

Gargian Sudheeran Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 13, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 482

Indian Penal Code, 1860 " Section 34, 201, 228A, 376

Protection of Children from Sexual Offences Act, 2012 " Section 3, 3(b), 4, 7, 8, 9(m), 9(n), 16, 17, 23, 23(4)

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: N.J.Mathews, Jibu T.S

Final Decision: Dismissed

Judgement

A. Badharudeen, J

1. CrI.M.C.No.11327 of 2023 has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") for

short) by Gargian Sudheeran, who is the sole accused in S.C.No.708/2023, pending before the Fast Track Special Court (Cases related to Atrocities

against (Women and Children), Perumbavoor, arose out of Crime No.2/2023 of Cyber Police Station, Ernakulam, seeking the following prayer:

"Call for the entire records relating to S.C.No.708/2023 and FIR No.516 of 2023 of the Kadakkal Police Station and FIR No.2/2023 of Cyber Police Station,

Ernakulam and to quash all further proceedings against the petitioner."

2. CrI.M.C.No.4154/2024 also is at the instance of Sri.Gargian Sudheeran, who is the 1st accused in S.C.No.184/2024 on the files of the Fast Track

Special Court, Kottarakkara, arose out of Crime No.516/2023 of Kadakkal Police Station, Kollam, and the prayer is as under:

"Call for the entire records relating to S.C.No.184/2024 before the First Additional District and Sessions Court, Kollam and to quash all further proceedings

against the petitioner."

3. Heard the learned counsel for the petitioner/Gargian Sudheeran as well as the 4th respondent/ defacto complainant in CrI.M.C.No.4154/2024 and

the 5th respondent/defacto, complainant, in CrI.M.C., No.11327/2023. Also heard the learned Public Prosecutor in detail.

4. The facts in CrI.M.C.No.11327/2023 run on the premise that, in crime No.2/2023 of Cyber Crime Police Station, Ernakulam, initially FIR was

registered alleging commission of offence punishable under Section 23(4) of the Protection of Children from Sexual Offences Act (hereinafter

referred to as 'PoCSO Act', for short) by Gargian Sudheeran and after investigation, final report was filed incorporating offence under Section

228A of the Indian Penal Code (hereinafter referred to as 'IPC', for short) as well as under Section 23(4) of the PoCSO Act. The sum and

substance of the allegation of the prosecution in this case is that on 28.05.2022, the accused herein disclosed the identity of the victim in Crime

No.2113/2016 through SRP FORUM Facebook page and thereby committed the above offences.

5. The prosecution case in Crime No.516/2023 of Kadakkal Police Station pertaining to CrI.M.C. No.4154/2024 is that, on 11.03.2023 and 23.03.2023,

the accused disclosed the identity of victim in Crime No.2113/2016 and thereby committed offences punishable under Sections 228A and 201 r/w 34

of IPC and Sections 23, 17 and 16 of the PoCSO Act. In Crime No.2113/2016, the prosecution alleges commission of offences punishable under

Section 376 of IPC and Sections 3(b), 4, 7, 8 and 9(m) (n) of the PoCSO Act by the accused therein.

6. According to the learned counsel for Gargian Sudheeran, Crime No.2/2023 was registered earlier and the allegations therein are similar to the

allegations in Crime No.516/2023. It is submitted by the learned counsel for Gargian Sudheeran that going by the 161 Cr.P.C. statement given by the

defacto complainant in this crime, the same would recite that what he has been stated in the principal Crime, viz., 2113/2016, is contrary and therefore,

both crimes are liable to be quashed for want of primary materials to sustain the offences. The learned counsel argued further that if at all it is found

prima facie that the offences alleged in Crime No.2/2023 are sustainable, warranting trial, then also, the 2nd crime registered for the same offences,

vide Crime No.516/2023, would not lie in the eye of law since registration of two First Information Reports and filing of two separate final reports in

relation to one occurrence is not permitted under law. The learned counsel for the petitioner/Gargian Sudheeran also placed decision of the Telangana

High Court in Writ Petition No.22037 of 2021 and decision of the Karnataka High Court in Criminal Petition No.2015 of 2022 and connected cases, to

contend that registration of multiple First Information Reports by the same person against the same accused is not legally permissible since the same

would result in getting the accused entangled in multiple criminal proceedings for the same allegations and such registration of FIR is an abuse of

process of Court.

7. Opposing this contention, it is pointed out by the defacto complainant that originally Crime No.2113/2016 of Kadakkal Police Station was registered

against the accused therein, alleging commission of offences punishable under Section 376 of IPC as well as under Sections 3, 4, 7, 8, 9(m) and 9(n) of

PoCSO Act. Thereafter, final report has been filed and the matter now pending for trial before the Special Court. According to the learned counsel

for the defacto complainant, going by the allegations in Crime No.2/2023, disclosure of identity of the victim on 28.05.2022 in Crime No.2113/2016 is

specifically made out prima facie. Therefore, quashment prayer therein would not succeed. He also argued that in Crime No.516/2023 also, similar is

the position. Therefore, prayer to quash the proceedings would not succeed.

8. It is pointed out by the learned counsel for the defacto complainant further that in this matter, FIR was not registered twice for the same

offence/offences. According to him, initially, when the identity of the victim was disclosed on 28.05.2022 in a Facebook post by Gargian Sudheeran,

crime was registered. Thereafter, final report filed on 14.02.2023. In order to substantiate this contention, the learned counsel for the defacto

complainant given much emphasis to order of this Court in B.A.No.1765/2023 dated 10.03.2023, whereby anticipatory bail application filed by Gargian

Sudheeran was dismissed, recording the submission of the learned Public Prosecutor that final report in crime No.2/2023 was already filed. On perusal

of the bail order, the said fact is noticeable. That apart, as per Annexure A3 final report in Crime No.2/2023, the same was filed on 14.02.2023. It is

true that, in this matter, allegation in both crimes is disclosure of the identity of the victim in Crime No.2113/2016; but during two different periods.

That is to say, in Crime No.2/2023, the allegation is confined on 28.05.2022 and in Crime No.516/2023, the dates of occurrence are 11.03.2023 and

23.03.2023. If so, as submitted by the learned counsel for the defacto complainant, FIR in Crime No.516/2023, registered for the occurrences on

11.03.2023 and 23.03.2023, is after filing of final report in Crime No.2/2023 on 14.02.2023. The learned counsel for the defacto complainant placed

decisions of the Apex Court in Abhishek Singh Chauhan V. Union of India & Ors. reported in 2022 LiveLaw (SC) 608, in Tarak Dash

Mukharjee & Ors v. State of Uttar Pradesh & Ors., reported in 2022 LiveLaw (SC) 731, in Babubhai v. State of Gujarat and Others,

reported in 2010 KHC 4608 and in Krishna Lal Chawla & Ors V. State of U.P. & ANR, reported in 2021 LiveLaw (SC) 145 to highlight the

principles governing multiple first information reports. It is pointed out by the learned counsel for the defacto complainant further that registration of

crime for different occurrences in different periods could not be held as registration of FIR for the same occurrence. Accordingly, the learned counsel

for the defacto complainant submitted that contention raised by the learned counsel for the petitioner/Gargian Sudheeran that Crime No.516/2023

registered for the occurrences on 11.03.2023 and 23.03.2023 would not succeed, on the finding that the same is an FIR registered in relation to an

occurrence covered by FIR in Crime No.2/2023.

9. Now the question poses for consideration is, what is meant by registering multiple First Information Reports for the same occurrence and

registration of First Information Report against the same accused at the instance of the same defacto complainant for difference occurrences which

would make distinct and different offences?

10. On a perusal of the decisions referred hereinabove, the legal position is emphatically clear on the point that if multiple first information

reports by the same person against the same accused are permitted to be registered in respect of the same set of facts and allegations, the same

would result in getting the accused entangled in multiple criminal proceedings for the same offences. Therefore, the registration of such multiple first

information reports is nothing but an abuse of process of law and the same would not stand in the scrutiny of Articles 21 and 22 of the Constitution of

India. In such cases, while permitting investigation in one FIR registered initially, other FIRs shall be quashed. At the same time, registration of first

information reports by the same person against the same accused for entirely different offence/s, not covered by the first information report earlier

registered, is within the orbit of law and such FIRs cannot be quashed.

11. In the instant case, originally crime No.2/2023 was registered alleging that on 28.05.2022, the petitioner herein disclosed the identity of the victim in

crime No.2113/2016 and committed offence punishable under Section 23(4) of the PoCSO Act. The said crime was investigated and final report filed

on 14.02.2023. After filing the final report on 14.02.2023, again the petitioner along with the accused persons, on 11.03.2023 and 23.03.2023 repeated

publication of the materials, disclosing the identity of the victim in crime No.2113/2016. Therefore, the same is a distinct and different offence, for

which registration of a fresh first information report is legally sustainable. In view of the above legal position, it could not be held that the proceedings

in crime No.516/2023 is regarding an occurrence which was covered by the occurrence in crime No.2/2023 since the same was registered for distinct

offence/s. In both the crimes, the prosecution materials would show prima facie that the accused herein committed offences alleged and therefore, the

matter would require trial. If so, quashment prayer canvassed is liable to fail. Accordingly, both petitions are dismissed.

Interim order of stay granted by this Court stands vacated.

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