
(2024) 11 KL CK 0065

High Court Of Kerala

Case No: Criminal Miscellaneous Petition No. 3605 Of 2022

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APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Nov. 19, 2024

Acts Referred:

- , Code of Criminal Procedure, 1973 - Section 482
- Indian Penal Code, 1860 - Section 354A(1)(i)
- Juvenile Justice (Care And Protection Of Children) Act, 2015 - Section 82
- Protection of Children from Sexual Offences Act, 2012 - Section 7, 8, 9(f), 10

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: R.Anil B.Raman Pillai, M.Sunilkumar, Sujesh Menon V.B., Thomas Abraham, Thomas Sabu Vadakekut, Mahesh Bhanu S., S.Lakshmi Sankar, Ressil Lonan, Swetha P. Dileep, Noushad Thottathil Noorji Noushad, M.P.Prasanth

Final Decision: Allowed

Judgement

A. Badharudeen, J

1. This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure to quash Annexure-5 Final Report and all

further proceedings in S.C.No.315/2022 on the files of the Additional Sessions Court-I, Pathanamthitta, arose out of crime No.1273/2021 of Koipuram

Police Station, Pathanamthitta. The petitioner herein is the sole accused in the above case.

2. Heard the learned counsel for the petitioner, the learned counsel for the victim and the learned Public Prosecutor in detail. Perused the relevant

documents.

3. As per the prosecution allegation, the accused herein alleged to have committed offences punishable under Section 354A(1)(i) of the Indian Penal

Code (hereinafter referred to as 'IPC', for short), under Section 82 of the Juvenile Justice (Care and Protection of Children) Act, 2015

(hereinafter referred to as 'JJ Act', for short) and under Sections 7 r/w 8 and 9(f) r/w 10 of the Protection of Children from Sexual Offences Act

(hereinafter referred to as 'PoCSO Act', for short). The specific allegation of the prosecution as per the final report is that at about 11.30 hours

on 14.11.2015, the accused, who is none other than the tuition teacher of the victim, sexually molested the victim by kissing on her forehead, lips as

well as by grasping on her breast from behind.

4. While canvassing quashment of the proceedings, the learned Senior Counsel appearing for the petitioner argued that as per the First Information

Statement given by the victim, the occurrence was on a day during July, 2015.

Subsequently, the date was corrected by additional statement given by

the victim on 10.12.2021 as 14.11.2015. It is pointed out that if the date is taken as 14.11.2015 also, the FIS was registered after six years of

occurrence and therefore, the delay is very material in this crime. In addition to that, the learned Senior Counsel argued further that going by the

statements given by the victim, there were multiple allegations of assault, abuse, etc. on various dates. But sexual assault not stated at any point of

time, apart from one incident disclosed after six years. The learned Senior counsel read out the statements of father, mother and classmates of the

victim to contend that this complaint was lodged as an afterthought without any materials. It is also pointed out that in the 164 Cr.P.C. statement given

by the victim, the victim given statement that she completed degree course, though she did not pass degree course. According to the learned Senior

counsel for the petitioner, the petitioner had some mental issues, for which, he was treated by the doctors, cited as witnesses 11 and 12. But their

statements were not filed along with the final report. Accordingly, it is submitted that the petitioner is innocent and quashment sought for is liable to succeed.

5. In the matter of delay, the learned counsel placed three decisions of this Court. In the decision in Biju P.Vidya @ Monai v. State of Kerala,

reported in 2024 KHC OnLine 820, wherein this court considered delay of 16 years in lodging the FIR and held that the same is fatal and the same

would stand in the way of prosecution. Apart from that, decision of this Court in Crl.M.C.No.6103/2024 (xxxx v. State of Kerala) also has been

placed, wherein this Court considered sexual molestation alleged by the student against the teacher after four months delay and quashed the same.

6. Another decision in Crl.M.C. 9538/2023 (Sujith V. State of Kerala and Another) also has been placed, wherein this Court considered a long delay

of 13 years in lodging the FIR as material while quashing the complaint.

7. Opposing the prayer for quashment, the learned counsel for the defacto complainant zealously pointed out that the victim was subjected to sexual

molestation by the tuition teacher and thereby she was in a perplexed state of affairs and she discontinued her studies thereafter. Thereafter, she

disclosed the same to the counsellor and in turn, this crime was registered. As regards the delay, it is pointed out by the learned counsel for the

defacto complainant that in cases of sexual assault, delay cannot be equated with the case involving other offences and there are several factors,

which weigh in the mind of the prosecutrix and her family members for coming to the police station to lodge a complaint. The learned counsel has

placed the decision of the Apex Court in State of Himachal Pradesh v. Prem Singh, reported in 2009 KHC 4054 SC : 2009(1) SCC 420, with

reference to paragraph No.5 and 6, wherein the Apex Court considered delay of two years and held in paragraph No.6 as under:

“6. So far as the delay in lodging the FIR question is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences.

There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a

tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that

there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction.

Additionally, we find that the prosecution has clearly established commission of offence punishable under S.354 and 506 of IPC. So far as the offence punishable

under S.376 of IPC is concerned, the basic ingredients are set out in S.375 IPC. On a reading of the evidence of the prosecutrix, we find that a case of rape has not

been established so far as the respondent is concerned.

8. Another decision of the Apex Court, in *Satpal Singh v. State of Haryana*, reported in 2010 KHC 4506 also has been placed to

contend that in cases involving sexual molestation, delay is not akin to delay in other cases. In paragraph No.17 of the said decision, the Apex Court

held that the delay in lodging the FIR in sexual offences has to be considered with a different yardstick after referring the decision in *Prem Singh*

(supra).

9. In answer to the contentions raised by the learned senior counsel for the petitioner, on the submission that offence under Section 82 of the JJ Act

would not attract in the facts of the case since Section 82 of the JJ Act, 2015 came into force with effect from 01.01.2016, the learned learned

counsel for the defacto complainant would submit that if the occurrence is prior to 01.01.2016, the said offence would not attract. The same is

conceded by the learned Public Prosecutor as well.

10. In this matter, even though the victim given first information statement that the petitioner sexually molested her during the month of July, 2015, in

the subsequent statement, she corrected the date as 14.11.2015. However, in the FIS, the date of occurrence is stated as a day during July, 2015. As

per the FIS, she disclosed the occurrence in a WhatsApp group involving women alone, and accordingly, it was reported to the police. As pointed out

by the learned Senior Counsel for the petitioner, as per the statement of the mother of the victim, the occurrence was reported to the counsellor when

she was subjected to counselling in Ernakulam when she attempted to commit suicide in continuation of this occurrence. The allegation as to sexual

molestation is confined to that of kissing on forehead, lips as well as grasping on her breast by the accused from behind and as on 14.11.2015 in the

164 Cr.P.C. statement sworn by the victim, stated the said occurrences even though she stated that she completed degree course. In fact, the records

would not show that the defacto complainant completed degree course.

11. The question to be decided is, whether the prosecution materials do not disclose prima facie offence under Section 354A(1)(i) of IPC as well as

under Section 7 r/w 8 and 9(f) r/w 10 of the PoCSO Act since it is already found that Section 82 of the JJ Act would not attract in the particular case.

It is true that there is delay in lodging the FIR. That is to say, the occurrence is during the year 2015 and this crime was registered on 04.12.2021. It is

true that when the prosecution materials would show the bona fides of the case, in sexual harassment cases, delay alone is not a reason to disbelieve

the prosecution case, particularly, when there is explanation for the delay. It is discernible from the First Information Statement Itself that the defacto

complainant was molested while she was studying in plus two course at SIMI tuition centre run by the accused. After the occurrence, when the victim

reached the tuition centre, the accused said her to go out. Thereafter, she did not go to the tuition centre and when the internal examination result of

Physics was obtained, she obtained only less marks and then the mother stated that if she attended tuition properly, the reduction could be avoided.

Then she stated to her mother that she hesitated to go to tuition since the accused done sexual assault against her. But the victim did not disclose the

occurrence and carried the same as a trauma, thereby she was consulted by Psychiatrists. Later, she disclosed the trauma in a WhatsApp group of

women. Although it is pointed out by the learned counsel for the petitioner that the petitioner was treated by witness Nos.11 and 12 for some

discomfort, the details of the treatment not fully available and the statements of the witnesses also not available, it is discernible that the sexual assault,

as stated by the defacto complainant, occurred in the year 2015, assimilated trauma on her and she was even not in a position to disclose the same till

2021. Reading the prosecution allegations in this pedestal, the delay is not a ground to disbelieve the prosecution case, so as to quash the entire

proceedings without allowing the prosecution to go for trial. It is true that regarding the date of occurrence, there are contradictions, but the same by

itself is not a reason to quash the proceedings, though the accused could very well use the same to contradict the maker during cross examination.

Summarizing the discussion, it is held that in this matter, prima facie case, to see commission of offences punishable under Sections 354A(1)(i) of IPC

and under Sections 7 r/w 8 and 9(f) r/w 10 of the PoCSO Act, is made out.

12. As far as Section 82 of the JJ Act is concerned, since JJ Act, 2015 and Section 82 thereof came into force only from 01.01.2016, the said offence

alleged against the petitioner before coming into force of the said act would not attract, as already found.

13. In view of the matter, this petition stands allowed in part. Prosecution against the petitioner for the offence punishable under Section 82 of the JJ

Act stands quashed while disallowing the prayer for quashment of offences punishable under Sections 354A(1)(i) of IPC and under Sections 7 r/w 8

and 9(f) r/w 10 of the PoCSO Act with direction to the petitioner to face trial and to take all contentions before the trial court during trial.

The interim order of stay granted by this Court stands vacated.

It is specifically made clear that the observations in this order are for the purpose of deciding the quashment prayer and have no binding effect during

trial and the trial court shall decide the case not hampered by the observations herein.

Registry is directed to forward a copy of this order to the jurisdictional court for information and further steps.