VERDICTUM.IN

2024:DHC:1905

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 13.02.2024***
Pronounced on: 07.03.2024

\+ **W.P.(CRL) 3080/2023**

RAJEEV DAGAR ..... Petitioner

Through: Mr. Rajat Wadhwa, Ms. Dhreti Bhatia, Mr. Gurpreet Singh, Mr. Nikhil Mehta and Mr. Himanshu Nailwal, Advocates

versus

STATE & ORS. ..... Respondents

Through: Ms. Rupali Bandhopadya, ASC for the State.
Mr. Gitesh Aneja and Mr. Lakshay Kumar, Advocates for R2 & 3

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

INDEX TO THE JUDGMENT

VERDICTUM.IN

SWARANA KANTA SHARMA, J.

1. The present case revealed a disturbing series of judicial and mediation orders and the prayer made before this Court, which is on three accounts:

First, the aspect of a prayer by a father estranged from his wife, not currently living with her or their children, seeking re-opening of a case of sexual abuse and assault by a near relative

VERDICTUM.IN

falling in the first degree of relationship on two minors (one who now has attained majority and the other being 17 years), after a period of seven years of closing of the complaint filed under Section 7 read with Section 33 of Protection of Children from Sexual Offences Act, 2012 (*'POCSO Act'*) before a competent Court of law.

Second equally disturbing fact emerged on record that a Special Court had referred a complaint filed under POCSO Act to mediation, where the victims were minors, on the basis of statements made by both father and the mother of the minor victims that they wanted to compromise the matter.

Third, an equally disturbing fact was that in the mediation centre, the matter was mediated and settled, and on the basis of the said settlement, the learned Special Court had closed the complaint filed under the POCSO Act.

2. The petitioner Sh. Rajiv Dagar, by way of present writ petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*), has sought issuance of writ in the nature of mandamus or any other writ, order or direction for the purpose of quashing the order dated 08.04.2015 passed by the learned Additional Sessions Judge-01, South, Saket Courts, New Delhi (*'Special Court'*) in Miscellaneous Application No. 01/2014; and for restoration/revival of the complaint filed under Section 7 read with Section 33 of POCSO Act against respondent no. 2 and 3 regarding sexual assault on the minor children of complainant i.e. petitioner herein.

VERDICTUM.IN

THE CASE OF THE PETITIONER

3. As disclosed from the petition, the petitioner is the husband of respondent no. 3, and respondent no. 2 is the brother of respondent no. 3 i.e. brother-in-law of petitioner. It is stated that the children of the petitioner, namely 'Ms. X' who was aged about 9 years and 'Mr. Y' who was aged about 6 years, were victim of sexual assault at the hands of respondent no. 2, in the year 2013-14. It is stated that in September 2013, the petitioner had caught respondent no. 2 inappropriately touching his children, and he had also filed a complaint bearing DD No. 41B dated 20.09.2013 at P.S. Defence Colony. It is further stated that the petitioner's wife had left the matrimonial home and her kids, and she had initiated proceedings against the petitioner *inter alia* including the proceedings for custody of the children, in the second week of October 2013, and she was granted visitation rights. It is alleged that during the visitation period between 03.01.2014 to 13.01.2014 granted to respondent no. 3, the petitioner had come to know, upon being informed by his children, that respondent no. 2 i.e. petitioner's brother-in-law had inappropriately touched the private parts of both the children of the petitioner. As stated in the petition, immediately thereafter, the petitioner had filed a complaint on 15.01.2014 before the local police station as he was the natural guardian of both the children, and the incident was described in detail in the complaint. However, no action was taken by the police and therefore, the petitioner being the father and the natural guardian of the children had filed a complaint under Section 33 of POCSO Act for the heinous offences committed by the

VERDICTUM.IN

maternal uncle of the children. It is stated that after the complaint was filed before the learned Special Court, the Court had directed the police to record statements of the children under Section 24 of POCSO Act, which were duly recorded and the petitioner's minor son and minor daughter had supported their case, as alleged in the complaint. Thereafter, the learned Special Court in terms of Section 35 of POCSO Act had called the children to the Court for their examination on oath and both the children had deposed before the learned Special Court about the alleged incident.

4. The case set out by the petitioner now is, that after the children had deposed before the learned Special Court, the wife of the petitioner, who is the real sister of the accused, had approached petitioner for settling all the matrimonial disputes. The petitioner, who was totally unaware about the real intentions of his wife, had agreed that the matter be referred to the mediation centre. It is stated that the petitioner's wife had proposed that they should settle all the disputes including the present complaint case to put an end to the litigation, and though the petitioner did not want to withdraw the complaint filed under the POCSO Act, but for the sake of his children, he had proposed that the custody of the children be given to him with no visitation rights to the wife or the maternal relatives of the children. It is stated that a Memorandum of Understanding was pinned down between the petitioner and his wife and it was agreed that they would apply for mutual divorce, giving the custody of the children to the father i.e. the petitioner. A Settlement Agreement dated 27.08.2014 was entered into between the parties wherein it was

VERDICTUM.IN

also agreed that the petitioner would withdraw the present complaint filed before the learned Special Court. It is submitted that the petitioner had withdrawn the present complaint in view of the terms of the mediation, and a separate statement dated 08.04.2015 to this effect was also recorded before the Court concerned.

5. The petitioner states that both the parties had then filed their joint petition for dissolution of marriage and after the first motion was approved by the learned Family Court, the wife of the petitioner had approached him and had requested to take her back and let her live with him and their children. The petitioner states that for the sake of the future of his children, he had allowed his wife to reside at the matrimonial house. Thereafter, the parties had started residing together at their matrimonial home only, however, the petitioner states that he was unaware that the accused/respondent no. 2, in a well-hatched conspiracy with his sister, had tricked the petitioner into withdrawing the present complaint case filed under the POCSO Act. It is stated that the petitioner had only agreed for a settlement, which was recorded on 27.08.2014, on the condition that the children of the petitioner will stay with him and the wife will forego all her rights against the children, but his wife failed to fulfil the terms of the settlement agreement. Further, the agreement clearly stated that the parties would be at liberty to revive the cases which were pending against them in case of any non-compliance with the agreement. Therefore, the present writ petition has been filed before this Court.

VERDICTUM.IN

ARGUMENTS ADDRESSED BY LEARNED COUNSELS

6. Learned counsel appearing on behalf of the petitioner argues that the learned Special Court had no power to dismiss the complaint filed under the POCSO Act after taking cognizance under Section 33 of the Act, and the Court could not have allowed the withdrawal of the complaint filed by the petitioner. It is vehemently argued that the learned Special Court could not have referred the present case for mediation between the petitioner and his wife i.e. respondent no. 3 herein, when the main accused in the case was respondent no. 2, who was not a party to the settlement, arrived between the parties before the mediation centre. It is further submitted that even otherwise, the learned Special Court was wrong in allowing a complaint for cognizable offence under POCSO Act to be dismissed on the basis of settlement arrived at between the parties, more so when the victims i.e. minor children of the petitioner had already been examined under Section 35 of the POCSO Act and had categorically stated that the respondent no. 2 had sexually assaulted them. Learned counsel further argues that the learned Special Court did not follow the due procedure as established under Section 33 of POCSO Act and the Court could not have settled the complaint on the basis of a compromise between the petitioner and respondent no. 3. It is also argued that the respondent no. 3 also failed to adhere to the conditions as mentioned in the settlement dated 27.08.2014 by not giving divorce to the petitioner, and rather, she had started living with the petitioner only in order to save her brother i.e. respondent no. 2. It is further stated that order dated 08.04.2015 *vide* which the learned

VERDICTUM.IN

Special Court had allowed the complaint to be withdrawn is a clear misuse and abuse of process of law and is liable to be quashed at the very threshold, and therefore, it is prayed that the present petition be allowed.

7. On the other hand, Counter affidavit has been filed on behalf of respondent no. 3 i.e. the wife of petitioner and learned counsel appearing on behalf of respondent no. 2 and 3 argues that the filing of present petition is sheer misuse and abuse of process of law and the same has been filled with oblique and ulterior motives. It is stated that the petition is not maintainable as there exists no provision in the POCSO Act or any other law governing the present proceedings so as to revive the prosecution for an alleged offence, after withdrawal of the complaint on the behalf of the complainant. It is argued that the petitioner has preferred the present writ petition after delay of almost 10 years approximately and no reasons have been mentioned in the entire petition to justify such delay. It is argued that the petitioner had filed a false and frivolous complaint under POCSO Act in which there was no substance and because of the same, he had settled the matter with the respondent no. 3. It is pointed out that the petitioner had withdrawn the complaint on 08.04.2015 on account of a compromise arrived at between respondent no. 3 and the petitioner, and thereafter in the year 2018, when the parties were again embroiled in a matrimonial discord, then the petitioner had filed this petition for revival of the complaint only in the year 2023. It is, thus, stated that the present writ petition has been filed as a counter blast to the complaint case initiated by respondent no. 3 under the Protection

VERDICTUM.IN

of Women from Domestic Violence Act, 2005 (*'PWDV Act'*) wherein the learned Mahila Court was pleased to pass an order dated 31.03.2023, *vide* which the petitioner was directed to pay interim maintenance of Rs.80,000/- per month, from the date of filing of petition, and these facts have been concealed by the petitioner from this Court deliberately in order to mislead and misguide this Court. It is further submitted that the petitioner had filed a complaint dated 13.09.2013 bearing DD No. 27A in P.S. Defence Colony when he had levelled serious allegations on the character of respondent no. 3, but had not mentioned anything about any alleged sexually deviant behaviour of respondent no. 2, and as an afterthought, the petitioner had levelled some allegations against respondent no. 2 in another complaint dated 20.09.2013 and thereafter in the complaint filed under the POCSO Act. It is further submitted that the complaint filed under POCSO Act was filed in a haste and without even waiting for any action being taken by police since the same was filed within 9 days of filing the complaint before the police. It is also argued that in the action taken report filed before the learned Special Court in the present case, the concerned SHO had clearly stated that the complaint filed by the petitioner against respondent no. 2 was *prima facie* false and the allegations seemed to be motivated with the motive to strengthen the petitioner's case in the Court for permanent custody of the children. It is further argued that the petitioner has deliberately and intentionally concealed that all the three children, one aged 19 years, another 16 years and one aged 8 years, are all in exclusive care and custody of respondent no. 3 i.e. the petitioner's wife since the

VERDICTUM.IN

year 2018, and she has been looking after the children without any support and economical assistance from the petitioner and his family. It is therefore prayed that the present petitioner, which is frivolous in nature, be dismissed.

8. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned counsel for the respondents, and has perused the entire material placed on record.

ANALYSIS: HISTORY OF THE CASE

Factual History & The Allegations

9. The material available on record before this Court reveals that the petitioner had first filed a complaint dated 13.09.2013 bearing DD No. 27A before P.S. Defence Colony, a copy which has been placed on record by the respondent no. 3. In the said complaint, he had alleged that in the morning of 13.09.2013, his in-laws i.e. relatives of his wife had barged into his residence and had alleged that he was defaming their daughter on ground that he she was having an affair with a senior colleague. It was alleged by the petitioner that his in-laws were very aggressive and they had also manhandled him. After exchanging hot words with him, they had also threatened to kill him and had tried to take away his wife and kids with them. It was further alleged that they were successful in taking away his wife as well as some ornaments and clothes and the keys of the car, whereas the custody of both the children was with the

VERDICTUM.IN

complainant/petitioner and he had an apprehension that the said people may again try to take away his kids in future.

10. Thereafter, another complaint bearing DD No. 41B dated 20.09.2013 was filed before ACP Defence Colony and it was again alleged that the petitioner's wife had been in a sexual relationship with some other man. It was again reiterated that on 13.09.2013, the family members of the petitioner's wife had barged into the petitioner's house and had abused him, manhandled him, and had taken away his wife forcibly. It was also stated that the next day, the petitioner had received calls from his brother-in-law, who had threatened him to hand over the custody of the children. It was further alleged in this complaint that the brother of his wife i.e. respondent no. 2 is of criminal mindset and the petitioner had seen him even touching his son and daughter in inappropriate manners, and the petitioner feared gross child sexual abuse of his kids if they remained in the custody of his wife and brother-in-law.

11. Thereafter, a complaint bearing DD No. 89B dated 15.01.2014 was filed by the petitioner before P.S. Malviya Nagar on the allegations of child sexual abuse at the hands of respondent no. 2 herein, during the period of interim custody granted to petitioner's wife from 03.01.2014 to 13.01.2014. As alleged, the minor children of the petitioner had complained to him regarding child sexual abuse and his minor daughter had informed the petitioner that her maternal uncle i.e. respondent no. 2 had continuously touched her chest and buttocks despite her resistance. The minor son of petitioner had also

VERDICTUM.IN

complained that his maternal uncle used to touch him under his thighs and he did not stop doing so even after being asked by him.

Complaint under POCSO Act

12. After filing this complaint before the police, the petitioner had preferred a complaint under POCSO Act, before the learned Special Court constituted under POCSO Act. The history of complaints filed before the police on 20.09.2013 and 15.01.2014 was mentioned in the said complaint. The details of the incident, as informed to him by his minor children, were also mentioned including as to how the accused i.e. respondent no. 2 used to sexually abuse the minor children of the petitioner. The aforesaid complaint was filed on 24.01.2014 and *vide* order dated 11.02.2014, the learned Special Court had observed that there were allegations that the minor children 'Ms. X' and 'Mr. Y' had been sexually assaulted by their maternal uncle, and the investigating officer was, thus, directed to record the statements of the children and file a report before the Court. Thereafter, the statements of the minor children/victim were recorded by the concerned police officer on 27.02.2014.

13. Order dated 03.06.2014 records that since provision of Section 35 of POCSO Act is mandatory in nature and the evidence of child is to be recorded within a period of 30 days of taking cognizance of the offence, the matter was fixed by the learned Special Court for 05.06.2014 for recording the statement of minor children/victim. On the said day, CW-1 and CW-2 were examined and discharged.

VERDICTUM.IN

14. Thereafter, the order dated 28.07.2014 records that both the parties had requested to explore the possibilities of compromise between them, and accordingly, **the matter was referred to Mediation Centre, Saket Court for 07.08.2014 for the purpose of mediation. The order dated 28.07.2014 reads as under**:

> "...At the request of both parties to explore the possibilties for compromise between them, matter is referred to Mediation Center, Saket Court Complex, for 07.08.14 at 2.00 PM. Parties to appear there accordingly. Put up for further proceedings before this court on 03.09.14…"

15. The parties had then settled the disputes and **a Settlement Agreement was entered into between the petitioner and his wife i.e. respondent no. 3 before the Mediation Center, Saket Courts, on 27.08.2014**. Pursuant to same, on 08.04.2015, the petitioner herein had given a statement before the learned Special Court (POCSO) that the matter has been settled between the parties and in compliance of the same, he did not wish to proceed further in the present complaint case and the application filed by him may be dismissed as withdrawn. **On the basis of statement made by the complainant i.e. the petitioner herein, that the matter had been settled before the Mediation Centre, the complaint/application by him was dismissed as withdrawn and disposed of**. The order dated 08.04.2015 as well as statement of petitioner recorded on the said date, read as under:

> "Ld. counsel for applicant submits that matter has already been settled before the Mediation Centre and applicant wants to withdraw the present application. Accordingly, statement of applicant has been recorded separately.

VERDICTUM.IN

In view of statement of applicant, the present application is dismissed as withdrawn and stands disposed of accordingly."

***

"Statement of Applicant Rajiv Dagar…

On SA

I am the applicant in this case. I say that the all disputes between the parties has been settled amicably in the Mediation Centre, Saket Court. The terms and conditions have been settled between the parties on 27.08.14. The proceedings of Mediation Centre is on already on record, which is Ex.CW-1/A, which bears my signatures on each and every page. The parties have taken the step. So in compliance of the Mediation proceedings, I do not want to further proceed in the matter. So the present application may kindly be dismissed as withdrawn."

Aftermath of Settlement Agreement

16. The respondents have brought to the knowledge of this Court that the petitioner and respondent no. 3 had started living together in the matrimonial house in September, 2014 itself and after the complaint under POCSO Act was dismissed as withdrawn on 08.04.2015, an FIR which had been registered against the petitioner under Section 313 of IPC was quashed by this Court on 06.04.2015 and another FIR registered under Sections 498A/406/34 of IPC against the petitioner was quashed by this Court on 27.05.2015.

17. The respondents have further revealed that the petitioner and respondent no. 3 were also blessed with a third child on 14.10.2015. However, respondent no. 3 i.e. the petitioner's wife had left the matrimonial home along with the children on 04.04.2018. On

VERDICTUM.IN

07.04.2018, she had filed a complaint under PWDV Act against the petitioner, wherein a restraining order had also been passed.

18. By way of order dated 10.07.2019, *ad-interim* maintenance of Rs.30,000/- per month was awarded in favour of the wife of petitioner. Thereafter, the learned Mahila Court, in the proceedings pending under the PWDV Act, had passed an order dated 31.03.2023 *vide* which the petitioner herein was ordered to pay interim maintenance of Rs.80,000/- per month, from the date of filing of petition under the PWDV Act, to respondent no. 3 and the children.

19. **It is only then that the petitioner, on 15.04.2023 i.e. within a period of 15 days from the passing of order of interim maintenance, had preferred an application under Section 7 read with Section 33 of POCSO Act before the learning ASJ (POCSO), South East, Saket Courts for restoration or revival of the complaint which he had filed under POCSO Act on 24.01.2014. However, he had later withdrawn this application on 22.08.2023 before the learned Sessions Court. Eventually, the present writ petition was filed before this Court on 12.10.2023**.

WHETHER MEDIATION CAN BE PREFERRED IN CASES REGISTERED UNDER THE POCSO ACT OR CASES OF SEXUAL ASSAULT?

Which Cases Cannot be Referred To Mediation?

20. The Hon'ble Apex in the case of ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*** *(2010) 8 SCC 24* held

VERDICTUM.IN

that the following categories of cases can be considered as non-suitable for ADR process:

> "The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:
>
> (i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).
>
> (ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association etc.).
>
> (iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.
>
> (iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.
>
> (v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against government.
>
> (vi) **Cases involving prosecution for criminal offences**."
>
> (Emphasis supplied)

21. Criminal offences are violations against the state or society as a whole, and the prosecution is pursued by government authorities on behalf of the public interest. Attempting to apply ADR methods to serious criminal cases would be impractical and potentially detrimental to the principles of criminal justice, since criminal offences involve violations of laws enacted to protect public safety and order, and the consequences of such offences extend beyond the interests of individual parties. Moreover, criminal cases often involve complex legal issues, evidence, and constitutional rights that require careful adjudication by the Courts of law. Furthermore, the victims of

VERDICTUM.IN

criminal offences may seek justice and closure through the formal criminal justice system, which provides avenues for accountability and restitution. Hence, cases involving criminal prosecution cannot be referred to Alternative Dispute Resolution (ADR) processes, as held by the Hon'ble Apex Court.

22. The **Supreme Court Mediation Manual** also provides guidance as to what cases can or cannot be referred by the Courts to mediation. The relevant portion of the said manual is extracted hereunder:

Choice of Cases for reference

As held by the Supreme Court of India in **Afcons Infrastructure Ltd. and Anr. V. Cherian Varkey Construction Co. Pvt. Ltd. and Ors.,** (2010) 8 Supreme Court Cases 24, having regard to their nature, the following categories of cases are normally considered unsuitable for ADR process.

i. (i) Representative suits under Order I Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court.

ii. Disputes relating to election to public offices.

iii. Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

iv. Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc.

v. Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.

vi. Cases involving prosecution for criminal offences.

All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

i) All cases relating to trade, commerce and contracts, including

-disputes arising out of contracts(including all money suits);

-disputes relating to specific performance;

- disputes between suppliers and customers;

- disputes between bankers and customers;

66

VERDICTUM.IN

-disputes between developers/builders and customers;

- disputes between landlords and tenants/licensor and licensees;

- disputes between insurer and insured

ii) All cases arising from strained or soured relationships, including

- disputes relating to matrimonial causes, maintenance, custody of children;

- disputes relating to partition/division among family members/coparceners/co-owners; and

- disputes relating to partnership among partners.

iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including

- disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.);

- disputes between employers and employees;

- disputes among members of societies/associations/apartment owners' associations;

iv) All cases relating to tortious liability, including

- claims for compensation in motor accidents/other accidents; and

v) All consumer disputes, including

- disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.

The above enumeration of "suitable" and "unsuitable" categorisation of cases is not exhaustive or rigid. They are illustrative which can be subjected to just exceptions or addition by the courts/ tribunals exercising its jurisdiction/discretion in referring a dispute/case to an ADR process.

In spite of the categorization mentioned above, a referral judge must independently consider the suitability of each case with reference to its facts and circumstances.

23. **However**, the Hon'ble Apex Court in case of ***K. Srinivas Rao v. D.A. Deepa*** *(2013) 5 SCC 226* has held that in case of a complaint filed by a wife under Section 498A of IPC against the husband and his family, mediation as a method of alternative dispute redressal could being resorted to, in order to settle matrimonial disputes, even though the offence under **Section 498A** of IPC is **non-compoundable in nature**. The relevant portion of the judgment reads as under:

> "44. We, therefore, feel that though offence punishable under Section 498-A IPC is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is,

VERDICTUM.IN

> obviously, not to dilute the rigour, efficacy and purport of Section 498-A IPC, but to locate cases where the matrimonial dispute can be nipped in bud in an equitable manner. The Judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law."

Reference of Compoundable Offences to Mediation

24. In case of ***Dayawati v. Yogesh Kumar Gosain*** *2017 SCC OnLine Del 11032*, the Hon'ble Division Bench of this Court discussed the power of criminal courts to refer cases to mediation and held that even though there is no specific statutory provision allowing referral to alternate dispute resolution mechanisms in criminal cases, the process of mediation and conciliation can be utilised for resolving offences **which are compoundable as per Section 320 of Cr.P.C**. It was also observed that cases under Section 138 of Negotiable Instruments Act, 1881, being compoundable in nature, can also be settled through mediation process. The relevant observations in this regard read as under:

> *"VI. Power of criminal courts to refer cases to mediation*
>
> ***
>
> 63. We have extracted above the provisions of Section 320 of the Cr.P.C. Section 320 of the Cr.P.C. enumerates and draws a distinction between offences as compoundable, either between the parties or with the leave of the court. This provision clearly permits and recognizes the settlement of specified criminal offences. Settlement of the issue(s) is inherent in this provision envisaging compounding. The settlement can obviously be only by a voluntary process inter se the parties. To facilitate this process, there can be no possible exclusion of external third party assistance to the parties, say that of neutral mediators or conciliators.

VERDICTUM.IN

> 64. Therefore, even though an express statutory provision enabling the criminal court to refer the complainant and accused persons to alternate dispute redressal mechanisms has not been specifically provided by the Legislature, however, the Cr.P.C. does permit and recognize settlement without stipulating or restricting the process by which it may be reached. There is thus no bar to utilizing the alternate dispute mechanisms including arbitration, mediation, conciliation (recognized under Section 89 of CPC) for the purposes of settling disputes which are the subject matter of offences covered under Section 320 of the Cr.P.C.
>
> *VII. Process to be followed in reference of above disputes in criminal law to mediation*
>
> 65. So what is the process to be followed in disputes under criminal law? So far as criminal matters are concerned, Section 477 of the Cr.P.C. enables the High Court to make rules regarding any other matter which is required to be prescribed. The Mediation and Conciliation Rules stand notified by the Delhi High Court in exercise of the rule making power under Part X of the Code of Civil Procedure, Section 89(2)(d) of the C.P.C. as well as "all other powers enabling the High Court" in this behalf. The Rules therefore, clearly provide for mediation not only in civil suits, but also to "proceeding pending in the High Court of Delhi or in any court subordinate to the High Court of Delhi". So far as Delhi is concerned, these rules would apply to mediation in a matter referred by the court concerned with a criminal case as well as proceedings under Section 138 of the NI Act.

25. The **website of Delhi District Courts' Delhi Mediation Centre**, for the reference of all learned judicial officers of Delhi judiciary as well as mediators on the panel of Delhi Mediation Centre, also specifies the category of cases which are suitable for mediation, the extract of which is reproduced hereunder:

> "Cases Suitable for Mediation
>
> The working of the mediation centres has revealed that Suits for Injunction, Specific Performance, Suit for Recovery, Labour Management disputes, Motor Accident Claims cases

VERDICTUM.IN

> and Matrimonial Disputes have met with a positive result during mediation.
>
> **As far as criminal cases are concerned, cases of harassment on account of dowry and cruelty under section 406/498-A IPC and under section 138 of Negotiable Instruments Act are suitable for mediation**."
>
> (Emphasis supplied)

Non-Compoundable Serious Offences cannot be settled through Mediation

26. This Bench in ***Abhishek @ Love v. State of NCT of Delhi*** *2023 SCC OnLine Del 5057* has also held that **serious criminal offences, which are non-compoundable in nature**, including those under Sections 384/397/394/376/377 of IPC and under POCSO Act, **cannot be compromised by way of a mediated settlement agreemen**t. The relevant observations of this Bench alongwith other guidelines issued for the mediators are reproduced hereunder for reference:

> "i. **Guidelines for the Mediators**
>
> 22. In these circumstances, this Court issues the following guidelines, to be followed by the mediators in all the mediation centres in the District Courts of Delhi as well as of this Court, at the time of recording mediation settlements:
>
> i. **That the offences under Sections 384/397/394/376/377 and under POCSO Act, etc., being non-compoundable cannot be compounded or compromised by way of a mediated settlement and should not be a subject matter of settlement on payment of money, etc.**
>
> ii. In such cases where one FIR is under compoundable offence and the other under non-compoundable offence, it should be specified that mere presence of the complainant before the Court does not, as a matter of right, confer a right on the accused persons to seek quashing of the FIR as it is

VERDICTUM.IN

discretion of the Court which is to be exercised depending on facts and circumstances of the case.

iii. The mediators should be sensitized that payment of money cannot become a criteria for quashing of the FIR of heinous offences which will amount to paying money to get out of a criminal case of serious nature.

iv. The mediators at the end of mediated settlement agreement must mention in the cases as the present one i.e. non-compoundable cases where the parties want the FIR to be quashed in clear terms that quashing of the FIR is the discretion of the Court and the case being non-compoundable, depending on the facts and circumstances of the case FIR may or may not be quashed by the Court, it becomes relevant and important to do so in situations where both the parties have filed cases against each other and the agreement is based upon settlement that both will be withdrawing cases against each other. However, at times one case is withdrawn from the Court of Magistrate being compoundable the other criminal case being serious in nature may not be found fit to be quashed by the High Court, thereby causing anguish to one of the parties who have withdrawn their complaint in the hope and belief that case against them will also be quashed by the High Court through such settlement.

v. The mediators should be able to foresee the issue of enforceability of the type of above-mentioned mediated agreements and explain the same to the parties concerned. The fact of mediator having explained the same to the parties should be reflected in the mediated agreements.

vi. The mediators should also keep it in mind that though in such cases, where both the parties have cases pending against each other or heinous criminal offences which are non-compoundable and attract stringent punishment though both sides may be ready to perform their part of agreement, it is not legally enforceable agreement as there is no assurance of FIR being quashed as a matter of right. Incaseof non-quashment of such cross-FIR, it will prevent one party to still face the criminal trial against whom the settlement was to get the FIR quashed and the party against whom a compoundable offence is alleged will gain the benefit of the agreement despite failing to get the FIR quashed as a matter of right from the High Court.

VERDICTUM.IN

> vii. A mediator is ethically responsible to ensure that the parties are informed of the legal issues surrounding enforceability in the areas in which he or she has mediated.
>
> viii. Mediation is a process where the disputants constructively settle their disputes. In cases as the present one, they must be made aware of technical rules, procedures and procedural justice which may be at the discretion of the Court.
>
> ix. The mediator must keep in mind that one of the parties should not be prejudiced by performing their part of agreement when the agreement which is to be performed in their favour is not wholly dependent upon the agreement or consent of the other party.
>
> x. The present mediated settlement agreement is a useful reminder that in a hurry to end litigation, one should not draw mediation agreements which are non-enforceable as part of it may be subject to discretion of the Court, which is not mentioned in the mediation agreement.
>
> xi. These directions are also a reminder of importance of clarity of communication in writing the terms and consequences of the mediation agreement for each party which should be clarified before mediation settlement is reached, written and signed by the parties.
>
> xii. The mediation agreements should be also written inHindi where the parties understand Hindi as their mother tongue so that it is understood by them completely."
>
> (Emphasis Supplied)

Conclusion: Cases registered under POCSO Act cannot be referred to Mediation

27. Thus, in view of the aforesaid discussion, this Court has no hesitation to hold that the offences under POCSO Act, which are non-compoundable in nature and are even rarely quashed by the Constitutional Courts, cannot be referred to mediation by the Courts and cannot be settled or compromised through mediated agreements, nor should they be subject to resolution through monetary payments

VERDICTUM.IN

or similar arrangements. Allowing such serious and grave offences to be settled through mediated agreements, especially since such settlement is acceded to by the parent or guardian of the minor victim and not the victim himself or herself who is a minor, would amount to trivialising the gravity of the offence and undermining the rights of minor victims of sexual abuse to seek appropriate legal recourse and justice.

JUDICIAL ERRORS COMMITTED IN THIS CASE

Reference of Case under POCSO Act to Mediation & Mediating and Settling it by the Mediator

28. In the present case, the complaint under POCSO Act was filed by the petitioner, on behalf of his minor children, against respondent no. 2/accused, before the learned Special Court constituted for the purpose of adjudicating cases related to POCSO Act.

29. However, on 28.07.2014, considering the statement made by the petitioner and his wife that they wanted to settle their disputes, the learned Special Court had referred the parties to Mediation Centre, Saket Courts Complex, in the present case.

30. It is important to note that the complaint which was filed before the learned Special Court and was pending adjudication before it was not a complaint filed by a wife against her husband or vice-versa, which could be simply termed as a matrimonial dispute between husband and wife. Rather, it was a complaint alleging sexual abuse of minor children of the petitioner, by accused/respondent no.

VERDICTUM.IN

2 who was the maternal uncle of minor victims. **However, ignoring all the principles of mediation and judicial precedents, the learned Special Court had referred the matter to mediation**.

31. **Equally shocking** is the fact that a mediated settlement agreement was also entered into between the parties with the help of **learned Mediator at Mediation Centre, Saket Courts whereby the husband and wife i.e. petitioner and respondent no. 3 had agreed to settle their matrimonial disputes**.

Procedural Errors

32. The learned Special Court should have also gone behind the facts of the case, as well as the procedure to be adopted in a complaint received under POCSO Act.

33. Firstly, the petitioner had lodged a complaint at the concerned police station wherein he had disclosed that his minor children had informed him about sexual assault committed upon them by their maternal uncle i.e. respondent no. 2 herein. However, the police in this case did not register an FIR despite there being clear allegations of sexual assault falling within the purview of POCSO Act, though they were duty bound by law. Since no FIR was registered by the police, it is presumed that since application has been filed seeking a relief as is sought in an application filed under Section 156(3), the learned Special Court instead of directing the registration of FIR, had called for a status report from the Investigating Officer, and thus, had not entertained it under Section 190(1) of Cr.P.C. Even the procedure to proceed with the case treating the application under Chapter XIV

VERDICTUM.IN

and Chapter XV of Cr.P.C. was not followed, instead the police was asked to record the statements of minor children and file a report which is a procedure unknown to law to proceed with the case/complaint filed under the POCSO Act. Thus, a procedure not prescribed under law was followed in this case.

34. Resultantly, no statements under Section 161 or under Section 164 of Cr.P.C. of the minor children could be recorded. The record finds the statements of victims recorded by the police on plain white sheets. The status report filed by the investigating officer before the learned Special Court in the present complaint case reveals that the police without registering an FIR had given a finding before the Court that no case under POCSO Act was made out since the complaint seemed motivated in order to make the complainant's case for permanent custody of his children stronger.

35. Had the police registered an FIR, since the offences disclosed were punishable under POCSO Act, and would have got recorded the statements of minor children under Section 161 and 164 of Cr.P.C. in accordance with Section 24 and 25 of POCSO Act and conducted investigation, it could have either filed a chargesheet or a closure report, and the same would have been the legally logical end of the allegations and the complaint made by the petitioner.

36. Since the police had not registered an FIR, this Court presumes that the complaint filed was treated as one under Section 7 read with Section 33 of POCSO Act. Relevant portion of Section 33 of POCSO Act reads as under:

VERDICTUM.IN

> "**33. Procedure and powers of Special Court.**—
>
> (*1*) A Special Court may take **cognizance of any offence**, without the accused being committed to it for trial, **upon receiving a complaint of facts which constitute such offence**, or upon a police report of such facts…"
>
> (Emphasis supplied)

37. Learned Special Court on 11.02.2014 had entertained the complaint without taking cognizance of it since it is not so mentioned in the order sheet and had directed the police officer to record the statements of the minor victims, the learned Special Court upon filing of an application under Section 35 by State reached a conclusion that it had overlooked the provisions of Section 35 of POCSO Act which mandates that the evidence of a child shall be recorded by the Court within a period of 30 days of taking cognizance of the offence. The relevant portion of the order dated 03.06.2014 reads as under:

> File taken up today on an application U/S 35 POCSO Act for pre-ponement of the hearing regarding recording the statement of sexually abused children.
>
> Present: Sh. Rajesh Arora, ld. counsel for complainant
> Sh. Manoj Chaudhary, Ld. Addl. PP for State
>
> Heard. Since the provision of Section 35 of POCSO Act are mandatory in nature where it is specific mandate that the evidence of the child shall be recorded within period of 30 days by the Special Court of taking cognizance of the offence, the present application is allowed. The next date of hearing I.e 26.07.14 is pre-poned to 05.06.14 for recording the statement of children of complainant. The earlier date 26.07.14 stands cancelled.
> Application stands disposed of accordingly.

38. Section 35 reads as under:

> "**35. Period for recording of evidence of child and disposal of case.**—

VERDICTUM.IN

> **(***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."
>
> (Emphasis supplied)

39. It was thereafter, the evidence of the children was recorded before the Court on 05.06.2014 as CW-1 and CW-2 wherein they had levelled specific allegations of sexual assault against their maternal uncle. Therefore, it is presumed that the Court had now again reverted back to the procedure under Section 200 to 202 of Cr.P.C. Yet again, even though both the minor victims had alleged sexual assault by their maternal uncle in the statements given to the police as well as before the learned Special Court, the Court on 28.07.2014 had still referred the matter to the mediation i.e. after taking cognizance of the offence under Section 33 of POCSO Act and having recorded the evidence of the minor victims as CW-1 and CW-2, leaving the proceedings mid-way, instead of taking it to a logical end as per law had allowed the complainant to withdraw his complaint, vide order dated 08.04.2015, in view of the mediated settlement agreement dated 27.08.2014 against the law.

40. Such an approach adopted by the learned Special Court resulted in gross miscarriage of justice, since the children who were allegedly sexually abused, being minors of tender age, had to be taken care of by a court of law they had approached through one parent.

VERDICTUM.IN

WHETHER THE PETITIONER IS ENTITLED TO RELIEF AS PRAYED FOR?

41. In the present case, it is undisputed that the order which is being challenged was passed on 08.04.2015 i.e. about nine years back, on the basis of a Settlement Agreement entered into between the parties i.e. petitioner and respondent no. 3 on 27.08.2014, and the present writ petition has been filed in the year 2023 i.e. after a period of more than eight years from the date of the passing of the impugned order and nine years from the date of settlement arrived at between the parties.

Doctrine of Delay & Laches and the Conduct of the Petitioner

42. Though there is no limitation period for filing of a writ petition, at the same time, it is also settled law that the doctrine of delay and latches is applicable in case of writ petitions. In case of any unreasonable delay, the petitioner who is approaching a Constitutional Court in the writ jurisdiction must explain the circumstances as to why there is an inordinate delay in seeking a remedy which he could have sought earlier.

43. In ***Sudama Devi v. Commissioner & Ors.*** *(1983) 2 SCC 1*, the Hon'ble Apex Court held that there is no period of limitation for filing a writ petition under Article 226 of Constitution of India, however in every case, the Courts will have to decide whether the petitioner is guilty of laches or not. The relevant portion of the judgment reads as under:

> "...There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is

VERDICTUM.IN

> in fact doubtful whether any such period of limitation can be prescribed by law. In any event one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. **In every case it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches** and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner…"

44. In ***Northern Indian Glass Industries v. Jaswant Singh*** *(2003) 1 SCC 335*, the Hon'ble Apex Court had cautioned that the High Courts cannot ignore the delay and latches on part of a petitioner in approaching the writ court and there must be satisfactory explanation by the petitioner as to why he could not approach the Court well in time. These observations are extracted hereunder for reference:

> "6. It is not in dispute that the writ petition was filed almost after 17 years from the date of passing the award and after taking possession of land. **There is no explanation for inordinate delay and laches except the statement made in para 8 of the writ petition** to the effect, that although the possession of the land was taken 17 years back in 1973, the compensation was not paid fully and the acquisition was mala fide and illegal and that the acquisition was made only to peg down the prices. It is also not in dispute that Respondents 1-5 accepted/received the amount of compensation as early as on 16-10-1974 on the basis of the award passed; they sought reference under Section 18 of the Act for enhancement of the compensation and further, they pursued the matter in the High Court seeking further enhancement of the compensation till 1988. Three years thereafter they filed writ petition challenging the acquisition proceedings. **In our view, in the absence of any explanation for inordinate delay and laches on the part of Respondents 1-5 in approaching the High Court, the writ petition ought to have been dismissed on this short ground**."
>
> (Emphasis supplied)

VERDICTUM.IN

45. The Hon'ble Apex Court in case of ***Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corporation*** *2022 SCC OnLine SC 641*, has explained the applicability of doctrine of delay and laches to writ petitions in the following words:

> "Law of limitation does not apply to writ petitions, ***albeit*** **the discretion vested with a constitutional court is exercised with caution as delay and laches principle is applied with the aim to secure the quiet of the community, suppress fraud and perjury, quicken diligence, and prevent oppression** (See *Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510*). Therefore, some decisions and judgments do not look upon pleas of delay and laches with favour, especially and rightly in cases where the persons suffer from adeptness, or incapacity to approach the courts for relief. However, other decisions, while accepting the rules of limitation as well as delay and laches, have observed that such rules are not meant to destroy the rights of the parties but serve a larger public interest and are founded on public policy. **There must be a lifespan during which a person must approach the court for their remedy. Otherwise, there would be unending uncertainty as to the rights and obligations of the parties** (See *N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123*). Referring to the principle of delay and laches, this Court, way back in *Moons Mills Ltd. v. M.R. Mehar, President, Industrial Court, Bombay and Others AIR 1967 SC 1450* had referred to the view expressed by Sir Barnes Peacock in *The Lindsay Petroleum Company* AND. *Prosper Armstrong Hurd, Abram Farewell, and John Kemp (1874) LR 5 PC 221* in the following words:
>
> > "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an

VERDICTUM.IN

> argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

Conduct of Petitioner & Delay in Approaching this Court

46. While going through the contents of the petition, this Court is unable to infer or discern any reason as to why this petition was preferred in the year 2023 i.e. about nine years after the impugned order was passed. Even though the petitioner mentions that his wife had not given him divorce and she had started living with him 2015 onwards, and thus had violated the terms of settlement, no reason has been mentioned as to why the present petition was not filed in the year 2015 or anytime soon thereafter, but was filed only in the year 2023. **Even otherwise, there cannot be any connection between the matrimonial dispute between him and his wife and the sexual abuse of his children by third party, which he himself compromised in a mediated settlement.**

47. Further, this Court has also taken note of the fact that in the entire petition, including the list of dates and events, the petitioner has nowhere disclosed the fact that the petitioner and respondent no. 3 had started living together since the year 2015 and in 2018, respondent no. 3 had again left the matrimonial home along with all the children born from the wedlock of petitioner and respondent no.

VERDICTUM.IN

3, including the children 'Ms. X' and 'Mr. Y', who were victims in the complaint filed under POCSO Act in the year 2014 as well as the third child of the parties, who was born on 14.10.2015. Further, the petitioner has also not disclosed before this Court that after his wife had left the matrimonial home in April, 2018, she had initiated proceedings against the petitioner under the PWDV Act in the year 2018 itself.

48. It is the respondent no. 2 and 3 who have also brought to the notice of this Court, the fact that in March 2023, an order directing the petitioner to pay Rs.80,000/- as interim maintenance to the wife as well as to the children who have been living with the wife, has been passed against him and it was immediately thereafter that the petitioner had woken up and had preferred an application for restoration or revival of the complaint before the learned Sessions Court and after withdrawing the same subsequently, he had instituted the present writ petition before this Court.

Opening the Old Healed Wounds of Sexual Assault of Minor Children

49. At this stage, this Court also notes that the minor children who were the victims in the complaint case filed under POCSO Act before the learned Special Court, are now living with the wife of the petitioner i.e. their mother i.e. respondent no. 2 since the year 2018, and the petitioner in fact, has been ordered to pay interim maintenance to his wife i.e. respondent no. 2 and his children i.e. respondent nos. 3 and 4. These children i.e. 'Ms. X' and 'Mr. Y',

VERDICTUM.IN

who were minor at the time of filing and withdrawal of complaint under POCSO Act, are now aged about 20 years and 17 years.

50. In the background of aforementioned facts and circumstances of this case, it seems that the parties in the present case are misusing their children to settle scores with each other. Both the parties i.e. the petitioner and respondent no. 3 had jointly submitted before the learned Special Court that they may be referred to mediation centre since they wanted to settle their disputes and it was the petitioner himself who had given a statement on oath before the learned Special Court that he wished to withdraw the said complaint in view of the settlement agreement entered into between the parties.

51. Though the orders and the proceedings before the learned Special Court, who was dealing with the complaint filed under POCSO Act, which have been impugned before this Court, do *prima facie* reflect that the Court had committed an error by referring the case to Mediation, an issue which has been addressed in the preceding paragraphs, this Court is of the opinion that the petitioner has not explained as to why this petition was filed after more than nine years of the passing of impugned order, especially when the complaint under POCSO Act was dismissed as withdrawn on the basis of statement made by petitioner himself.

52. Further, it is most crucial to consider that petitioner and respondent no. 3 have been living separately since the year 2018, and all their three children are in the custody of respondent no. 3, and not the petitioner. The petitioner has, for some mysterious reason, woken up after nine years to file the present writ petition as if his concern

VERDICTUM.IN

and love for the children has been woken only after the learned Mahila Court had directed the petitioner, *vide* order dated 31.03.2023, to pay interim maintenance of Rs.80,000/- to his wife and children.

53. **It is most disturbing that though the petition has been camouflaged in words which may project as if the petition arises out of love and concern for the children, however, the Courts of law are not ostriches who bury their heads in the sand instead of the facts of the case. Rather, they go beyond what is visible in the petition to reach a just decision. In cases such as the present one, a judge with his experience and discerning eye is able to see through what may not be apparently visible and read what is between the lines.** In this regard, the Hon'ble Apex Court has also held in the case of ***Mahmood Ali v. State of Uttar Pradesh*** *2023 SCC OnLine SC 950*, though on the point of quashing of an FIR, the need of a Court to read between the lines. The relevant observations of Hon'ble Apex Court are as under:

> "13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are

VERDICTUM.IN

> such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

54. It is at times, unpleasant and distasteful for a judge while adjudicating a case to note that parents can use the provisions of POCSO Act to settle their own scores, and equally disturbing is to realise that in relationship of a parent and a child, instead of emotion, care, love, affection for their children, the estrangement between husband and wife and their legal battles overcome the earlier.

55. A step further when the concern for the children takes the least priority, a parent may want to re-open the healed wounds of their children of a forgotten sexual assault. Strangely, in the present case, the parties herein had themselves buried the past, only to be revived due to a recent revived dispute and an estrangement. The sad part is that in this process, there is an attempt to re-open the sad chapter of life of their children without there being any hesitation to expose

VERDICTUM.IN

them to the gory past. As if the first error of settling the dispute under the POCSO Act *qua* their children with the assistance of learned Trial Court was not enough, a direction to commit another error has been sought i.e. to revive a complaint which was though wrongly referred to mediation and equally wrongly mediated by the mediator, has been sought to be re-opened by way of direction of this Court in the present writ petition.

56. This Court, however, is of firm and considered view that it cannot be a party to exhibit insensitivity by ordering to reopen chapter of lives of the minors, one of whom has now attained majority and the other is 17 years of age, are not party to re-opening of their complaint, and thereby re-opening the wounds which they have closed in their memory.

57. Therefore, in view of the detailed discussion made in the preceding paragraphs, this Court is not inclined to allow the reliefs sought in this petition i.e. quashing of order dated 08.04.2015 and restoration/revival of complaint which was filed under POCSO Act before the learned Special Court when the victims themselves have not prayed for the same, and thus, the prayer in this petition stands rejected.

CONCLUSION OF PRESENT CASE: BEGINNING OF REFRESHING PLEDGE TO EMBRACE MEDIATION IN ITS TRUE SPIRIT

58. The series of errors committed and orders passed, in this case, have forced this Court to yet again make an effort to remind and

VERDICTUM.IN

reiterate the process of mediation, the do's and don'ts of mediation, especially the don'ts which have somehow escaped the notice of the judge and the mediator concerned, lest such mistakes are committed again in future.

59. **This Court asks a Question to itself as to whether despite the mediation centres extending extensive training to the mediators, is there any need to pass such a direction?**

The **conscience of this Court answers** the above question that the social face of justice cannot and should not ignore any shortcomings or challenges faced by a Court of law in the adjudication of cases even if it is mediation process regarding which mediators are trained extensively.

The question itself has the answer, if the points in questions raised in this case had been imbibed by the training, why would the cases as the present one and many others become the subject matters of writs before constitutional Courts.

60. This Court **should not be taken to be questioning** the adequacy, sufficiency or sincerity of the mediation training, but since it is the Court which while adjudicating the cases as the present one would know **where the shoe pinches**, will be in a position to point it out **not for the purpose of criticism but betterment of the mediation process**. Rather, it is also the constitutional duty of this Court.

61. This Court also believes that only after the shoe pinches one will take steps and adopt remedies to repair it. In this background, while this Court stubbornly believes that there should be ***yoga*, i.e.**

VERDICTUM.IN

***yog* of statutory law in the Court and the compromise law in the mediation centre**, the true justice and intent of a legislation will lose its soul if we cease to adhere to the core principles of mediation.

62. **This Court thus, opines that it is not on the basis of the British or other foreign Jurisprudences alone but on the basis of unplundered wealth of ancient Indian Judicial and mediation jurisprudence** which is found in our old texts including *Ramayana* (रामायण), *Mahabharata* (महाभारत), *Bhagavad Gita* (श्रीमद्भगवद्गीता), when read and understood in detail in context of the messages conveyed in certain chapters, subject to their true interpretation and understanding without being referred to as religious texts alone.

As per the **Holy Bible**, Matthew 5:9 urges Christians to use useful means to resolve disputes amicably and that those who are peacemakers shall be called sons of God. Matthew 18:15-17 states that in case of a deadlock, the parties should contact a third neutral party to get their issue resolved.

Even in Islam, the **Holy Qur'an**, the Sunna, the Ijma, and the Qiyas support peaceful conflict settlement within the Islamic community, between Islamic and non-Islamic communities, and between two or more non-Muslim communities.

63. *Arthashastra* (अर्थशास्त्र) by *Kautilya* and the principles enumerated by the judges, commentaries, lectures and mediation training on mediation process will have the potential to give finality to disputes between the parties.

VERDICTUM.IN

64. Judges and lawyers in the past and present with their hardwork have made mediation centres and mediation process a **reality from mere dreamy projects**, and brought Delhi Mediation Centres, and Delhi High Court Mediation and Conciliation centre (Samadhan) **to the glory which it basks in today**. It cannot be allowed to go waste even by a stray case as the present one.

65. **Thus, also believing that at times judgment of a Court can make its own impact by the sheer weight of compulsion of complying with it and ensuring that some beautiful dreams are realised through it such as '*mediation, no litigation*' and taking it from the height of a process to the height of judicial Revolution in ADR.**

66. This Court firmly observes that **in the midst of conflict, mediation is the bridge to resolution** and under no circumstances the bridge will be allowed to collapse**.**

67. This Court, **before parting, issues a mandatory reminder, rather than a gentle reminder**, towards fulfilment of its duty, that it is essential to emphasise that in cases involving offences of serious nature, particularly those falling under the Protection of Children from Sexual Offences (POCSO) Act, **no form of mediation is permissible**. These cases cannot be referred to or resolved through mediation by any Court. It is essential to uphold the gravity and seriousness of such offences, ensuring that perpetrators are held accountable through appropriate legal proceedings, and that victims receive the necessary support, protection, and justice they deserve. Any attempt to mediate or compromise in such cases undermines the

VERDICTUM.IN

principles of justice and the rights of victims, and must not be entertained under any circumstances by a mediator.

In times of Quick References: An Attempt towards Compiling some Reference Material on Mediation

68. In the times of **quick references**, and quick fixes, this Court attempts to provide the readers of this judgment some crucial **links** and extracts to help them stay in touch at the click of a button to the principles laid down in a few important judgments and the manuals of mediation of Supreme Court, High Court, *et al*, which are as follows:

Particulars	**Link**	**QR Code**
Mediation Training Manual of India *Mediation and Conciliation Training Project Committee, Supreme Court of India*	To view, Click Here	
Mediation Training Manual for Awareness Programme *Mediation and Conciliation Training Project Committee, Supreme Court of India*	To view, Click Here	
Mediation Training Manual for Capsule Course *Mediation and Conciliation Training Project Committee, Supreme Court of India*	To view, Click Here	

VERDICTUM.IN

Delhi High Court Mediation and Conciliation Centre - SAMADHAN	To view, Click Here	
Delhi Mediation Centre	To view, Click Here	
Dayawati v. Yogesh Kumar Gosain *2017 SCC OnLine Del 11032*	To view, Click Here	
Chattar Pal v. State *2023 SCC Online Del 3026*	To view, Click Here	
Abhishek @ Love v. State *2023 SCC OnLine Del 5057*	To view, Click Here	

69. The judges and lawyers are partners in their common pursuit of administration of justice and betterment of society. The crucial social mission of both is to achieve a common end of administering timely, inexpensive, equal and impartial justice, whether through litigation or mediation. **Whether in the Courts of law or working from office, or mediation and arbitration rooms, the lawyers have proved that the partnership between the 'lawyer power' and the 'judicial**

VERDICTUM.IN

power' have brought functional transformation of jurisprudence whether in litigation or mediation.

70. Mediators while mediating have to deal with complex situations of human emotions and navigating the complex terrains of legal statutes, with unwavering dedication and expertise. Therefore, **in the modern days' realities and demands, a full proof mediation process and mediated settlement agreement will go a long way to liberate the lifestyle of the old judicial system of resolution through litigation towards the new lifestyle of resolution through the process of mediation**, however, as per law.

71. Accordingly, the present application stands disposed of, in above terms.

72. A copy of this judgment be forwarded, by learned Registrar General of this Court, to Incharge, Delhi High Court Mediation and Conciliation Centre (SAMADHAN) as well as concerned In-charges of all the Mediation Centres in all District Courts of Delhi, for taking note of its contents and for further circulation among all learned mediators. A copy be also forwarded to Director (Academics), Delhi Judicial Academy for taking note of its content.

73. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 7, 2024/ns