
Rakesh M.R Vs State Of Kerala

Criminal Miscellaneous Petition No. 5044 Of 2021

Court: High Court Of Kerala

Date of Decision: April 7, 2022

Acts Referred:

Code of Criminal Procedure, 1973 " Section 9(3), 26, 227, 228(1)(a)#Indian Penal Code, 1860 " Section 354C, 447, 354C, 509#Protection of Children from Sexual Offences Act, 2012 " Section 11(iv), 12, 28, 33(9)#Kerala Police Act, 2011 " Section 119(1)(b)

Hon'ble Judges: Dr Kauser Edappagath, J

Bench: Single Bench

Advocate: V.A.Johnson, P.Narayanan

Final Decision: Dismissed

Judgement

Dr. Kauser Edappagath, J

1. This CrI.M.C has been filed challenging Annexure A order passed by the Fast Track Special Court, Palakkad (for short, "the court below")

dismissing an application filed u/s 228(1)(a) of the Code of Criminal Procedure (for short, Cr.P.C').

2. The petitioner is the accused. A crime was registered by the Hemambika Nagar Police Station, Palakkad as Crime No.153/2019 against the

petitioner alleging that he has committed offences punishable under Sections 447, 354C, 509 of IPC and S.119(1)(b) of the Kerala Police Act and S.12

r/w 11(iv) of the Protection of Children from Sexual Offences Act (for short, the POCSO Act).

3. The allegation against the petitioner is that, on 17/4/2019 at 10.00 p.m, he trespassed into the property of CW2, peeped through the hole on the

southern wall of the bathroom of the residential house of CW2 while CW1, a minor girl, was taking bath and he took visual images of CW1 in his

mobile phone and thus committed the offences.

4. On completion of the investigation, the final report was filed at the court below. After the appearance of the accused, the court below heard both

sides u/s 227 of Cr.P.C. and framed charge against the petitioner for the offences punishable under Sections 447, 354C, 509 of IPC and S.119(1)(b)

of the Kerala Police Act. The court below found that the offence u/s 12 r/w 11(iv) of the POCSO Act was not attracted and no charge was framed

against the petitioner for the said offence. Accordingly, as per the order Ā, dated 23rd July, 2021, the court below discharged the petitioner for the

offence punishable u/s 12 r/w 11(iv) of the POCSO Act.

Ā, 5. Thereafter the petitioner filed CrI.M.P.No.152/2021 at the court below invoking S.228(1)(a) of Cr.P.C to transfer the case to the Judicial First

Class Magistrate Court- III Palakkad or to the Chief Judicial Magistrate Court, Palakkad. According to the petitioner, the charge framed against him

was for offences triable by Magistrate and, hence, the court below has no jurisdiction to try the case. The court below after hearing both sides

dismissed the said petition as per Annexure A. The said order is under challenge in this CrI.M.C.

6. I have heard Sri.Johnson Varikkappallil, the learned counsel for the petitioner and Sri.P.Narayanan, the learned Additional Public Prosecutor for the

State.

7. The learned counsel for the petitioner submitted that the offences under Sections 447, 354C, 509 of IPC and S.119(1) (b) of the Kerala Police Act

are triable by Magistrate and, hence, the court below transgressed its jurisdiction in proceeding with the trial. The learned counsel further submitted

that the Special Court constituted u/s 28 of the POCSO Act is for the trial of such offences and matters connected thereto or incidental thereto only

and this case does not include any offence under the POCSO Act to attract the jurisdiction of the Special Court. On the other hand, the learned

Additional Public Prosecutor submitted that the court below is a Special Court for the trial of offences punishable under the provisions of the POCSO

Act, and the said court can exercise the jurisdiction of the Sessions Court and the Sessions Court has every power to try all the offences under the

Indian Penal Code, and there is no jurisdictional irregularity or impropriety in trying the offences under the Indian Penal Code.

8. S.26Ā, ofĀ, Cr.P.CĀ, providesĀ, thatĀ, subjectĀ, toĀ, theĀ, other provisions of the Code, the Court of Session may try any offence under the

Indian Penal Code. S.228 of Cr.P.C which deals with framing of charge, reads as follows:

Ā, ĀĉĀ,Ā"228. Framing of charge ĀĉĀ,Ā" (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the

accused has committed an offence whichĀĉĀ,Ā,

Ā, (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial

Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the

Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the

trial of warrant-cases instituted on a police report;

Ã, (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of Sub-Section (1), the charge shall be read and explained to the accused and the accused shall be asked

whether he Ã, pleads guilty of the offence charged or claims to be tried.

Ã, On a perusal of the provision extracted above, it is clear that once the case is committed to the Court of Session, it indeed becomes clothed with the

jurisdiction to try it, and the mere fact that the offence disclosed is not one exclusively triable by the Court of Session, does not divest it of that

jurisdiction. The Sessions Court has the discretion to transfer the case for trial to the Chief Judicial Magistrate Court or to try the case by itself. Ã, The

same issue was considered by the Apex Court in *Sudhir v. State of Madhya Pradesh* [(2001) 2 SCC 688] and it was held that the Sessions Court

has the power to try all offences under the IPC notwithstanding the fact that it is triable by a Magistrate Court. It was observed that when a case

involving offence not exclusively triable by such court is committed to the Court of Session, the Sessions Judge has to exercise discretion regarding the

case which he has to continue for trial in his court and the case which he has to transfer to the CJM.

9. Chapter VII of the POCSO Act deals with Special Courts. As per sub clause (1) of S.28, the State Government shall in consultation with the Chief

Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the

offences under the Act. The court below is the designated Special Court u/s 28 for the trial of offences punishable under the POCSO Act. The High

Court of Kerala on 9th February 2021 in the exercise of the Ã, powers conferred by S.9(3) of the Cr.P.C issued a notification empowering the court

below to exercise the jurisdiction of the Court of Session. Sub clause (2) of S.28 empowers the Special Court to try other offences along with the

offences provided under the POCSO Act. Sub section (9) of S.33 of the POCSO Act specifically says that a Special Court shall, for the purpose of

the trial of any offence under the POCSO Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session,

and as far as may be, in accordance with the procedure specified in the Code of Criminal procedure for trial before a Court of Session. Being a Court

of Session, the court below has every power to try the offences under the Indian Penal Code as well.

For the reasons stated above, I am of the view that the challenge against Annexure A order must fail. Accordingly CrI.M.C stands dismissed.