

## Dr. V.K. Sulochana Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Feb. 4, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 53A, 164, 482

Indian Penal Code, 1860 â€” Section 376, 450

Protection of Children from Sexual Offences Act, 2012 â€” Section 3(a), 4(1), 5(j)(ii), 6(ii), 19, 19(1), 21, 27(1)

**Hon'ble Judges:** A. Badharudeen, J

**Bench:** Single Bench

**Advocate:** K.T.Bosco, P.Darly John, Jibu T S

**Final Decision:** Allowed

### Judgement

A. Badharudeen, J

1. This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings

pursuant to Annexure.A1 Final Report in Crime No.884/2021 of Ollur Police Station, Thrissur, now pending as S.C. No.929/2021 on the files of the

Special Court for the trial of cases under the Protection of Children from Sexual Offences Act [hereinafter referred as POC SO Act] for

short] (1st Additional District and Sessions Court), Thrissur. The petitioner herein is the 3rd accused in the above case.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor, in detail. Perused the Final Report and the decisions placed by

the learned counsel for the petitioner as well as the learned Public Prosecutor.

3. In this matter, the prosecution allegation is that, at about 13.30 hours on a day in the last week of January, 2021, the 1st accused trespassed upon

the residence of the minor victim, aged 17 years and subjected her to sexual intercourse and as a result of the same, the minor victim became

pregnant. On this premise, the prosecution alleges commission of offences punishable under Sections 450 and 376 of the Indian Penal Code and under

Sections 4(1) read with 3(a), 6(ii) read with 5(j)(ii) of the POC SO Act, as against the 1st accused.

4. The prosecution allegation against the petitioner, who is the 3rd accused and the mother of the victim, who the 2nd accused is that, they failed to

report the crime to the Police as provided under Section 19 of the POC SO Act and thereby they committed the offence punishable under Section 21

read with 19(1) of the POCSO Act.

5. The learned counsel for the petitioner vehemently argued to substantiate that the petitioner/3rd accused is absolutely innocent of the allegations and

there was no deliberate omission on the part of the doctor to inform the crime to the Police. In this connection it is submitted that, as per the statement

given by the victim, it was stated that, she met Dr.Indu M.R. of Aswini Hospital, Thrissur, when there was no menstruation for a period of five

months and the doctor advised to do scan examination. On scan examination, it was found that the victim was four months pregnant and accordingly,

she was directed to go to Government Medical College Hospital and treat accordingly. In tune with the statement given by the victim, the learned

counsel read out the statement given by Dr.Indu M.R., Aswini Hospital, Thrissur. In the statement of Dr.Indu M.R., she stated that she attended the

minor victim and found that she was pregnant and accordingly, she was sent to Government Medical College Hospital, Thrissur, for further

treatment. The doctor's statement would show further that, since she found the same as MLC, it was reported on 03.06.2021 and the CMO of the

hospital forwarded the same on 04.06.2021 to the Police. According to the learned counsel for the petitioner, in this matter, the FIR was registered on

04.06.2021 and the same would reveal that the First Information Statement of the victim was recorded while she was undergoing treatment at GEM

Hospital, Thrissur, where the petitioner herein treated her. According to the learned counsel for the petitioner, the pregnancy of the victim was first

noticed by Dr.Indu M.R. on 31.05.2021 and on noticing the pregnancy of the minor victim, the doctor reported the same as MLC on 03.06.2021 and

the CMO of the hospital forwarded the same on 04.06.2021 to the Police and the FIR was registered on 04.06.2021 itself. It is submitted by the

learned counsel for the petitioner further that, though Dr.Indu M.R. advised the minor victim to have further treatment at Government Medical

College, Thrissur, the victim opted her treatment at GEM Hospital, Thrissur, when there occurred bleeding and for the first time the petitioner had

occasion to meet the victim was only on 02.06.2021 and accordingly she was given treatment and the pregnancy got aborted, to save the life of the

victim. Since the crime was registered on 04.06.2021, while the victim was undergoing treatment at GEM Hospital, there is no deliberate omission on

the part of the petitioner to report the matter to the Police. Therefore, the prosecution against the petitioner is unwarranted and the same would

require quashment.

6. The learned counsel for the petitioner placed decision in *D r.Radhakrishna S Naik v. State of Kerala* reported in [2024 KLT

OnLine 2268], where this Court, after referring the decision of the Apex Court in Dr.Sr. Tessy Jose v. State of Kerala reported in [2018 (3) KLT

934 (SC)], wherein the Apex Court discharged a doctor on the finding that there was no deliberate omission on the part of the doctor in the said case

to report the crime under the POCSO Act. In paragraph Nos.11 and 12 of Dr. Radhakrishna S Naik's case (supra) this Court held as under:

“11. Thus, going through the statutory wording under Section 19(1) of the POCSO Act, it is emphatically clear that a duty is cast upon a person, who has

apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, to provide such information to

the Police. But, when a person notices that an offence under the POCSO Act has been committed and failed to inform the same within a reasonable time, definitely

he said to have committed offence punishable under Section 19(1) of the POCSO Act.

12. Failure to inform the matter within a period of 7.15 hours alone is not sufficient to hold that there was failure to report the same to the Police. In my view, in

order to fasten criminal culpability upon a person for failure to report to the Police regarding commission of offence under the POCSO Act and to make omission

to report the same, as an offence punishable under Section 19(1) of the POCSO Act, there must be a deliberate omission to be gathered from the records. It is to be

born in mind that, doctors are persons engaged in treating patients of multiple numbers, including patients who would require urgent attention, to save their

lives. Say for instance, if a Gynecologist is at the out patient department, a minor girl (a victim of POCSO Act crime) meets him with medical reports showing

that she is pregnant, naturally a duty is cast upon the doctor to inform the same to the Police in terms of Section 19(1) of the POCSO Act. Suppose, at the time

when the doctor notices the pregnancy of a minor girl, he gets a call from the ward that a pregnant lady would require urgent cesarean, it is his primary duty to

attend the said surgery, so as to save the lives of the pregnant lady as well as the child in the womb. So, the doctor could return back only after the surgery, which

may sometimes take hours. If the doctor could have to attend another urgent cesarean thereafter, then also he could not get much time to inform about the

pregnancy of a minor girl, soon after getting knowledge regarding the same. Therefore, reasonable time should be given to the doctors to inform such incidents to

the Police. Viewing the duties of a doctor in this plank, in the instant case, the doctor failed to inform about pregnancy of a minor girl, within a period of 7.15

hours from the time of his knowledge, by the time, Police reached the hospital and soon crime was registered. In such a case, can criminal culpability to be

imposed upon the doctor is the relevant question? The answer to the said question is; definitely not, because he did not get a reasonable time to inform the

matter to the Police, since the matter already informed by another doctor and on the said information, Police reached the hospital and registered crime.

7. The learned Public Prosecutor would submit that a duty is cast upon the doctor, when there is apprehension that an offence under the POCSO Act

is likely to be committed or has knowledge that such an offence has been committed, to provide such information to the Special Juvenile Police Unit or

the local Police for investigation and when there is omission in reporting the same, as provided under Section 19(1) of the POCSO Act, the same

warrants penal consequences provided under Section 21 of the POCSO Act. In the instant case, no records available to see that, even though the

petitioner treated the victim on 02.06.2021 and continued the same thereafter, she had taken any steps to inform the same to the Police. Therefore, the

petitioner is liable to be proceeded for the offence punishable under Section 21 read with 19(1) of the POCSO Act and the quashment sought for is

liable to fail.

8. The learned Public Prosecutor placed decision of the Apex Court in The state of Maharashtra and Another v. Dr.Maroti S/o Kashinath

Pimpalkar reported in [(2022) 0 AIR (SC) 5595 : (2022) 6 KLT (OnLine) 1002], to contend that, in cases of sexual abuse of minor girls, prompt

and proper reporting of the commission of offence under the POCSO Act is of utmost importance. Therefore, such omissions would come within the

teeth of Section 21 read with 19(1) of the POCSO Act. Paragraph Nos. 13 to 15 of the above decision are relevant and the same are extracted as

under:

“13. In the decision in Shankar Kisanrao Khade’s case (supra), a two Judge Bench of this Court in paragraph 77.5 and 77.6 issued certain directions for

due compliance and they read thus: -

“77.5. If hospitals, whether government or privately-owned or medical institutions where children are being treated come to know that children admitted are

subjected to sexual abuse, the same will immediately be reported to the nearest Juvenile Justice Board/SJPU and the Juvenile Justice Board, in consultation with

SJPU, should take appropriate steps in accordance with the law safeguarding the interest of the child.

77.6. The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a

serious crime and by not reporting they are screening the offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt

action be taken against them, in accordance with law.”

14. In Vijay Madanlal Choudhary’s case (supra), this Court observed that the length of punishment is not only the indicator of the gravity of

offence and it is to be judged by a totality of factors, especially keeping in mind the background in which the offence came to be recognized by the

Legislature in the specific international context. In this context, it is also relevant to note that the United Nations Convention on Rights of Children,

which was ratified by India on 11.12.1992, requires the State parties to undertake all appropriate national, bilateral and multilateral measures to prevent

the inducement or coercion of child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual

practices etc. Articles 3 (2) and 34 of the Convention have placed a specific duty on the State to protect the child from all forms of sexual exploitation

and abuse.

15. Prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and we have no hesitation to state that

its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act. We say so taking

into account the various provisions thereunder. Medical examination of the victim as also the accused would give many important clues in a case that

falls under the POCSO Act. Section 27 (1) of the POCSO Act provides that medical examination of a child in respect of whom any offence has been

committed under the said Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offence under the

Act, be conducted in accordance with Section 164 A of the Cr.P.C., which provides the procedures for medical examination of the victim of rape. In

this contextual situation, it is also relevant to refer to Section 53 A of Cr.P.C. that mandates for examination of a person accused of rape by a medical

practitioner. It is also a fact that clothes of the parties would also offer very reliable evidence in cases of rape. We refer to the aforesaid provisions

only to stress upon the fact that a prompt reporting of the commission of an offence under POCSO Act would enable immediate examination of the

victim concerned and at the same time, if it was committed by an unknown person, it would also enable the investigating agency to commence

investigation without wasting time and ultimately to secure the arrest and medical examination of the culprit. There can be no two views that in

relation to sexual offences medical evidence has much corroborative value.Ã¢â‚¬â€œ

9. Going by the decisions placed by the learned counsel for the petitioner as well as the learned Public Prosecutor, it is not in dispute that prompt and

proper reporting of the commission of offence under the POCSO Act is of utmost importance and its failure on coming to know about the commission

of any offence under the Act would defeat the very purpose and object of the Act. No doubt, medical examination of the victim as also the accused

would give many important clues in a case that falls under the POCSO Act. Therefore, timely reporting is inevitable to start the investigation without

much delay, including medical examination of the victim, in time. At the same time, when evaluating the materials of the prosecution in order to see

whether there was willful or deliberate omission on the part of the doctor, the facts of each case should be evaluated to see whether there was

deliberate or intentional omission, so as to fasten criminal culpability upon the doctor.

10. In the instant case, the minor victim was first treated by Dr.Indu M.R., Aswini Hospital, on 31.05.2021 and as per her statement she reported the

same as MLC on 03.06.2021 and accordingly the CMO of the hospital reported the same to the Police. On 04.06.2021, while the victim was

undergoing treatment at GEM Hospital, under the management of the petitioner herein, her statement was recorded and crime was registered. It is

true that, the prosecution records no way suggest that, though the petitioner started treating the victim from 02.06.2021 and continued the same till

04.06.2021, she had taken any steps to report the same to the Police. But, on 04.06.2021, the Police reached the hospital, while the victim was under

the treatment of the petitioner and the crime was registered.

11. Technically speaking, the petitioner got knowledge regarding the commission of POCSO Act offences on 02.06.2021 and she did not inform the

same to the Police. But, according to the learned counsel for the petitioner, it was already informed by Dr.Indu M.R. and crime was registered on

04.06.2021. Now, the question poses for consideration is, whether there is any deliberate or willful omission on the part of the petitioner in the matter

of reporting the crime to the Police, in the facts of the given case, as discussed? and the other question arises for consideration is; on getting

information regarding commission of offence under the POCSO Act, once the doctor who initially attended the victim already informed the matter to

the Police, whether non furnishing of information again by another doctor, who treated the victim subsequently, by itself would attract an offence

punishable under Section 21 read with 19(1) of the POCSO Act?

12. In this matter, initially the victim was treated by Dr.Indu M.R. on 31.05.2021 and on noticing pregnancy of the minor victim, she reported the same

as MLC on 03.06.2021 and the CMO of the hospital reported the same to the Police on 04.06.2021. Accordingly, crime also got registered on

04.06.2021. The petitioner herein treated the victim from 02.06.2021 onwards and the crime was registered on 04.06.2021, acting on the earlier

information given by Dr.Indu M.R, who treated the victim for the first time. In fact, when a doctor, who had occasion to treat or attend a victim of the

POCSO Act offence, gets knowledge regarding commission of the offence under the POCSO Act, he is duty bound to report the same to the Police,

in view of the mandate of Section 19(1) of the POCSO Act. But the statute does not provide an outer time limit for the same. Therefore, the intent

behind the legislature is to report commission of the offence under the POCSO Act, without much delay.

13. In the instant case, Dr.Indu M.R, who initially treated the victim on 31.05.2021, on noticing the pregnancy of minor girl, reported the same as MLC

on 03.06.2021 and the CMO of the hospital reported the same to the Police on 04.06.2021 and crime was registered on 04.06.2021. In the meantime,

the petitioner also had occasion to treat the victim on 02.06.2021 onwards and on 04.06.2021 the Police, acting on the request given by Dr.Indu M.R.,

who attended the victim for the first time, registered the crime. In such a case, it is held that, when the initial doctor, who treated or had occasion to

attend the victim, on getting knowledge regarding commission of the offence under the POCSO Act, reports the same without much delay and on the

basis of the same crime also registered, criminal prosecution against the doctor or doctors, who subsequently treated the same victim for the offence

under Section 21 read with 19(1) of the POCSO Act, is an abuse of process of court, since the doctor who initially treated the victim already informed

the same to the Police and crime was also registered. No doubt, such prosecution shall be avoided.

14. Viewing so, there is no deliberate omission on the part of the petitioner in reporting the crime, in the facts discussed. Holding so, I am of the view

that the criminal prosecution as against the petitioner in this crime, alleging commission of offence punishable under Section 21 read with 19(1) of the

POCSO Act is unwarranted and without any justification, prima facie. Therefore, I am inclined to allow the prayer for quashment at the instance of

the petitioner.

15. Accordingly, this petition stands allowed and all further proceedings pursuant to Annexure.A1 Final Report in Crime No.884/2021 of Ollur Police

Station, Thrissur, now pending as S.C. No.929/2021 on the files of the Special Court for the trial of cases under the POCSO Act (1st Additional

District and Sessions Court), Thrissur, stand quashed as against the petitioner/3rd accused.

Registry is directed to forward a copy of this order to the trial court, within seven days, for information and further steps.