in question, even otherwise, on 21.8.2015 at 10.30 a.m. the matter was reported to Kanker Police and Kanker Police immediately started investigation and the petitioner was also arrested on 22.8.2015 i.e. on the very next day, therefore, he has no such opportunity to investigate the matter and report the matter to the police as required under Section 19(2) of the POSCO Act, therefore, the initiation and continuance of prosecution even if taking the entire charge-sheet in its face value as it is, does not disclose the prima-

facie offence under Section 21(2) of the POSCO Act against the petitioner. Therefore, prosecution against the petitioner in the jurisdictional criminal Court being abuse of process of law deserves to be quashed.

4. Mr.D.R.Minj, learned counsel appearing for respondent No.1/State would vehemently oppose the writ petition and would submit that the petitioner was duly informed by respondent No.2 on 21.8.2015 at about 8 a.m. in the morning, but he did not report the matter to the authority concerned that offence under the POSCO Act has been committed by his subordinate and co-accused Indrajeet Thakur and as such, the petitioner was having knowledge that such an offence has been committed failed to report the matter as envisaged under Section 19(1) of the POSCO Act to the competent authority, therefore, he is criminally liable under Section 21(2) of the POSCO Act and therefore, initiation and continuance of prosecution along with co-accused Indrajeet Thakur for the above-stated offences is in accordance with law and the writ petition deserves to be dismissed.

5. Mr.Azad Siddique, learned counsel appearing for respondent No.2 would also oppose the writ petition and submit that the petitioner having knowledge of commission of offence under the POSCO Act but he did not report the matter to the authorities nor to the Special Juvenile Police Unit or the local police and thereby committed the offence under Section 21(2) of the POSCO Act and as such, continuance of the prosecution for offence under Section 21(2) of the POSCO Act against the petitioner is in accordance with law and the

writ petition deserves to be dismissed.

6. Mr.Prasun Kumar Bhaduri, learned counsel appearing as Amicus Curiae would submit that Section 21(2) of the POSCO is itself liability on any person being in-charge of any company or in institution to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control presumes imprisonment for one year with fine as a punishment if such person being in-charge failed to report the commission of an offence in accordance with Section 19(1) of the POSCO Act. Such provision is imperative in character. He would rely upon paragraphs 71, 72 and 73 of the judgment of the Supreme Court in the matter of **Shankar Kisanrao Khade v. State of Maharashtra**[1] in which Their Lordships have held since best interest of the child is paramount and not the interest of perpetrator of the crime, therefore, approach must be child-centric. He has also highlighted paragraph 77.6 of the judgment in which it has been held by the Supreme Court that non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening the offenders from legal punishment and hence they be held liable under the ordinary criminal law and prompt action be taken against them in accordance with law.

7. I have heard learned counsel appearing for the parties and

1 (2013) 5 SCC 546

considered their rival submissions made therein and also gone through the record with utmost circumspection.

8. After hearing learned counsel appearing for the parties and after perusal of the record, the following question would emerge for consideration:-

> (1) Whether simultaneous prosecution of the petitioner for secondary offence under Section 21(2) of the POSCO Act is permissible before the principal offences which co-accused Indrajeet Thakur is charged under Sections 4 & 6 of the POSCO Act read with 377, 506 Part-II & 511 of the IPC are established ?

9. In order to judge the correctness of the submission raised at the Bar, the statement of Objects and Reasons for enacting the POSCO Act deserves to be noticed. The Protection of Children from Sexual Offences Act, 2012 was enacted by the Parliament, an Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. Statement of objects and reasons provides as under:-

> “4. It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences

and provision for establishment of Special Courts for speedy trial of such offences."

10. In view of statement of Objects and Reasons of the POSCO Act, it is clear that it has been enacted to provide protection to the children from offences of sexual assault, sexual harassment and to achieve such goal, various provisions under the said Act have been designed particularly incorporating child-friendly procedures for reporting the matter to the police.

11. At this stage, it is appropriate to notice Section 19(1) of the POSCO Act which states as under:-

> "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."

Non-compliance of Section 19(1) of the POSCO Act is made punishable under Section 21(2) of the POSCO Act, which states as under:-

> "21. Punishment for failure to report or record a case.-
>
> (1) xxx xxx xxx
>
> (2) Any person, being in-charge of any company or an institution (by whatever name called) 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."
>
> (3) xxx xxx xxx"."

Thus, sub-section (2) of Section 21 of the POSCO Act is charging provision for non-compliance of the provisions of the POSCO Act,

which is prescribed under Section 19(1) of the POSCO Act. The Act which constitutes an offence under Section 21(2) of the POSCO Act relates to failure to make report of commission of offence under the provision of the POSCO Act under Section 19 (1) of the POSCO Act which prescribes that 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. Thus, this provision is in three parts:-

(A) Any person including the child or

(B) who has apprehension that an offence under POSCO Act is likely to be committed or

(C) has knowledge that such an offence has been committed under POSCO Act.

12. The qualifying word in Section 19(1) of the POSCO Act is apprehension regarding an offence is likely to be committed or has knowledge that such an offence under POSCO Act has been committed, he shall provide such information to the Special Juvenile Police Unit or local police. Thus, Section 19(1) of the POSCO Act can be invoked only when the person concerned was having exclusive knowledge of commission of offence under POSCO Act and if the person is in-charge of the institution who fails to report the commission of an offence under sub-section (1) of Section 19 of the POSCO Act in respect of a subordinate under his control, he would be liable for prosecution under Section 21(2) of the POSCO Act.

13. Meaning of “knowledge” has been defined in the law lexicon as under:-

> ***Knowledge*** : The certain perception of truth; belief which amounts to or results in moral certainty indubitable apprehension; information; intelligence; implying truth, proof and conviction; the act or state of knowing; clear perception of fact; that which is or may be known; acquaintance with things ascertainable; specific information; settled belief; reasonable conviction; anything which may be the subject of human instruction.

14. The word '*knowledge'* has been considered by the Supreme Court in the matter of **Joti Prasad v. State of Haryana**[2]. Paragraph 5 of the said judgment reads as under:-

> "5. Under the Indian Penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reasons to believe". We are now concerned with the expressions "knowledge" and "reasons to believe". "Knowledge" is awareness on the part of person concerned indicating his state of mind. "Reasons to believe" is another facet of the state of mind. "Reasons to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reasons to believe" is higher level of state of mind. Likewise "knowledge" will be slightly on higher plane than "reasons to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same....."

15. Likewise, in the matter of **A.S. Krishnan and another v. State of Kerala**[3], Their Lordships of the Supreme Court have held as under:-

2 AIR 1991 SC 1167
3 AIR 2004 SC 3229

> “9. Under the IPC, guilt in respect of almost all the offences is fastened either on the ground of “intention” or “knowledge” or “reasons to believe”. We are now concerned with the expressions “knowledge” and “reasons to believe”. “Knowledge” is awareness on the part of person concerned indicating his state of mind. “Reasons to believe” is another facet of the state of mind. “Reasons to believe” is not the same thing as “suspicion” or “doubt” and mere seeing also cannot be equated to believing. “Reasons to believe” is higher level of state of mind. Likewise “knowledge” will be slightly on higher plane than “reasons to believe”. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26, IPC explains the meaning of the words “reason to believe” thus.
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> > 26. “Reason to believe”. A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise”.

16. At this stage, it would be appropriate to mention that charge-sheet against the petitioner and co-accused Indrajeet Thakur was filed consolidatedly and simultaneously by the jurisdictional police in the criminal court for trying co-accused Indrajeet Thakur for the principal offences under Sections 377, 506 Part-II, 511 of the IPC and Sections 4 & 6 of the POSCO Act and to the petitioner under Section 21(2) of the POSCO Act together for trying them jointly.

17. From careful perusal of the record, it is quite vivid that in a proceeding launched by the prosecution against co-accused Indrajeet

Thakur, the prosecution is yet to establish that the co-accused Indrajeet Thakur has committed penetrative sexual assault/aggravated penetrative assault within the meaning of Sections 3 & 5 of the POSCO Act which is punishable under Sections 4 & 6 of the POSCO Act respectively with grandson of respondent No.2 on 20.8.2015 and also to establish other offences, which are pending trial. Thus, this fact is to be established that such an offence has been committed by co-accused/principal offender Indrajeet Thakur with grandson of respondent No.2. In the prosecution under Section 21(2) of the POSCO Act, it is necessary for the prosecution to establish first commission of main offence under Sections 4 & 6 of the POSCO Act before making the person liable under Section 21(2) of the POSCO Act as the prosecution has firstly to establish beyond doubt in the jurisdictional criminal court that an offence under Sections 4 & 6 of the POSCO Act has been committed by an accused person and once finding is recorded by jurisdictional criminal court convicting the accused therein for offences under Sections 4 & 6 of the POSCO Act, then to establish the petitioner had exclusive knowledge of such an offence having been committed by the co-accused under POSCO Act and despite such knowledge, he failed to report the matter under Section 19(1) of the POSCO Act to the competent authority including local police station, then only penal provision contained in Section 21(2) of the POSCO Act would attract.

18. The law in this regard is well settled. Way back, in the matter of **Harishchandrasing Sajjansinh Rathod and another v. State of**

Gujrat[4], Their Lordships of the Supreme Court while considering the scope and applicability of Section 202 of the IPC have held that said provision does not apply to the person alleged to have committed the principal offence and also held that for prosecution under Section 202 of the IPC, it is necessary for the prosecution to establish that main offence before making the person liable under Section 202 of the IPC and observed as under:-

> "4. To sustain a conviction under the above quoted Section 202 of the Penal Code, it is necessary for the prosecution to prove (1) that the accused had knowledge or reason to believe that some offence had been committed, (2) that the accused had intentionally omitted to give information respecting that offence, (3) that the accused was legally bound to give that information. We have gone through the entire evidence bearing on the aforesaid offence under Section 202 of the Penal Code but have not been able to discern anything therein which may go to establish the aforesaid ingredients of the offence under Section 202 of the Penal Code. The offence in respect of which the appellants were indicated viz. having intentionally omitted to give information respecting an offence which he is legally bound to give not having been established, the appellants could not have been convicted under Section 202 of the Penal Code. It is well settled that in a prosecution under Section 202 of the Penal Code, it is necessary for the prosecution to establish the main offence before making a person liable under this section. The offence under Section 304 (Part II) and the one under Section 331 of the Penal Code not having

4 (1979) 4 SCC 502

> been established on account of several infirmities, it is difficult to sustain the conviction of the appellants under Section 202 of the Penal Code.....”

19. Similar is the proposition laid down by the High Court of Madhya Pradesh in the matter of **K.K.Patnayak, Dr. (Smt.) & 2 Ors. v. State of M.P.**[5] in which it has also held that offence under Section 202 of the IPC cannot be tried along with Sections 306 or 498-A of the IPC and observed as under:-

> “3. Learned counsel for the State urges that it might have been an offence u/s 202 IPC. That offence requires giving information to police by a person who is bound to give such information regarding commission of offence. No material has been placed on record that these accused knew that in burn injuries of this lady some offence was involved. Even if we assume that it should have been their duty to inform and it is a common practise also, it is clear that offence u/s 202 IPC cannot be tried along with the charge u/s 306 or 498-A IPC. It does not fall u/s 223 Cr.P.C. or under any other provision thereof can be tried jointly. These petitioners could not be tried jointly in that assumed offence u/s 202 IPC along with those who committed offence u/s 306 or 498-A IPC.

20. Thus, it is absolutely necessary for the prosecution to establish the main offence under the POSCO Act before the criminal court beyond reasonable doubt and main offender is brought to book before the Head of the Institution is charged/prosecuted for intentionally not giving information to the competent authority including the police

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5 2000 (I) MPJR 57

under Section 19(1) of the POSCO Act. The Madhya Pradesh High Court has also struck similar proposition and held that accused of the principal offences and accused of offence under Section 202 of the IPC cannot be tried jointly. Thus, applying the law so laid down by Their Lordships of the Supreme Court in **Harishchandrasing** (supra) to the facts of the present case, undoubtedly prosecution of main accused for commission of offence under Sections 4 & 6 of the POSCO Act and related offences under the IPC is pending trial and the petitioner is being tried jointly as consolidated charge-sheet has been filed by the prosecution against main accused Indrajeet Thakur and the petitioner. Therefore, pending establishment of the principal offences against main accused for commission of offences under POSCO Act, the initiation and continuance of prosecution against the petitioner for offence under Section 21(2) of the POSCO Act is nothing but clear abuse of the process of law.

21. This matter can be considered from another angle. Pari-materia provision like Section 21(2) of the POSCO Act is also exist in other enactments i.e. Section 201 of the IPC for causing disappearance of evidence of offence, or giving false information to screen offender. Section 202 of the IPC i.e. intentional omission to give information of offence by person bound to inform. Section 376F of the IPC i.e. liability of person in-charge of workplace and others to give information about offence and likewise the provisions in the Cr.P.C. i.e. Sections 39 and 40 of the CrPC. It has been held that omission to give information must be with reasonable cause to avoid culpability.

22. The Supreme Court in the matter of **State of Gujarat v. Anirudhsing and Another** [6] outlined the duty of citizen to give information to assist and co-operate with investigating agency to unearth the real offender and held as under:-

> "Every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society. Every citizen who has knowledge of the cognizable offence has a duty to lay information before the police and cooperate with the investigating officer, who is enjoined to collect the evidence, and if necessary summon witnesses to give evidence....."

23. In the matter of **The State of Maharashtra v. Dashrath Lahanu Kadu**[7], the Bombay High Court has held that provision requiring reporting of commission of an offence to police is procedural provision to set criminal law in motion and held as under:-

> "19. …….. As we have indicated, the events in this case clearly show that the information had actually reached the Police Station at about 3.30 p.m. relating to the commission of the offence of murder of both Watsala and Pundlik. Once the information is reached, the requirements of s. 44 are fully satisfied. Every eye-witness or every person who is in the know of the circumstances relating to an offence is not further expected to go to the Police Station so as to give a report of what he saw. Section 44 has been designed with a purpose to secure information relating to the commission of an offence with all expedition so that investigation should ensue. The provision itself is a part of procedural requirements under our system of criminal law. In view of other provisions in the Code, it is clear that once the investigation is taken up, what remains to be seen is whether the witness relied upon could be said to be a reliable one..."

24. The Andhra Pradesh High Court in the matter of **Akbaruddin Owaisi v. The Government of A.P. and others**[8] struck a similar note and

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6 (1997) 6 SCC 514
7 (1972) 75 Bom LR 450
8 2014 Cr.L.J. 2199

held as under:-

> "26. Every citizen who has knowledge of the commission of cognizable offence has the duty to lay the information before the police under Section 39 Cr.P.C. (State of Gujarat v. Anirudhsing), which obligates every person, who is aware of the commission of the offences mentioned in that Section, to give information to the nearest Magistrate or Police Officer. There is no statutory obligation on a citizen to inform the police about offences other than those mentioned in Section 39 Cr.P.C. (Dr. Satyasaheel Nandlal Naik v. State of Maharashtra)[9], as it merely casts a duty and an obligation to report offences mentioned therein, omission to discharge which is made penal. The said Section has been designed with the purpose of securing information relating to the commission of an offence with all expedition so that investigation should ensue. Once the information, relating to the commission of the offence has actually reached the Police Station the requirements of Section 39 Cr.P.C. are fully satisfied. Evey eye-witness or every person who is in the know of the circumstances relating to an offence is not expected, thereafter, to go to the Police Station to give a report of what he saw. (State of Maharashtra v. Dashrath Lahanu Kadu).

25. In the matter of **Ramphal v. King Emperor**[10], it has been held that provisions contained in Section 202 IPC are not intended to be punitive in themselves, but are intended to be facilitate information as to the commission of an offence. The report states as under:-

> "The second point is more serious and it is to the effect that the report as to the commission of the offence having been admittedly made in the presence of the applicant by the Chaukidar and that report being admittedly correct in all particulars no further duty or obligation lay upon the applicant under the terms of section 45 Cr.P.C., for adding his own weight to the information supplied by the Chaukidar by furnishing fresh information on the same lines. In my opinion the contention is sound and must be accepted. It is admitted that in consequence of the information furnished by the village Chaukidar the Sub-Inspector

9 1966 Cr.L.J. 1463
10 AIR 1921 Oudh 227

took action, the result of which was the conviction of the offender, Chote Lal. Consequently justice has been fully satisfied. The provisions of the section are not intended to be punitive in themselves but are intended to facilitate information as to the commission of an offence and thereby to facilitate steps being taken in the investigation of the same. All this object was attained by what happened in this case and particularly by what the Chaukidar had informed the Sub-Inspector in the clearest terms. This view of the law is supported by a series of authorities, three of which have been referred to by the learned counsel for the applicant in the course of the arguments before me. They are The Empress v. Sashi Bhushan Chuckrabutty[11], The Queen Empress v. Gopal Singh[12], in the matter of the Petition of Pandya Nayak[13].

26. In the matter of **P.K. Sarangi v. State of Orissa and Anr.**[14], it has been held by the Orissa High Court that omission under Section 202 IPC must not only be omission, but a willful omission with some ulterior object. Paragraph 7 of the report states as under:-

"7. So far as offence punishable under Section 202, IPC is concerned, it postulates commission of offence, though it does not expressly say so. The provisions of the section are analogous to those of Section 176, IPC which is however more general, for, while it relates to the legal obligation to furnish information on any subject, Section 202. IPC relates to the commission of an offence. As it is, both the sections have an application limited to the class of persons "legally bound to-give information. Such persons are, for examine, the police, village headman, village accountant, owner or occupier of land, etc. as specified in Section 40 of the Code. The public are "also under the legal obligation to inform the police regarding the commission of certain offences specified in Section 39 of the Code. It mentions the offence of which every person is bound to give an information to the nearest Magistrate or police officer, and his failure to do so is made punishable under Section 202 IPC Intentional omission is made culpable. It must be only an omission, but a willful omission, that is to say, an omission which amounts to

11 (1879) 4 Ca. 623
12 (1893) 20 Cal. 316
13 (1884) 7 Mad. 436
14 1995(I) OLR 319

suppression due to some ulterior object. Section 39 also deals with intention to commit any offence punishable under certain sections of the IPC. Omission to give information must be with reasonable cause to avoid culpability."

27. At this stage, it would be appropriate to notice the judgment of the Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**[15], in which the Supreme Court laid down the principle of law relating to exercise of extra-ordinary power under Article 226 of the Constitution of India and has held as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustrating wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

15 1992 Supp (1) SCC 335

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

28. A conspectus of the afore-stated judgments would show that Section 21(2) of the POSCO Act is a penal provision which obliges any person being in-charge of the institution to give information before the police about the commission of an offence under the POSCO Act. The said provision has been enacted for the purpose of screening the offender relating to commission of offence under the POSCO Act with an intention that information relating to commission of offence under the POSCO Act must reach to the police authorities with all expedition so that wheels of investigation for the offences under the POSCO Act will start running at the earliest and once the information relating to

commission of offence actually reaches to the Police Station, the requirement of Section 19 (1) of the POSCO Act stood satisfied and therefore, no prosecution for non-reporting the matter under Section 21(2) of the POSCO Act would lie against the Head of the Institution.

29. Thus, on the basis of aforesaid discussion, it is held that the prosecution of the petitioner for non-reporting the commission of offence by co-accused Indrajeet Thakur under Sections 4 & 6 of he POSCO Act offence under Section 21(2) of the POSCO Act is unsustainable in law as the prosecution of co-accused Indrajeet Thakur for the principal offences is still pending consideration and it has not been established beyond doubt that co-accused Indrajeet Thakur has committed the offence under Sections 4 & 6 of the POSCO Act and other related offences under the provisions of the IPC and therefore, unless the commission of the principal offences by the main accused for offences under the POSCO Act is established, question of prosecution of the petitioner for non-compliance of Section 19(1) that he has knowledge of commission of offence would not arise. The information as to the commission of offence has already reached to the jurisdictional police and after registration of an offence under the POSCO Act & IPC, crime has been investigated and offender has been charge-sheeted, thereafter, prosecution of the petitioner for offence under Section 21(2) of the POSCO Act is unsustainable in law.

30. Before parting with the case, I deem it appropriate to notice importance of the post of Principal in a school or college. A Full Bench of Kerla High Court in the matter of **Aldo Maria Patroni v. E.C.**

Kesavan[16] states as under:-

> "The post of Headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of institution, on him depends the continuity of its traditions, the maintenance of discipline and efficiency of its teaching".

31. Similar is the observation of the Supreme Court in the matter of **The Ahmedabad St. Xavier's College Society and Another v. State of Gujarat and another**[17], in which the Supreme Court has highlighted the importance of role of the principal of a college. It was observed as under:-

> "182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching.....".

32. Section 21(2) of the POSCO Act is a penal provision. Any person being in-charge of any institution is liable to be prosecuted criminally for failure to report for commission of an offence under Section 19(1) and 20 of the Act. In this case, the Head of the Institution is the Principal of Central School. The Principal is the key post in the running of a school. How important is the post of Headmaster or Principal of a school can be gathered from the observation made by the Supreme Court in following judgments:-

In the matter of **N.Ammad v. Manager, Emkay High School and others**[18], the Supreme Court observed as under:-

> "The Headmaster is the key post of the running of the

16 AIR 1965 Kera 75
17 (1974) 1 SCC 717
18 (1998) 6 SCC 674

> school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster."

Hon'ble Justice V.R.Krishna Iyer in **Gandhi Faiz-E-Am College v. University of Agra**[19] observed as under:-

> "An activist principal is an asset in discharging these duties which are inextricably interlaced with academic functions."

33. Thus, the petitioner being the Head of the Institution/Principal of a reputed school holding such a key post of running of a school was not given due respect which the Head of the Institution is usually entitled to by giving reasonable/sufficient time to inquire and collect the material as on 21.8.2015 at 8 a.m. alleged crime was said to be reported to him and before he could collect the material at his own school, the matter was reported to police at 10 a.m. on said day, crime was registered against the co-accused and investigation commenced, but unfortunately on the next date, the petitioner was arrested for non-reporting the matter to police under Section 21(2) of the POSCO Act for his failure of non-reporting the matter between 8 a.m. to 10 a.m. on 21.8.2015. Such a course on the part of investigating agency is wholly impermissible in law. Head of the Institution is entitled to and should be allowed sufficient/reasonable time to find out the correct facts by making an enquiry at the institutional level before reporting the matter to make the reporting of an offence responsible by the

19 (1975) 2 SCC 283,

Head of Institution based on material collected, which legislature has intended while enacting the provision under Section 21(2) of the POSCO Act and therefore the prosecuting agency should be circumspect in initiating prosecution under Section 21(2) of the POSCO Act against the In-charge of the institution.

34. As an upshot of the aforesaid discussion, initiation and continuance of prosecution only against the petitioner for offence under Section 21(2) of the POSCO Act, which is subject-matter of Special S.T. No.56/2015 (State of Chhattisgarh v. Indrajeet Thakur and another) pending in the Court of the Additional Sessions Judge (F.T.C.), Uttar Bastar Kanker, stands quashed. However, the prosecution would continue against co-accused Indrajeet Thakur.

35. Accordingly, the writ petition is allowed to the extent indicated hereinabove, but without imposition of cost(s).

36. Before parting with the record, this Court appreciates the assistance rendered to this Court by Mr.Prasun Kumar Bhaduri, learned amicus curiae in the matter. Copy of this order be sent to the Director General of Police, Raipur Chhattisgarh for information and needful action.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr) No.8 of 2016

PETITIONER Kamal Prasad Patade

Versus

RESPONDENTS State of Chhattisgarh and others

HEAD-NOTE

(English)

The prosecuting agency should be circumspect in initiating prosecution under Section 21(2) of the POSCO Act against the In-charge/Head of the Institution and should allow them sufficient/reasonable time to enquire & report the matter.

(हिन्दी)

अभियोजन पक्ष द्वारा संस्था के प्रभारी/अध्यक्ष के विरूद्ध लैंगिक अपराधों से बालकों का संरक्षण अधिनियम की धारा 21 (2) के अंतर्गत अभियोजन आरंभ करते समय सावधानीपूर्वक अभियोजन आरंभ करना चाहिए तथा उन्हें मामले की जॉच और जानकारी देने हेतु पर्याप्त/यथोचित समय दिया जाना चाहिए।