HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrlA (S) 8/2024
CrlM 983/2024

Reserved on: 03.09.2024
Pronounced on: 09.10.2024

Shabir Ahmad Naik, aged 24 years
S/o Abdul Ahad Naik
R/o AhmaTargam tehsil Khari
District Ramban
(at present lodged in Central Jail, Srinagar)

… Appellant

Through: Mr. Wajid Mohammad Haseeb, Advocate

V/s

UT of J&K through SHO P/S Zakoora

… Respondent

Through: Mr. Allaud Din, DAG with Ms. Shaila, Advocate

,

CORAM: **HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

J U D G M E N T

1. This appeal is directed against the judgment of conviction and the order of sentence, each dated 07.06.2024 passed by the Fast Track Court for POCSO Cases, Srinagar (for short 'the trial court"), whereby the appellant has been convicted for the commission of offence under section 10 of Protection of Child from Sexual Offences Act (for short 'the POCSO Act') and sentenced to undergo simple imprisonment of seven years along with fine of Rs.25,000/-. In case of default in payment of fine, he has been directed to undergo further imprisonment for six months.

2. Mr. Wajid Mohammad Haseeb, learned counsel appearing for the appellant has raised the following issues:

(i) That there is unexplained delay in lodging of FIR and the same makes prosecution case doubtful.

(ii) That the appellant was charged for an attempt to commit an offence of sexual assault and once he was charged for attempt to commit an offence, he could not have been convicted for commission of substantive offence.

(iii) That there are material contradictions in the evidence led by the prosecution, but the learned trial court has ignored the same while convicting the appellant.

(iv) That the age of minor victim has not been proved in accordance with law because date of birth was entered in the school record on the basis of aadhar card.

He has relied upon the judgments of the Hon'ble Supreme Court of India in **'Ghulam Hassan Beigh v. Mohd. Maqbool Magrey', (2022) 12 SCC 657, 'Rai Sandeep alias Deepu v. State (NCT) of Delhi' 2012 Cr.L.J 4119** and **'P. Yuvaprakash v. State' 2023 Live Law (SC) 538.** He has also placed reliance upon the judgment of the Coordinate Bench of this Court in **'Hardev Singh v. UT of J&K & Anr.'2022(3) JKJ 161 (HC).**

3. **Per Contra**, Mr. Alla-Ud-Din Ganai, learned AAG has argued that the prosecution had proved the case to the hilt against the appellant and that is why the learned trial court has convicted and sentenced the appellant and contradictions, if any, are minor in nature having no material and substantial effect upon the prosecution case. He has further argued that as the victim was a minor child, some contradictions are bound to occur in his testimony. He has vehemently submitted that in fact the accused had not attempted to commit an offence and rather had committed an offence within the meaning of section-10 of the POCSO Act, therefore, there is no illegality in the judgment of the conviction recorded by the learned trial

court. He has further argued that the evidence of the minor victim has been corroborated by other students of the same Madrasa, as such, there is no infirmity in the judgment passed by the learned trial court. He laid much stress that in view of the applicability of section-29 of the POCSO Act which provided for the presumption on the part of the accused to have committed an offence under the POCSO Act, the appellant has been rightly convicted by the learned trial court, as the appellant miserably failed to rebut the presumption by leading any cogent evidence in rebuttal to the evidence led by the prosecution. He has also submitted that the defence witnesses examined by the appellant have not been able to belie the case projected by the prosecution.

4. **Heard and perused the record.**

5. **Proescution case**:

The case projected by the prosecution is that on 12.11.2021 a written application (EXT-P1) was submitted by PW-1, who happens to be the father of minor victim, stating therein that he has been a resident of Niyadi Koot Kalaroos, Kupwara and his son namely Master X was a student of Al-Falah Habibullah Educational Trust, Rangpora. He came to know that some wrong had been committed with his son. After reaching the institution, he came to know, that the person who tried to do wrong with his son was Shabir Ahmad Naik a resident of Ramban. The accused had absconded when he reached the institution. He requested the concerned SHO to do justice. On receipt of this application, FIR bearing No. 107/2021 was registered for commission of offences under sections 10, 18 of the POCSO Act. The investigation commenced and during investigation, the statement of the minor victim was recorded by the

Magistrate under section 164 Cr PC and the statements of other witnesses under section 161 Cr PC were also recorded. The minor victim was also examined by the Medical Officer and no marks of any violence were found on the body of the minor victim. After conclusion of the investigation, the Investigating Officer established the offences under section 10, 18 of the POCSO Act against the appellant. The charge sheet was laid before the learned trial court on 25.11.2021 and the appellant was charged for the commission of offences under sections 10, 18 POCSO Act vide order dated 15.02.2022 and prosecution was directed to lead evidence as the appellant did not plead guilty to the charge.Out of the 8 witnesses cited by the prosecution, 7 witnesses were examined. The appellant examined 2 witnesses in his defence. After closure of the defence evidence, and hearing the parties, the learned trial court convicted and sentenced the appellant as mentioned above.

6. In order to appreciate the contentions raised by the appellant it is imperative to have a brief resume of the relevant portion of the evidence led by the parties.

7. **Evidence of Prosecution:**

PW-1: (Father of the minor victim):

In examination-in-chief, the PW1 stated that he knows the accused, whose name is Shabir Ahmed Naik. His son used to study in Alfallah Habibullah Educational Trust, Rangpura. On. 09.1102021 at night, he received the phone call from In-charge of Trust, and he was asked to come to school. On 10.01.2021, he could not find anyone who could take him to school, as he was handicapped. On 11.01.2021, he took a vehicle to school and when he reached the school and met his son, he started weeping and told him

that the accused asked him to bring a glass of water to his room at 10 p.m. He further told him that as soon as he entered the room, the accused bolted the door and took him (victim) to his bed. His son told him that the accused took off the clothes of the victim and took off his clothes also. Then the accused started rubbing his hand on victim's anus and then put his penis into his anus, but then again stated that he tried to insert his penis into his anus. The minor victim further told him that when he (victim) started weeping, the accused left him, and he came out of the room. Next day, when the In-charge of the school came, the minor victim informed him about the incident. That incident was of 04.11.2021. He further stated that he went to the police station and submitted application (EXT-P1). The contents of application were admitted by him to be true, and he also identified his signature.

In cross-examination, he stated it is true that he has no personal knowledge regarding the occurrence. The accused had called parents of other students, but he did not call him. He was called by the In-charge of police on the phone. He had saved the phone number of Mohmmad Younis in his phone. At about 8/9 PM, he received the phone call. He has only one phone number. On this number, he got the call from the In-charge. He knows In-charge Mohmmad Younis one year prior to the occurrence. Prior to the occurrence, he had gone to the Al-Falah Habibullah Trust once. He was regularly talking on the phone. He also used to talk to the accused on phone. It is not true that he used to talk to the In-charge on phone four-five times a week. His elder son was also studying with the younger one in the institution Al-Falah Habibullah Trust. In the institution, besides accused and Mohmmad Younis, two other

teachers were also there, whose names were Qaree Burhan and Qaree Tariq. On 9th, In-charge called him on phone and not on 4th. It is true that he did not talk to police on phone from 4th to 9th. He has no knowledge as to for whom Al-Falah Habibullah Trust was established. He has no knowledge that trust was opened for poor and orphans. He had asked Mohd. Yunus why he did not inform about the incident for five days and he had mentioned that fact in his statement recorded under section 161 Cr.P.C. Since he was residing in the hilly area, ‘palanquin’ or 'cot' was required to carry him. As he could not get vehicle, so application could not be filed immediately. He does not know whether the accused was ousted from the trust or he himself left the trust. He was told by the In-charge police that the accused had run away. He had no knowledge that the wife of the accused was under treatment in Sub-District Hospital and the accused had left to look after her. He does not know whether the accused had some dispute with Mohd. Yunus with regard to donations. In his statement recorded under section 161 CrPC, it is not mentioned that he left Kupwara for Srinagar on 11.11.2021. In Ext P1, it is not mentioned that he was called by Mohd. Yunus. He was on leave for few days from 09.11.2021. Police did not seize the victim’s clothes in his presence. The date of birth of his son is 12.12.2012. This is wrong that he and Yunus used to distribute money of trust between themselves.Yunus had told him that his son was unwell and asked him to come there. Younus knew that the accused had molested his son. Yunus did not lodge any report with the Police in respect of the incident. He had asked Yunus that it was his duty to inform Police, but Yunus had replied that it would have brought disrepute to the trust. On 12th, they went to Police Station, but they were

told to approach P/S Zakoora which was ½ an hour away. They went to the Police Station on 12th at 10 A.M. After the registration of FIR, the medical of the child was conducted but he does not remember the date of medical examination. From 4th to 9thNovember, he was in touch on phone with Younis many times and Younis also had contacted him during that period. Younis told him that when he reached in the evening, the children told him regarding the incident. Younis got knowledge of this incident on 5th. The application was not in his handwriting and one passerby had written it. He has read upto Matric class. He did not know the person who wrote the application. He narrated him the occurrence and he wrote down. He went through the application and then appended his signature on it.

PW-2: Mohmmad Younis Bhat

In the examination-in-chief, he stated that he was posted as Principal of Al-Falah Habibullah Trust. The occurrence is of 04.11.2021, when he went to his institution. He met the child, who was getting education in the institution. The child told him that the accused had done wrong to him in the night. The child told him that he cried a lot with the result all the children came out of their rooms in the institution. After that he asked the accused regarding it, on which the accused made noise. When he went to shop to make purchases of some items, the accused administered beatings to two children (names concealed). When he came back from the shop, both the children were weeping. He provided solace to them, and he took both the children to his home. That night at 10 o'clock, the accused informed him on the phone that his wife was sick at home, and he was leaving early in the morning. He did not permit the accused. Next morning, the accused left on his own. He reached institution at 8 O'clock

and enquired from the children about the accused. Children told him that the accused had taken his bag and run away. As the victim was frightened after the occurrence and his condition was not good so, he informed the father of the child on phone that the child was not feeling well. Thereafter, the father of the child met the victim, and he told his father about the occurrence. The victim's father asked him as to why he did not inform him personally, to which he said that he was investigating the matter, and the accused had escaped. He called the accused several times, however, his phone was switched off. After that the father of the victim child went to Zakoora, Police station. During investigation, police arrested the accused. Police had recorded his statement.

During cross-examination, he stated that whatever he deposed today, had stated to the police also. He had no personal knowledge regarding the occurrence, however, he was told by at least 20/25 children. He was B.Ed, Graduate, besides being Molvee Fazil and Hafiz Quran. It is not true that he was working in the police department. On the day of occurrence, he was working as Principal and the accused was working as a teacher. Besides them, there was no other non-teaching staff in the institution. On the day of occurrence, he was himself working as chef and was preparing food for those thirty-five children. The children were also helping him in preparing food, the accused was also helping him. The victim and his brother had been the students of the institution for the last eight months. They were admitted by the complainant himself in the institution. It is true that he knows the complainant very well. The poor, orphan and the children whose parents are handicapped can get education in this Institution. He knows that the complainant is a Government teacher. The

occurrence is of 4.10.2021. He worked as Principal as well as a teacher. It is true that he had stated in his statement under section 161 CrPC before the police that he worked in the institution as a teacher and not as a Principal. It is true that if in the institution any child is injured or sick, he will take him to the hospital for treatment. It is true that the duty of Principal is cast upon him that he shall remain 24 hours in the institution, however, above the Principal, there is In-charge of the institution. The In-charge of the trust is Ghulam Qadir Shah. The In-charge of the trust has assigned him the duty upon him from 8 o'clock in the morning till 5 o'clock. It is true that Ghulam Qadir Shah does not remain present in the institution from 5 pm till 8 am. Regarding the occurrence, he had informed Ghulam Qadir Shah through phone. He had not told the police about same. He came next day also in the institution. He did not inform the police immediately, as he was busy in preparing food for children and was also investigating the matter. He had not told the police in his statement recorded under section 161 CrPC that the accused had beaten two children. From 04.10.2021 till 09.10.2021, he might have called the complainant two or four times on the phone. He told the complainant regarding the incident on 7thon phone, and not on 9th. He did not accompany the complainant, when the report was submitted before the police. However, the complainant had himself reported the matter before the police station Zakura. He had no knowledge as to the date when the complainant had submitted the report before the police. The statement of In-charge of institution Ghulam Qadir Shah was not recorded in his presence.

PW-2: Mohmmad Younis Bhat was recalled on the application submitted by the prosecution, and his further statement was recorded on 14.10.2023. In the examination-in-chief, he stated that he was working as Principal of Al-Falah Habibullah Trust in the year 2021. Date of birth certificate on record is signed by him and its contents are as per record. He has brought the record of school. He proved the certificate (Ext MYB). As per the certificate, the date of birth of the child is 12.12.2012 and the same is also entered on the Aadhar card, on the basis of which the child was admitted in school.

In cross-examination, he stated that certificate bears his signature, and the stamp. The signature on Ext- MYB is different as compared to the signature appended to the statement made in the court. He has not mentioned the date of issuance of certificate. He had submitted the said certificate to Police Station Zakoora, as the same was demanded by them. They had demanded the certificate verbally. Police had come to get the certificate. He had not gone to Police to hand over the same. He has brought the record, on the basis of which certificate was issued by him. He has no personal knowledge about the date of birth of the child.

PW-3(minor victim):

After initial questions, PW-3 was declared as competent witness by the trial court. In examination-in-chief, he stated that he knows the accused and he is the same person who had done wrong to him. He was studying in Madrasa at Rangpora. At around 10 PM, the accused called him and asked him to bring a glass of water to his room. He took the glass of water to his room and as soon as he entered the room, the accused bolted the door of the room from inside. He directed him to remove his clothes, but he did

not. Thereafter, the accused removed his (victim's) clothes himself and pulled him to his bed. He made him lie on the bed and rubbed his (victim's) buttocks with his hand. Then he (accused) inserted his penis into his anus, and he started shouting. As soon as he shouted, the accused opened the bolt of the door, and he came out with his clothes in his hands. Thereafter, he wore the clothes and told the children present there about the occurrence. The next day, the senior teacher came, and he told him about the occurrence. His statement was recorded by the police under section 161 Cr.PC which statement was read over to him and he admitted it to be true. His statement was also recorded under section 164 Cr.PC, which was read over to him and he admitted the same to be true, which was marked as Ext P3.

During cross-examination, he stated that he studies in a school at Kalaroos. He does not remember the name of the school. He studies in the class 3rd. He stays with his parents and his father is a government employee. He has two sisters and one elder brother. He does not remember as to when he came to study in Madrassa at Srinagar. He was studying in two Madrassas, and he remembers the name of only one Madrassa and that is Alfala Habibullah Educational Trust. This is correct that besides him, majority of children were from Kalaroos. There was one teacher and one In-charge Mohammad Younis, who was teaching English subject in the Madrassa. The accused was teaching Quran there. His father did not use to come daily to Madrassa and would come occasionally. His father used to talk to him on the phone of the accused as well as Mohammad Younis. He did not call him daily. This is wrong that there is friendship between his father and Mohammad Younis. He remembers the

names of only few students of Madrassa. He remembers the names of one Ajaz, Manzoor, Basharat, Anzar, and Anas. He was having friendship with them only. He does not remember the date of occurrence. The senior teacher Mohammad Younis took him to the room of his house, and he was not taken to the police station on that day. He was taken to the police station the next day. His father came to know about the occurrence after three days. As soon as his father came to know about the incident, he came to Madrassa the same day. This is true that parents admonish the child when he does not do the homework and similarly in the school also, the student is admonished for not doing the homework. This is also true that the accused used to admonish him in case of not doing the homework. He does not remember as to whether any quarrel took place between the accused and Mohammad Younis. The police did not seize the clothes worn by him and the police also did not seize the glass of water. This is true that the police did not come on spot and that he was taken to the police station. He has not seen the glass and clothes in the court today. This is true that whether we speak truth or lies, God watches us. He has never come to the court prior to that date. His signature was taken on the statement recorded by the police. He was never asked to collect the donations for the orphanage. He does not know the meaning of an orphan. There was no cook on the date of occurrence, as he had already left the place. During those days, the children used to cook the food and their names were Manzoor, Irshad and Basharat. When he cried, he came out and thereafter wore the clothes and told the students present there about the occurrence. When he took the glass of water the other children were also present, but the accused told them to leave. He does not remember the

names of those children who were asked by the accused to leave. His elder brother was also in the room at that time. When he was getting the water from tap, at that time the accused asked the other children to leave. He does not know as to whether the statement of his brother was recorded or not. He does not know as to whether his father has taken the money from the trust or not. After five to six days, he was taken to hospital. He had disclosed about the occurrence to his brother. In his presence, one policeman had come to the Madrasa, but he does not know whether he clicked photographs or not. He had not made statement under section 164 on the asking of anyone, but he had made the statement himself.

PW-4 (Child Witness):

After initial questions, PW-4 was declared by the trial court to be competent witness. In the examination-in-chief, he stated that he knows the accused. His name is Qari Shabir, and he identifies him. The incident is of 4thNovember, 2022 then stated it is of 2021, the accused asked the minor victim to bring him a glass of water. Then the victim brought the glass of water. He and Saleem were with the victim. We went into the room of the accused. The accused sent us (me and Saleem) out of the room. After 10-20 minutes, the victim came out crying from the room. When we reached the victim, he told us that the accused had told him to remove his trouser. He had come to madrassa for studying two years prior to the date of occurrence. His statement was recorded by the police. He also told Molvi Saheb about the occurrence.

During cross-examination, he stated that he was not present inside the room at the time of the occurrence. This is true that except him and Saleem, there was none else inside the room. His statement was recorded

by the police three days after the date of incident. His statement was recorded by the police in the Madrasa itself i.e. on 07.11.2021. This is true that the PW-2, who is his teacher has also come today in the court along with him. He knows the father of the victim, who is the resident of Kupwara. The victim's father also came to the Madrasa on the same date. His statement was also recorded in the school by the police. The accused was teaching Quran to us. This is true that the accused used to beat the children for not memorising the lesson. This is true that the children were afraid of the accused. The In-charge of our Madrasa is Mohammad Younus. On the day of occurrence, Mohammad Younus was also present in the Madrasa. There was no quarrel/altercation between the accused and said Mohammad Younus on the day of occurrence. Besides him, there were about thirty children studying in the Madrasa, who were from Kalaroos Kupwara.

PW-5 (Saleem Ahmad Sheikh):

In the examination in chief, he stated that he knows and identifies the accused person. The incident is of 4.11.2021, when he was in Madrasa situated at Rangpora, about 30 to 40 students were getting education in the Madrasa. At around 11 PM the accused, who was working as Qari (One who teaches Quran), asked the victim to bring a glass of water to his room. The minor victim took the glass of water to his room. After sometime, he heard the cries from the room of the accused. He and one Maqbool ran towards the room of the Qari. As soon as they reached there, the minor victim came out of the room of the accused. They asked him as to why he was crying, he replied that the accused forcibly removed his pyjama and attempted to sexually abuse him. The other day, In-charge of

the Madrasa came there, and they informed him about the occurrence. The police recorded his statement, but he doesn't remember the date when his statement was recorded.

During cross-examination, he stated that he had come to Madrasa five to six months prior to the date of occurrence. Mohd. Yunus runs Madrassa. There is one owner of Madrasa, but he does not know his name. This is true that he was not inside the room but when he heard the screams, he went there running. He does not know what happened inside the room. The victim told him about what happened inside the room. He further stated that the police came to Madrasa after two days. He told the police that the victim had told him that the accused had opened his pyjama and tried to sexually abuse him.

PW-6 (Dr. Abid Rasool):

In examination-in-chief, he has stated that on 13.11.2021, he was posted at SMHS Hospital as Registrar on duty in casualty. On that day, he examined the minor victim (name concealed). On examination, he found there were no marks of violence, abrasions, bruises on the body of the patient and then he checked perianal region and there were no violence marks on that region and faecal soiling was present and anal tone was increased. As per clinical examination, no sexual assault had taken place. The certificate (EXPT-6) is in his handwriting and bears his signature and seal and the contents are true.

In cross-examination, he stated that patient was accompanied by ASI Ghulam Jeelani. The patient was brought in emergency. The police had not recorded his statement.

PW-7 (ASI Ghulam Jeelani):

In his examination-in-chief, he stated that he knows the accused and identifies him. He was posted as ASI in Police Station, Zakoora on 12.11.2021. He had conducted investigation of FIR No. 107. As soon as he got the report at the Police Station, he went to the place of occurrence and prepared the site plan (Ext-P-7). He recorded the statements of witnesses and medical examination of the victim was conducted by the doctor at SMHS Hospital. Thereafter, the statement of the victim was recorded under section 164 CrPC and the accused was arrested from Ramban. He proved the arrest memo (Ext- P-7/1). On the basis of statements of witnesses and medical evidence, case under section 10,18 POCSO Act was proved against the appellant and challan was presented before the court. The age of the victim child was eight years. He had obtained the birth certificate of the victim from the Al-Falah Habibullah Trust.

During cross-examination, he stated that it was his first POCSO case. He cannot tell the full form of POCSO. Section 10 of the Act is about an act of wrong doing against the child. The occurrence was of 04.11.2021 and he received the application on 12.11.2021. The father of the victim child came to the police station. He asked the complainant father if the occurrence was of 04.11.2021, why he came to the police station on 12.11.2021. He has seen the case diary and there is no reference of delay in submitting application in the case diary. He went to the place of occurrence on 12th and recorded the statements of the witnesses. He recorded the statements of all the witnesses except the victim, on 12.11.2021. He did not record statement of any witness on 7th. If any witness has deposed that, that is false. He had enquired from the father of

the victim child whether he had gone to any other police station prior to coming to this police station, to which he responded in negative. He arrested the accused from Police Post Khadi, Ramban. He did not cite any official from Police Post, Khadi as witness to the arrest memo. Then stated that he did not remember whether he had cited any witness or not. He did not cite any witness from police station Ramsoo. He had reported at police station Ramsoo that they required the arrest of the accused. At the time of arrest, no photography or videography was done. The arrest memo and site plan marked as Ext P7 and Ext P7/1 respectively are in his hand writing but written in different style. He enquired from Mohammad Younis as to why they had delayed in reporting the matter, to which he stated that he had contacted the father of the minor victim. This is true that he did not take any action against the head of the trust, who had not discharged his obligations. In the site plan, he has shown Darul Hayat, which is meant for girl students, and is adjacent to Habibullah Trust and the two are separated by a wall. He had communicated with the school authorities regarding the date of birth of the victim, which he had obtained from Habibullah Trust, but he did not place the same on record at the time of presentation of challan. He did not prepare the seizure memo in respect of certificate. On 12th the FIR was registered, and the victim child was subjected to medical examination on 19.11.2021, but later stated on 13.11.2021, medical examination was conducted. He got the statement of victim child recorded under section 164 Cr.P.C. in the court on 22.11.2021. He was searching for the accused and finally he arrested him on 17.11.2021. The statement of the child under section 164 CrPC was not recorded immediately and even after the arrest of the accused, the

statement of the child was not got recorded and it was got recorded after five days. He has not mentioned the reason for the delay in recording the statement of the victim child in the CD file. He does not remember whether the brother of the victim was also the student of that institute. He did not record the statement of the brother of the victim. He recorded the statements of two witnesses (names concealed) on 12.11.2021 under section 161 Cr.PC. If witness (name concealed) has deposed that police came on the spot of occurrence after two days, then that statement is false. He does not know what statement the witness (name concealed) has given in the court. He does not know whether the father of the victim child had come at the place of occurrence on 7th. They had left Srinagar to arrest the accused on 15.11.2021. He had gone along with his team, but he has not cited any of his team members as witness in the challan.

8. **Defence Evidence:**

DW-1Ayan Ahmed Makloo stated that he used to study in Al Fallah Habibullah Educational Trust. He had obtained admission in the above mentioned school in the year 2021. He knows the accused present in the court. He along with other children used to sleep in three separate room, whereas the teachers used to sleep in other room. No occurrence had taken place in the school on 04.11.2021. On that day also, the victim had slept with them. Accused, Qari Yunus, Sajjad used to work as teachers in the school. Qari Yunus used to get the money collected from them. He also used to get the food cooked from them, and also would get cleaning & mopping from them. Qari Yunus used to tell them that if they did not collect the money, he would not give food to them. 15 days prior to the occurrence, accused had requested Qari Yunus that his wife was not well,

and he wanted to go home. He was withdrawn from the school in the year 2022. QariYunus abused his parents, and used inappropriate words against them. Accused never assaulted them.

During cross-examination by the learned P.P stated that that he did not know the accused prior to 2021. The bathroom was outside the room, where they used to sleep. This is true that he never accompanied any child whenever any child went to bathroom. This is also true that whenever any child was called to the room or office by the teacher, he would not accompany him.This is also true that whenever any child was taken to room by the teacher, he would not know as to whether he was beaten by the teacher or loved by him. This is wrong that on 04.11.2021, he had gone to his home. When the incident took place, it was around 10:00 PM. This is true that he was not aware as to what was done by the teacher with the victim. This is true that he left the institution because he was harassed there. He was asked to collect money. The money collected by them used to be given to Yunus who was running the institution, and not the accused.

DW-2 Suzain Tariq stated that he studies in Habibullah Public School. He was studying in 5thclass at that time. He had not seen anything wrong on 04.11.2021. He meant that allegations against the accused were baseless as no occurrence had taken place. Police had not come on spot. Principal Mohammad Younis used to make the students to do labour in the school and accused used to ask him to stop that. On 06.11.2021, Principal Mohammad Younis had called the children to his room and asked them to give wrong statement that the accused had abused the victim. He (witness) told him that he would not make any wrong

statement, as the status of teacher is equivalent to father. Then, Principal Mohammad Younis threatened him and other children that he would level false allegations of theft against them in the school. He was seen by his father collecting money on receipt book, as such his father took him to home. The victim had slept with him that time. In case accused needed anything, he would only ask him for the same.

During cross-examination by the learned P.P, he stated that on 04.11.2021, he was 14 years old. As per his date of birth, his age is 15 years and not 17 years. He is neither 14 nor17 but is 15 years of age. He was a student of 5th class in the year 2021 whereas the victim was student of 3rd class.There were 22 students in the institution at that time. He was monitor of the class.Children used to sleep at 12:45 AM in the madrasa. He would sleep 5 minutes later than them. He did not know as to what happened in the madrasa, while he was sleeping. He left the institution on 07.11.2021. The accused had been arrested by then and he left the institute after the accused was arrested. He left the institution because the children were forced to do labour. He was asked by the accused to make statement in the court.

9. Appreciation of the evidence and contentions of the appellant:

9(a). It is urged by the appellant that he was charged with the commission of offence under sections 10 and 18 of the POCSO Act, meaning thereby that he was charged for making an attempt to commit an offence and not for committing the substantive offence, therefore, the learned trial court could not have convicted the appellant for commission of substantive offence and if at all, the appellant was to be convicted, he was required to be convicted for an attempt to commit an offence. A perusal of the charge

framed against the appellant reveals that he was charged for commission of offences under sections 10 and 18 of the POCSO Act. The allegations levelled against the appellant in the charge framed against him are extracted as under:

> "That on 04.11.2021, you,at 10 PM asked the minor victim (name concealed) to bring glass of water to your room. As soon as the minor victim brought the glass of water to your room, you immediately bolted the door. You asked the child minor to remove his clothes and thereafter, you removed his clothes and pulled him on his bed. You rubbed your hands on the anus of the minor victim, and as you tried to put your penis into the anus of the minor victim,he started crying and you got scared & opened the bolt of the door. Thereafter, the minor victim took his clothes and ran away and disclosed the incident to the other children who were standing outside."

9(b). The appellant was charged for the commission of offence under section 10 of the POCSO Act, which provides punishment for commission of aggravated sexual assault and section 18 of the POCSO Act, which provides punishment for attempt to commit an offence. In order to appreciate the contention of the appellant, this court deems it proper to extract the definition of "sexual assault" as provided under section 7 of the POCSO Act which is as under:

> "7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

9(c). Thus, in terms of section-7 of the POCSO Act, if the accused with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person or does any other act with sexual intent which involves physical contact without penetration, he is said to have committed sexual assault. It is mentionable here that in terms of section-30 of the POCSO Act, there is

presumption of culpable mental state, when the offence requires a culpable mental state and the accused can rebut the presumption by proving his defence beyond reasonable doubt. In the present case, there is a specific accusation against the appellant that he bolted the room from inside and pulled the minor victim on his bed. He not only removed the clothes of the minor victim but also rubbed his hands on his anus. He also tried to put his penis in the anus of the minor victim, but the victim started crying. The charge framed against the accused was specific in respect of commission of an offence under section-7 of the POCSO Act, and in fact the allegations put to the accused clearly demonstrated the commission of offence by the appellant within the meaning of section-7 of the POCSO Act and not its attempt. As the victim was minor boy of 9 years and the accused was teacher in the Institute, where the offence was committed by the accused, he was charged for commission of offence of "aggravated sexual assault" as defined under section-9 of the POCSO Act. In fact, as per the allegations reflected in the chargesheet, the appellant committed an attempt to commit an offence of 'aggravated penetrative sexual assault' but neither the Investigating Officer laid the chargesheet against the appellant for commission of an attempt to commit 'aggravated penetrative sexual assault" nor he was specifically charged for the said offence by the learned trial court. The learned trial court in fact has committed an error while charging the appellant for commission of offence under section-18 of the POCSO Act, when the appellant in fact had committed an offence under section-9 of the POCSO Act. In this context, this court deems it proper to extract sections 215 and 464 of the CrPC.

Section 215.Effect of errors.

> No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.
>
> **Section 464 – Effect of omission to frame, or absence of, or error incharge**
>
> 1. No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.
> 2. If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may
> (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.
> (b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:
>
> **Provided** that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

9(d) As per the mandate of section 215 of the CrPC, no error in stating either the offence or particulars required to be mentioned in the charge and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused demonstrates that he was in fact misled by such error or omission and it has occasioned a failure of justice. Likewise, section 464 CrPC also provides that no finding, sentence or order by a court shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby to the accused. Thus, under sections 215 and 464 CrPC where there is any error or omission or irregularity in the charge, then it is incumbent on the part of the accused to establish before the court and that he was not only misled by the charges, but such

error has led to failure of justice. The learned counsel for the appellant has relied upon the judgement of the Hon'ble Supreme Court in **'Ghulam Hassan Beigh v. Mohd. Maqbool Magrey', (2022) 12 SCC 657** to demonstrate that the prosecution cannot lead evidence for a higher offence against the accused when he is charged with a lesser offence. The judgment is not applicable at all in the present facts and circumstances of the case, as the prosecution has led evidence in respect of the commission of an offence of aggravated sexual assault by the appellant, for which the appellant was charged by the learned trial court and that evidence only has been relied upon by the learned trial court for the purpose of convicting the appellant. Merely, charging the appellant for commission of attempt to commit an offence in addition to the commission of offence itself, is not an error which can be termed as fatal necessitating the reversal of judgment of conviction. The appellant has not able to satisfy the twin conditions that he was misled by error in the charge, and it has occasioned failure of justice to him. Reliance is also placed upon the decision of the Hon'ble Ape Court in "***State of U.P. v. Subhash*, (2022) 6 SCC 508",** the Hon'ble Supreme Court of India has held as under:

> **17.** While interpreting Section 464CrPC, this Court in Fainul Khan has observed and **held that in case of omission or error in framing a charge, the accused has to show failure of justice/prejudice caused thereby.**
> **18.** In AnnareddySambasiva Reddy, it was submitted on behalf of the accused that in the absence of a specific charge under Section 149, accused persons cannot be convicted under Section 302 read with Section 149 as Section 149 creates a distinct and separate offence. This Court negated the said submission and observed and held that mere non-framing of a charge under Section 149 on face of charges framed against the appellant would not vitiate the conviction in the absence of any prejudice caused to them. **Considering Section 464CrPC it is observed and held that mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby. It is further observed that if ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be**

sustained, irrespective of the fact that said section has not been mentioned.

(emphasis added)

9(e) It was also urged by the appellant that the incident took place on 04.11.2021 but the FIR was a registered on 12.11.2021, thus there is delay of 8 days in lodging of FIR which makes the prosecution case doubtful. It has come in the evidence of PW-1 (complainant) that on 09.11.2021, he was asked by the In-charge of the school to come to school and as he was handicapped, he could not find any one who could take him to school on 10th. On 11th only, he took the vehicle and when he went to school and met his son, he started crying and told him about the occurrence. PW-2 Mohd. Yunus has stated that he was told about the occurrence by PW-3 (victim) when he came to the institute on 5th but he did not make any complaint to Police, as he was himself conducting preliminary investigation. He has further admitted that the victim was upset after the incident and his health was also not good, therefore he informed the complainant on phone that his son (victim) was not well. It has also come in the evidence of the PW-3 (victim) that he informed the senior teacher in respect of the incident, the very next day when he came to school, the fact admitted by PW-2. The minor victim had informed the PW-2 Mohd. Yunus about the incident on the very next day, when he came to Madrassa, and it was PW-2 Mohd. Yunus, who neither informed the police nor the father of victim, immediately about the incident and the reason assigned by him is that he was himself investigating the matter. The father of the victim came to Institute on 11.11.2021 and informed the Police through Ext-P1 when he got the information about the incident and the fact that cannot be lost sight of is that he is handicapped and is unable to move without assistance. PW-

2 Mohammad Younis ought to have registered an FIR against the accused when he came to know about the incident. This is fact that he did not lodge any report with the police, and it was the handicapped father of the victim who lodged FIR against the appellant. This court does not find any force in the submission made by the learned counsel for the appellant that the prosecution case needs to be rejected on the ground of delay in registration of FIR. The prosecution has explained the delay and the delay, if any, was on the part of PW-2 Mohammad Younis, who was managing the Madrasa, and it appears that he deliberately did not inform the police about the incident just to protect the reputation of the Madrasa, though he has stated that he was investigating the matter himself. The delay in registration of FIR has been properly explained in this case and it cannot come to the rescue of the appellant. In '**Hariprasad v. State of Chhattisgarh, (2024) 2 SCC 557'** the Hon'ble Apex Court has held as under:

> **"9. It cannot be gainsaid that the first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the course of the trial. The object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eyewitnesses present at the scene of occurrence** [*Thulia Kali* v. *State of T.N.*, (1972) 3 SCC 393] . It is also an equally settled legal position that the receipt and recording of information report by the police is not a condition precedent to set into motion a criminal investigation [*King Emperor* v. *Khwaja Nazir Ahmad*, 1944 SCC OnLine PC 29]. **The first information report under Section 154CrPC, as such could not be treated as a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in the court.** As held by a three-Judge Bench of this Court [*Apren Joseph* v. *State of Kerala*, (1973) 3 SCC 114] , FIR is very useful if recorded before there is time and opportunity to embellish, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the court on guard to look for the possible

> motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.
> **10. Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution**."
>
> (emphasis added)

9(f) It was next vehemently contended by the learned counsel for the appellant that the age of the minor victim has not been proved in accordance with law, as the date of birth of the minor victim was entered in the school record on the basis of aadhar card. PW-2 Mohd. Ynuus Bhat has been examined by the prosecution to prove the date of birth of the minor victim as 12.12.2012. A perusal of his statement would reveal that he has categorically stated that as per school record, the date of birth of victim is 12.12.2012, which is entered in the aadhar card of the victim also, on the basis of which he was admitted in school. The witness was never cross-examined by the appellant in respect of date of birth of the minor victim, more particularly when the said witness had brought the record in the court, on the basis of which the date of birth certificate (Ext MYB) was issued. PW-1, father of the victim has also stated that the date of birth of minor victim is 12.12.2012. He too was never cross-examined by the defence with regard to the date of birth of minor victim, meaning thereby the appellant had admitted the date of birth of minor victim as 12.12.2012. Otherwise also, the date of birth certificate issued by the school is a valid document, which can be relied upon for the purpose of determining the age of minor victim. (See para-19 of the judgment of the Hon'ble Supreme Court in **'P. Yuvaprakash v. State' 2023 Live Law(SC) 538).**

Thus, there is no force in the submission made by the appellant, as such, the same is rejected.

9(g) It was also strenuously argued that there are major contradictions in the prosecution story as neither in the application pursuant to which FIR was registered nor in the statement of minor victim recorded under section 164 Cr.PC, there was any allegation that the appellant attempted to put his penis in the anus of the minor victim, whereas in the statement made in the court, he has deposed in that manner. Before considering this contention of the appellant, it would be profitable to take note of the judgment of the Hon'ble Apex Court of India in "**Shahaja v. State of Maharashtra"**, 2022 SCC OnLine SC 883, wherein, it has been held as under:

> **"27.** The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:
>
> I. **While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief**.
>
> II. **If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.**
>
> III. **When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.**
>
> IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching

> importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.
>
> V. **Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny**.
>
> VI. **By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen**.
>
> VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.
>
> VIII. **The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another**.
>
> IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.
>
> X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.
>
> XI. **Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on**.
>
> XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. **The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.**
>
> XIII. **A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction.** Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."
>
> (emphasis added)

9(h) This is true that in Expt-P1 which was submitted by the PW-1 (father of the victim) with the P/S Zakoora for registration of FIR, and in the

statement of the minor victim recorded under section 164 CrPC there was no allegation in respect of insertion of penis in the anus of the minor victim, but equally true is that he has not been convicted for commission of offence of aggravated penetrative sexual assault. It was stated by the minor victim in his statement recorded under section 164 Cr.P.C(EXT P3) that the appellant removed his (victim's) clothes and pulled him on his bed and made him lie down. He cried and the appellant opened the bolt of the door, and then he (victim) ran away from the room with clothes in his hands. He thereafter told the other children about the occurrence. In statement made before the court, he stated that as soon as he entered the room, the accused bolted the door of the room from inside. He directed him to remove his clothes, but he did not. Thereafter, the accused removed his (victim's) clothes himself and pulled him to his bed. He made him lie on the bed and touched his buttocks. Then, he (accused) put his penis into his anus, and he started shouting. This is true that the victim has made an addition that the appellant inserted his penis in his anus, and he started crying but as already noted above the appellant has not been convicted for the commission of aggravated penetrative assault. Occurrence took place on 04.11.2021 and the age of victim was 9 years (approx.) at the time of incident. When the victim is very young, he cannot be expected to possess photographic memory and depose like an adult, because he is unaware of the guileful or knavish behaviour of the accused. As such some contradictions are bound to occur in the testimony of the minor victim made in the normal course, otherwise it would be argued by the defence that he has been tutored and has made parrot like statement. This court is of the considered view that the act of the appellant in bolting the door of

the room at 10 p.m.after asking the minor child to come to his room with glass of water, removing his clothes, making the minor victim lie on the bed and touching his buttocks/anus is sufficient for conviction of the appellant for commission of offence under section-10 of the Act. In '**Birbal Nath v. State of Rajasthan', 2023 SCC OnLine SC 1396,** the Hon'ble Apex Court of India has held as under:

> **23.** In *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012, it was held that to contradict a witness would mean to "discredit" a witness. **Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgment, including *Rammi* (supra). Moreover, in this case the High Court lost sight of other more relevant factors such as the witness being an injured eye witness**.
>
> (emphasis added)

9(i) The statement of PW-3 (minor victim) has been corroborated by the evidence of the other two witnesses i.e. PWs- 4 & 5, who were also the students of the same Madrassa and immediately after the occurrence, they were told about the occurrence by the PW-3. PW-2 Mohd. Yunus and PW-1 have also corroborated the evidence of PW-3 in all material particulars.

9(j) As matter of fact, the edificial facts were proved by the prosecution in respect of age of minor victim and commission of offence by the appellant, for applicability of presumption in terms of section-29 of the POCSO Act. Thereafter, the onus shifted on the appellant that he had not committed an offence under section-9 of the POCSO Act. In "**Attorney General v. Satish, (2022) 5 SCC 545"**, the Hon'ble Apex Court has held as under:

> **38. The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialised or held insignificant or peripheral so as to exclude such act from the purview of**

> **"sexual assault" under Section 7.** As held by this Court in *Balram Kumawat* v. *Union of India* [*Balram Kumawat* v. *Union of India*, (2003) 7 SCC 628] , the law would have to be interpreted having regard to the subject-matter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law.
>
> **39.** It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the legislature has incorporated certain statutory presumptions. **Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub-section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability,** the Explanation to Section 30 clarifies that "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Sections 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, "sexual intent" would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of "culpable mental state" on the part of the accused."
>
> (emphasis added)

9(k) The appellant though tried to rebut the presumption by examining two witnesses in his defence i.e. Ayan Ahmed Makloo and Suzain Tariq but their evidence is not of such nature, so as to discredit the cogent and reliable evidence led by the prosecution. DW-Ayan Ahmed Makloo in examination-in-chief has stated that no occurrence took place on 04.11.2021, whereas in cross-examination, he stated that the occurrence took place between 9 to 10 p.m. The appellant in his statement recorded under section 313 Cr.P.C has stated that he has been falsely implicated in the case at the behest of PW-2 Mohd. Yunus. This defence has not been proved at all by the appellant. Rather the cross-examination of PW-1 by

the appellant would reveal that an attempt was also made by the defence counsel to create as defence that PW-1 (complainant) and Mohd. Yunus used to mis-appropriate the money of the Trust.

9(l) The prosecution has also successfully proved that the act of the appellant squarely falls under clause-(f) and clause (m) of section-9 of the POCSO Act, as the appellant being teacher committed an offence of sexual assault upon the minor student of Alfallah Habibullah Educational Trust, Rangpura, who was less than 12 years of age.

10. This Court has gone through the judgment passed by the learned trial court. The learned trial court has very meticulously dealt with the issues and has rightly arrived at a conclusion in respect of guilt of the appellant. In fact, in view of cogent and reliable evidence led by the prosecution, there was only one course available before the learned trial court and that was to convict the appellant. The judgment of the Coordinate Bench in **'Hardev Singh v. UT of J&K & Anr.'2022(3) JKJ 161 (HC)** is distinguishable on facts and as such, is not applicable in the instant case.

11. The appellant has been sentenced to simple imprisonment of 7 years and a fine of Rs. 25,000/. The appellant, who was providing religious education to the children, has not only committed an offence under the POCSO Act but also has shattered the confidence which a student poses in his teacher. He has sexually assaulted the minor child of less than 12 years of age in Educational Institution and as already observed above, the act of the accused falls under clause-(f) and clause (m) of section-9 of the POCSO Act. The minimum sentence prescribed under section-10 of the POCSO Act, is imprisonment for 5 years, whereas the maximum sentence prescribed is 7 years of imprisonment, with fine. Though the appellant

deserves no sympathy as he has committed a heinous offence but equally true is that he is not having criminal antecedents, therefore, this court is of the considered view that the sentence of 7 years imprisonment awarded to the appellant deserves to be reduced to simple imprisonment for six (6) years, to secure the ends of justice.

12. In view of the above discussion, the judgment of conviction dated 07.06.2024 of appellant under section-10 of the POCSO Act, passed by the Fast Track Court for POCSO Cases, Srinagar in chargesheet titled "U.T Of J&K versus Shabir Ahmed Naik", arising out of FIR. No. 107/2021 of P/S Zakoora, Srinagar, is upheld. However, the order of sentence dated 07.06.2024 passed by theFast Track Court for POCSO Cases, Srinagar, is modified to the extent that instead of simple imprisonment for 7 years, the appellant shall undergo simple imprisonment for 6 years. The fine component of the sentence shall remain the same.

13. The appeal is, accordingly, disposed of. Copy of the judgment be provided to the appellant, who is serving sentence in Central Jail, Srinagar. Copy of the judgment be also sent to Superintendent, Central Jail, Srinagar.

14. Record of the trial court be sent back forthwith.

(RAJNESH OSWAL)
JUDGE

Srinagar
09-10-2024
N Ahmad

Whether the order is reportable: Yes
Whether the order is speaking: Yes