



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 19TH DAY OF JUNE 2024 / 29TH JYAISHTA, 1946

CRL.REV.PET NO. 753 OF 2022

AGAINST THE ORDER DATED 16.05.2022 IN IN CMP NO.216 OF
2022 IN SC NO.64 OF 2021 OF THE ADDITIONAL DISTRICT COURT
& SESSIONS COURT (VIOLENCE AGAINST WOMEN & CHILDREN) ,

ERNAKULAM

CRIME NO.571/2020 OF KADAVANTHRA POLICE STATION,

ERNAKULAM

REVISION PETITIONER/S:

AJAY JIMMY
AGED 20 YEARS
S/O. JIMMY JOSEPH, LAYIPPALLY HOUSE,
THAIKKATTUSSERY, CHERTHALA, PIN - 688528.

BY ADVS.
V.A.HARITHA
GAYATHRI MURALEEDHARAN

RESPONDENT/S:

STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031.

BY SMT.PUSHPALATHA M.K., SR.PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 19.06.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



P.G. AJITHKUMAR, J.

Crl.Revision Petition No.753 of 2022

Dated this the 19th day of June, 2024

ORDER

Annexure A8 order dated 16.05.2022 of the Special Court for the trial of cases relating to Atrocities and Sexual Violence against Women and Children, Ernakulam is under challenge in this revision. As per the said order the Special Court dismissed C.M.P.No.216 of 2022, filed by the petitioner seeking discharge.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. Final report was filed before the Special Court with the following allegations;

The victim girl was aged 17 years. The petitioner was aged 18 years. They had sexual relationship and thereby the victim got impregnated. At about 07.20 p.m., on 30.10.2020, the victim left her house and joined the petitioner at Kalavoor in Alappuzha. The petitioner took the victim in his car bearing



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Reg.No.KL-32-N-2613 to Ernakulam where they stayed in a lodge near Lakeshore Hospital. Thereby, the petitioner alleged to have committed the offences punishable under Section 363 of the Indian Penal Code, 1860 (IPC) and Section 11(iv) r/w Section 12 of the Protection of Children from Sexual Offences Act, 2012 (PoCSO Act).

4. The learned counsel for the petitioner would submit that if the allegations in the final report are considered in the light of the statement of the victim under Section 164 of the Code, no offence either under Section 363 of the IPC or under Section 12 of the PoCSO Act would be revealed. It is pointed out that in her Section 164 statement, Annexure A6, the victim specifically stated that she on her own volition left her house and joined the petitioner. They stayed in the lodge and during that time the police came and apprehended the petitioner. The basis for charging offence under Section 12 of the PoCSO Act is that the petitioner contacted the victim over phone several times.



5. The learned Public Prosecutor would submit that the petitioner having taken the victim to a distant place by itself will amount an amount of kidnapping from lawful guardianship. Also, it is contended that making of phone calls to the victim would amount to an offence punishable Section 12 of the PoCSO Act if it was with a sexual intent. Here both offences are established and therefore, the plea for discharge is untenable.

6. The question therefore, is whether the allegations in the final report together with the materials produced by the prosecution would create a grave suspicion enabling to frame a charge against the petitioner. Of course, in the final report it is stated that the victim was taken by the petitioner on 30.10.2020 in his car to Ernakulam and thereby he has committed kidnapping of the victim from her lawful guardianship. What the victim stated in her statement under Section 164 of the Code is that on account of the distress following detection of pregnancy, she thought of leaving the home and as the petitioner also agreed to accompany her, she



left her house. Thereafter, she joined the petitioner and reached the lodge at Ernakulam. In order to amount an offence defined under Section 361 of the IPC taking of the victim by the accused shall be a voluntary one. If the leaving from the guardianship is on the volition of the victim, that may not amount to an offence even if she is below the age of 18 years. Considering the entire materials produced by the prosecution, what could be made out is only that the victim left her home on her own volition and on her insistence the petitioner took the victim to a lodge at Ernakulam. That would not constitute an offence as defined under Section 361 of the IPC.

7. The acts narrated in Clauses (i) to (vi) under Section 11 of the PoCSO Act could amount to offence only if the same was done with a sexual intent. The allegations in the final report do not indicate that the petitioner contacted the victim during the relevant period over phone with any sexual intent. This Court in **Jibin Joseph K.A. v. Union Territory of Lakshadweep and Another** [2022(4) KHC



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458] explained the ingredients of the offence under Section 11 of the PoCSO Act. The sexual intent is a necessary ingredient to constitute an offence. The allegations levelled against the petitioner concerning the incident occurred on 30.10.2020 do not reveal any criminal intent on his part. In the circumstances, I hold that offences punishable under neither Section 363 of the IPC nor Section 11(iv) r/w Section 12 of the PoCSO Act is revealed from the prosecution records.

8. Therefore, I find that there is no sufficient ground for proceeding against the petitioner. Hence, the impugned order dated 16.05.2022 in C.M.P.No.216 of 2022 is set aside. On allowing this revision petition, the petitioner is discharged under Section 227 of the Code.

Sd/-

P.G. AJITHKUMAR, JUDGE

dxy/dkr