

(2024) 12 KL CK 0042

High Court Of Kerala

Case No: Criminal Revision Petition No. 913 Of 2023

XXXXXXXXXX

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Dec. 10, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 227, 228, 397, 401
- Indian Penal Code, 1860 - Section 354(B), 376(2)(f), 376(A)(B), 506
- Protection of Children from Sexual Offences Act, 2012 - Section 3(b), 4(2), 7, 8, 9(m), 9(n), 9(p), 10

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: T.J.Lakshmanan Iyer, K.N.Abhilash, Sunil Nair Palakkat, Rishi Varma T.R., Rithik S.Anand, Sreelakshmi Menon P., M.P.Prasanth

Final Decision: Dismissed

Judgement

A. Badharudeen, J

1. This Criminal Revision Petition has been filed under Sections 397 and 401 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for

short) and the revision petitioner impugns Annexure K order dated 03.06.2023 in CMP No.73/2023 in S.C.No.345/2023 on the files of the Special

Court-II for the trial of offences under the Protection of Children from Sexual Offences Act ('POCSO Act' for short), Thrissur. The revision

petitioner herein is the sole accused in the above case. As per the impugned order, the learned Special Judge dismissed the plea of discharge at the

instance of the revision petitioner, who is the sole accused in this case.

2. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor in detail. Perused the impugned order and the relevant documents produced along with the revision petition.

3. Here, the prosecution alleges commission of offences punishable under Sections 354(B), 376(2)(f), 376(A)(B) and 506 of the Indian Penal Code and Sections 3(b) r/w 4(2), 7 r/w 8 and 9(m)(n)(p) r/w 10 of the PoCSO Act. The prosecution case is that the accused, who is the father of the victim, on a day during the month of December, 2016, disrobed the minor victim and inserted his finger into her vagina and also pressed on her breast.

Further the accused threatened the victim from disclosing the same to anybody. After investigation, final report filed, alleging commission of the above offences.

4. The accused appeared before the Special Court. Later he filed an application under Section 227 of Cr.P.C., seeking discharge on the ground that the materials available to the prosecution records are insufficient to proceed with the trial and therefore, he deserves discharge.

5. The prosecution side opposed the plea of discharge pointing out that there are sufficient materials in the prosecution records prima facie to see commission of the offences alleged against the petitioner and therefore, the matter would require trial.

6. The learned counsel for the petitioner justified the plea of discharge, mainly contending that in order to settle the matrimonial dispute between the petitioner and his wife and wreak vengeance against the petitioner, this case was foisted by the mother by misusing the provisions of the PoCSO Act.

Further, the daughter of the accused was used as a weapon to win the custody application filed before the family court and the same is visible from the statement of the mother of the victim. The investigation also was disputed.

7. The learned Special Judge, after appraising the contentions, addressed the question as to whether the materials collected during the investigation are sufficient to prove the allegation against the petitioner could be decided only during trial and the available materials on record, prima facie, would show that there are sufficient materials to proceed against the petitioner/accused by framing charges. Accordingly, the discharge petition was dismissed.

8. While assailing the order, the learned counsel for the revision petitioner re-iterated the contentions mainly asserting that it is a false case foisted to wreak vengeance against the revision petitioner and also to avoid custody of the victim to the father. He would submit that earlier, a settlement regarding custody of the victim was reached between the husband/revision petitioner and his wife and accordingly, the revision petitioner was given right to visit the daughter and share time with her in the presence of the mother of the defacto complainant and also telephonic access to him to the daughter. The matrimonial dispute in between the parties also settled. It is also pointed out that originally, CrI.M.C.No.5881/2022 was filed before this Court and the same was subsequently withdrawn by order dated 09.11.2022 and thereafter, the revision petitioner moved bail application and he was granted bail. Going by the prayer in this petition, the revision petitioner wants to set aside Annexure K order dated 03.06.2023 passed by the learned Special Judge in the discharge petition.

9. Coming to the essentials to be considered while considering discharge sought under Section 227 of Cr.P.C and framing charge under Section 228 of Cr.P.C, in the decision in Sandeep G. v. State of Kerala and Another, reported in 2024 KHC OnLine 586, this Court set out the principle as under, following the Apex Court decisions in this regard:

“ (i) Matters to be considered at the time of considering discharge and while framing charge are not aimless etiquette. Concomitantly the same are not scrupulous exertion. Keeping an equilibrium in between aimless etiquette and scrupulous exertion, the trial judge need to merely examine the materials placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on the basis of police charge/final report. The trial Judge shall look into the materials collected by the investigating agency produced before the Court, to see, prima facie, whether those materials would induce suspicious circumstances against the accused, so as to frame a charge and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged. But if the court is of the opinion, after such consideration of the materials there are grounds for presuming that accused has committed the offence/s which is/are triable, then necessarily charge shall be

framed.

(ii) The trial Judge has to apply his judicial mind to the facts of the case, with reference to the materials produced by the prosecution, as may be necessary, to determine whether a case has been made out by the prosecution for trial on the basis of charge/final report.

(iii) Once the accused is able to demonstrate from the materials form part of the charge/final report at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at this stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial.

(iv) At the stage of considering an application for discharge the court must proceed on an assumption that the materials which have been brought on record by the prosecution are true and evaluate said materials, in order to determine whether the facts emerging from the materials taken on its face value, disclose the existence of the ingredients necessary of the offence/s alleged.

(v) The defence of the accused not to be looked into at the stage when the accused seeks discharge. The expression ""the record of the case"" used in Section 227 Cr. P.C. is to be understood as the documents and objects, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the prosecution.

(vi) The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record shall not be evaluated.

(vii) At the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

(viii) In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and

probabilities which are really the function of the trial Judge, after the trial. At the stage of Section 227, the Judge has merely to sift the prosecution materials in order to find out whether or not there are sufficient grounds to proceed with trial of the accused.

(ix) Strong suspicion in favour of the accused, cannot take the place of proof of his guilt at the conclusion of the trial. But at the time of framing charge, if there is suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. In such case also charge needs to be framed to permit the prosecution to adduce evidence.

(x) If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.â€

10. Keeping the legal position in mind, in this case the revision petitioner raised plea of discharge before the trial court, that too, after withdrawing the

CrI.M.C. filed earlier to quash the final report. The legal position is clear that the strong suspicion in favour of the accused, cannot take the place

of proof of his guilt at the conclusion of the trial. But at the time of framing charge, if there is suspicion which leads the Court to think that

there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient

ground for proceeding against the accused. In such case also charge needs to be framed to permit the prosecution to adduce evidence. The

contention raised by the revision petitioner to succeed discharge is pendency of matrimonial disputes in between the revision petitioner and his wife.

But the allegation of prosecution regarding the occurrence is, prima facie, discernible from the prosecution records and therefore, the plea of discharge

could not be considered as rightly found by the Special Court. In this case, it is discernible that the final report was filed on 08.07.2022 and

CrI.M.C.No.5881 of 2022 challenging the proceedings was withdrawn even after filing the final report on 09.11.2022. Therefore, the revision

petitioner is debarred from filing petition to quash the proceedings even though his right to challenge the dismissal of discharge petition is very much available.

11. In view of the above, this petition is dismissed, confirming the order of discharge passed by the trial court, with liberty to the revision petitioner to raise his contentions before the trial court.

The Registry shall forward a copy of this order to the jurisdictional court for information and further steps, forthwith.