

Mohanan Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 9, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 482

Indian Penal Code, 1860 â€” Section 376AB, 376(2)(f)(n), 376(3)

Protection of Children from Sexual Offences Act, 2012 â€” Section 3(b), 4, 5(l), 5(m), 5(n), 6

Juvenile Justice (Care and Protection of Children) Act, 2015 â€” Section 75

Indian Divorce Act, 1869 â€” Section 10A

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: A.Ranjith Narayanan, A.Simi, S.K.Saju, Seetha S

Final Decision: Disposed Of

Judgement

G.Girish, J

1. The petitioner is the accused in Crime No.845/2019 of the Thrissur Town West Police Station. In the aforesaid case, the Investigating Agency has

filed a final report alleging the commission of offence under Sections 376Ã, AB,Ã, 376(2)(f)(n)Ã, &Ã, 376(3)Ã, ofÃ, theÃ, IndianÃ, PenalÃ,

Code,Ã, 1860,Ã, and SectionÃ, 4Ã, readÃ, withÃ, SectionÃ, 3Ã, (b)Ã, &Ã, SectionÃ, 6Ã, readÃ, withÃ, SectionÃ, 5 (l)(m)(n)Ã, ofÃ, theÃ,

ProtectionÃ, ofÃ, ChildrenÃ, fromÃ, SexualÃ, OffencesÃ, Act,Ã, 2012, and Section 75 of the Juvenile Justice (Care and Protection of Children)

Act, 2015.

2. Ã, The allegation against the petitioner, a person aged 69 years whoÃ, retiredÃ, fromÃ, theÃ, UniversityÃ, ofÃ, Calicut as Section Officer, is that

he committed rape and penetrative sexual assault upon his seven year old granddaughterÃ, byÃ, pressingÃ, hisÃ, fingersÃ, uponÃ, herÃ, genitalÃ,

areaÃ, during various occasions from 2017 to 2019.Ã, According to the petitioner, a false case has been foisted against him by his daughter, who is

the mother of the victim child, since he did not give approval for the wanton life being followedÃ, byÃ, her. ItÃ, isÃ, stated that the victim child was

born in the first marriage of the petitionerÃ¢â€â„¢s daughter, which was dissolved under Section 10AÃ, ofÃ, theÃ, IndianÃ, DivorceÃ, Act,Ã, 1869,Ã,

onÃ, 21.08.2017. Thereafter,Ã, the Ã, petitionerÃ¢â€â„¢s daughterÃ, isÃ, saidÃ, toÃ, haveÃ, marriedÃ, anotherÃ, person,Ã, butÃ, the above

relationship also did not extend for more than one year. While the proceedings were pending, before the Family Court, Thrissur,

for the divorce of the second marriage of the petitioner's daughter, she is said to have fallen in love with another person, who later on

committed suicide. According to the petitioner, his daughter was having behavioural abnormality and she was undergoing psychiatric treatment. The

present case is said to have been foisted by the petitioner's daughter, since she was, in inimical terms, with the petitioner, due

to the admonition and correctional steps being taken by him, to guide his daughter, to lead a disciplined life.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

4. It is submitted by the learned counsel for the petitioner that at present, the victim child, and her mother, are under the

care, and protection of the petitioner and his wife, and the victim's mother, who is the daughter of the petitioner, has now realised the wrong

committed by her, in preferring a false complaint against the petitioner. It is further submitted that the

petitioner's daughter, and the victim child, fervently want to withdraw the false complaint, raised against the

petitioner, as misguided by some unscrupulous persons. In support of the above argument, the learned counsel for the

petitioner adverted to an affidavit filed by the victim's mother, on 13.12.2024, stating that she deeply regretted the

institution of this crime against the petitioner as an act of retaliation for trying to interfere with her freedom. It is further stated in the affidavit that

the victim's mother preferred the complaint under the advice of some of her friends, and that at present, neither she, nor her daughter, wanted to

prosecute the petitioner. Thus, it is argued by the learned counsel for the petitioner that the criminal proceedings initiated against the petitioner,

in this regard, are to be quashed, since it is writ large from the above affidavit, filed by the mother of the

victim that a false case has been foisted against the petitioner.

5. The learned Public Prosecutor, per contra, submitted that the inherent powers under Section 482 of the Code of Criminal

Procedure, 1973, cannot be invoked for the termination of the prosecution proceedings, in a case like this, where there is very

serious allegation pertaining to the commission of rape and penetrative sexual assault upon a child.

6. The child, who is the victim, of the offence, in this case, is presently aged only 13 years. It is true,

that, her, mother, has, filed, an affidavit to the effect that the criminal prosecution against the petitioner was launched by her as an act of

retaliation, since she did not like the control exercised by the petitioner upon her free life. But, it, is well-settled that in cases like this, where the

accusation pertains to rape and, POCSO, Act, offences, the, prosecution cannot be nipped in the bud invoking the powers under Section

482 Cr.P.C. stating the reason that the parents, or, guardian, of, the, victim, had, sorted, out, the, issue, with, the accused. The

accusations levelled against the petitioner are to be tested in, the, proceedings, before, the, designated, Court. If, the, contentions

raised, by, the, petitioner, about, the, fabrication of false case against him has got any basis, the Trial Court could very well consider the

said aspect at, the, appropriate, stages, including, the, stage, of, hearing, on, framing charges. However, taking into account of

the fact that the petitioner is a senior citizen and that the victim's mother herself has stated that there was no basis for the accusations levelled

against the petitioner, I deem it appropriate to permit the petitioner to appear through his counsel before the Trial Court, except for those occasions

where the personal presence of the petitioner is indispensable for the proper conduct of the trial.

In the result, the petition is disposed of as follows:-

(i) The, Trial, Court, shall, not, insist, the, personal, presence, of, the petitioner, except for those occasions where his personal

appearance is inevitable in connection with any procedure for the proper conduct of the trial.

(ii) If, the, petitioner, prefers, to, file, any, petition, for, his, discharge, it shall, be, disposed, of, on, merit,

after, taking, into, account, all, the facts and circumstances of the case including the stand taken by the victim's mother about the

reasons for the registration of this crime.