



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

CRL.MC NO. 5582 OF 2016

CRIME NO.668/2015 OF MANGALAPURAM POLICE STATION,

THIRUVANANTHAPURAM

AGAINST THE ORDER/JUDGMENT DATED IN SC NO.205 OF 2016 OF FAST
TRACK SPECIAL COURT, ATTINGAL.

PETITIONER/ACCUSED:

xxx xxx

xxx xxx

BY ADV P.VINODKUMAR

RESPONDENTS/STATE/DEFACTO-COMPLAINANT:

- 1 THE STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.
- 2 xxx xxx
xxx xxx
BY ADV. SINDHU
SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
22.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**CR****P.V.KUNHIKRISHNAN, J.****-----
Crl.M.C. No.5582 of 2016
-----****Dated this the 22nd day of July, 2024****O R D E R**

The purpose of marriage is to find happiness and companionship with the partner, and not to perpetuate strife and discord. In other words, marriage is for happiness, and not for fight. Nowadays, if there is any misunderstanding between parties to a marriage, there is a trend for the parties to the marriage to fight between them indefinitely. If children are there in a marital relationship, the custody of the children also will be a weapon for the parties to strengthen their fight. If the parties to the marriage decide that there is no chance for a reunion, a cordial separation with a golden shake hand is preferable. But it seldom happens. The facts in this Criminal Miscellaneous case is an example of the fight of a couple which leads to an awkward



situation. This is an unfortunate case in which a small girl aged 3 years is used by her own mother as a weapon to fight against her husband.

2. Petitioner is the accused in S.C.No.205/2016 pending before the Fast Track Special Court, Attingal. The above case is registered alleging offences punishable under Sections 3, 4 and 5(l) of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO' Act) and Section 23 of the Juvenile Justice Act, 1986 (for short 'JJ Act').

3. The above case is registered based on a statement given by the 2nd respondent, the mother of the victim. In the above statement, it is stated that the victim is a 3 year old girl child born in the relationship between the petitioner and the 2nd respondent. The petitioner was working at Ernakulam. The 2nd respondent is well-educated and she completed MBA course. She is working in a company at Kazhakkootam. It is stated by the 2nd respondent in her complaint to the police that the petitioner visited the family only on Saturdays and Sundays after the



marriage because of his job. According to the 2nd respondent, when the petitioner leaves the house after the visit, the minor child shows some special behaviour. According to the 2nd respondent, it is noted by her mother. It is further stated that the minor child used to tell that the husband of the 2nd respondent used to lick on the tongue of the child and the private parts of the child. It is also the case of the 2nd respondent that, he also kissed on those parts of the child. It is the case of the 2nd respondent that at the initial stage, the same was neglected by her. On 05.04.2015, the 2nd respondent found inflammation on the private parts of the child and she asked her minor child about the same. It is further stated that the 2nd respondent came to know that her minor child was sexually abused by the petitioner. Therefore, the 2nd respondent started to observe the petitioner when he visited the house. On 19.04.2015, when the petitioner washed the private parts of the child, she started to cry and she didn't allowed to touch the same. Then the 2nd respondent found that there was infection in the private parts. After a week, the infection increased and she



met a gynecologist in a private hospital. According to the 2nd respondent, the doctor examined the child and found that there is inflammation. Subsequently, on 25.04.2015, when the petitioner came to the house of the 2nd respondent, the petitioner took the child to the bedroom. According to the 2nd respondent, she closely watched the activities of the petitioner with the child through the window. At that time, she found that the petitioner was sexually abusing the child. The 2nd respondent objected the same. But, it is stated that the petitioner assaulted the 2nd respondent and also threatened that, if she disclosed the same to others he would do away with her. The 2nd respondent informed the same to her father and mother. When the mother of the 2nd respondent asked about the same to the petitioner, the petitioner again shouted towards the mother, is the submission. According to the 2nd respondent, she informed the petitioner that, he cannot touch the child hereinafter and asked him to go away from the house. The petitioner left the house stating that the 2nd respondent could do whatever she wanted and he was ready for divorce.



4. Thereafter, on 01.07.2015, the petitioner filed a complaint before the Circle Inspector of Police, Kazhakkootam stating that, the 2nd respondent and his child were missing. The 2nd respondent met the Circle Inspector on 02.07.2015 and informed the details. Thereafter, on 04.07.2015, at 7.15 pm, a complaint was submitted by the 2nd respondent before the Mangalapuram Police Station and accordingly, Crime No.668/2015 was registered alleging the offences under the POCSO Act and JJ Act. Annexure-A is the FIR. After investigation, Annexure-B final report was filed. Aggrieved by Annexures A and B, this Criminal Miscellaneous Case is filed.

5. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor. I also heard the learned counsel appearing for the 2nd respondent.

6. As I mentioned earlier, nowadays, the matrimonial disputes are leading to the registration of several cases between the parties, which never happened in earlier times. Here is a case where the petitioner and the 2nd respondent are educated people. Therefore, the court may believe the words of the



mother at first blush. But, on a close perusal of the facts in this case, I am of the considered opinion that, this is a frivolous complaint submitted by the 2nd respondent with an ulterior motive to get the custody of the child. Such practice should not be allowed.

7. A perusal of Annexure-A would show that the complaint was filed on 04.07.2015 at 7:05 pm, alleging serious allegations of sexual harassment by the petitioner against his own daughter aged 3 years. But, a perusal of Annexure-A FIR itself would show that on 05.04.2015 itself the 2nd respondent had got a case that, she found inflammation on the private parts of her 3 year old child and she understood that the petitioner misused the child for his sexual happiness. If a mother of a child understood such a thing, she would not hesitate for a moment to submit a complaint before the police. But, the complaint was filed only on 04.07.2015, that also after the petitioner filed a complaint to the police that, his wife and child were missing. It is interesting to note that, on 19.04.2015, according to the 2nd respondent, she found inflammation on the private parts of her



daughter aged 3 years. According to the 2nd respondent, the child refused her to touch her private parts. Thereafter, there was serious infection on the private parts of the child, is the submission. According to the 2nd respondent, the child was taken to a private hospital and met a Gynecologist. The name of such a Gynecologist is not mentioned in the complaint. She is not ready to disclose that. Hence, the police were not able to question the Doctor concerned, who according to the 2nd respondent treated the child at that time. Non disclosure of the name of the Gynecologist who treated the child is suspicious.

8. Thereafter, on 25.04.2015, it is the case of the 2nd respondent that she directly found the petitioner sexually abusing her child. This was informed to her parents also. According to the 2nd respondent, the petitioner was directed to go out of the house and the petitioner left the house on that day. Even then, there is no complaint from the 2nd respondent to the police. If the above facts are true, no mother will hesitate to complain the same to the police. Moreover, in Annexure-A FIR itself, it is stated that, on 01.07.2015, the petitioner filed a



complaint before the police stating that his wife and child were missing. The 2nd respondent was summoned to the police station. Thereafter, on 04.07.2015, the present allegation came. That itself shows that, it is only to get the custody of the child, such a cruel statement is given by the 2nd respondent against her own husband to the police on 04.07.2015.

9. The petitioner produced Annexure-C, the case study report of the minor child. On 09.07.2015, the Childline, Thiruvananthapuram received a call regarding the sexual abuse of the child. As per the direction, all of them appeared before the Childline. The grandfather of the child also came over and Childline people had a talk with the grandfather also. The following observations were made by the Childline, Thiruvananthapuram. It will be beneficial to extract the same:

“1. The views of the mother and grandmother of xxxx are sharply in contrast with that of the grandfather; xxxx and father, xxxx.

2. xxxx, the minor girl is not able to give a consistent statement and seems to be repeating something she has been taught. She seems to be a happy child.

3. xxxx mother and grandmother are consistent with the



accusation.

4. xxxx contended that his wife, xxxx takes care of the child when xxxx goes to work and xxxx attachment towards the child when he visits home is not acceptable to xxxx because she has some psychological problems which affect her views. The family relationships had been haywire because of the same. The view of Grandfather needs to be taken into account due to the fact that he should be foremost in taking an action as he is the grandfather and especially a doctor.

5. xxxx had shown us a video which did not contain anything incriminating her husband. There is incongruity in statements comparing with the video that xxxx possesses and the medical examination reports do not seem to contain evidences.

From above five observations, we feel that this is a case of wrong accusation deriving from distorted perception probably due more to mental health issues rather than ill intention. However this cannot be a conclusive observation without establishing the facts foolproof."

10. A perusal of the above Case Study Report of the Childline would further corroborate the case of the petitioner. The Childline opined that it is a wrong accusation deriving from distorted perception. Annexure-C will further strengthen the case of the petitioner. The witness list produced along with



Annexure-B are all close relatives of the 2nd respondent.

11. This Court directed the Public Prosecutor to get the Case Diary in this case. This Court also directed the Sessions Judge to forward the Trial Court Records. This court perused the Case Diary and Trial Court Records. The wound certificate of the child is also produced along with the final report. The doctor found the hymen intact and there is absolutely no external injury noted. The doctor also recorded that no tears were seen in perineum. The doctor reserved the final opinion because the Chemical Analysis Report was not received. The Chemical Analysis Certificate is also produced along with the final report which shows that there is no semen or spermatozoa detected in the items forwarded. Moreover this Court also perused Section 164 statement of the victim. It is heartening to see that even after repeated tutoring, the child said before the Magistrate that she likes her father more than her mother. It will be better to extract the question put to the minor by the Magistrate who recorded the Section 164 statement and the answer by the child.



Q: മോൾക്ക് ആരെയാണ് കൂടുതൽ ഇഷ്ടം?

A: അച്ഛനെയും അമ്മനെയും . അച്ഛനെ കൂടുതൽ ഇഷ്ടം.

12. Even the child aged 3 years who is tutored to depose against her own father deposed before the Magistrate that she likes her father more than her mother. This is a fit case in which the prosecution against the petitioner who is the father of the victim is to be quashed in the light of the above discussions.

13. Matrimonial disputes leading to false allegations of child sexual exploitation by a father can have severe and far reaching consequences for all parties involved. False allegations can cause immense emotional distress for the accused, child and other family members. The accused may have to face the trauma of criminal charges even if the allegations are later proven false. The accused may suffer social ostracization, damage to reputation and loss of community stand. False allegations can lead to family break down, custody battles and long term psychological effects on the child. The child may experience emotional distress, guilt or anxiety due to being at



the centre of the dispute. When the child is grown up and becomes major, the records of the case may be available to her. It will be an embarrassing situation. False allegations against the father of the child at the instance of the mother can create a ripple effect, damaging community interest and relationships. All parties involved may experience lasting psychological and emotional scars. It is essential to approach such situations with sensitivity, prioritizing the child's well being and seeking support from professionals such as counsellors, social workers or law enforcement agencies to ensure a fair and just resolution.

14. This Court considered similar situations in some of the decisions. In **Xxx v. State of Kerala** [2023 (2) KHC 339] this Court observed like this:

"19. In the aforesaid decision, this Court highlighted the growing tendency of foisting false cases against the biological father alleging sexual abuse misusing the provisions of the POCSO Act. This Court alerted the Family Courts by emphasizing the necessity to adopt a conscious approach while dealing with the allegation of offences under the POCSO Act in cases where the custody of the child is under serious litigation. The courts, while dealing with the applications for bail,



involving the offences of the POCSO Act, allegedly committed by the accused against their children, should take a very cautious approach, particularly when the custody of the child is under serious litigation between the parents. In such cases, when the materials placed before the court evoke a reasonable suspicion as to the veracity of the allegations, the courts should not hesitate to invoke the powers under section 438 of the Cr.P.C. What is at stake is someone's personal liberty, integrity, dignity and sometimes, the life itself. The power under section 438 is an important tool for the court to protect the personal liberty of the persons, which is one of the fundamental rights guaranteed under the Constitution of India."

15. Again in **Xxxxx v. State of Kerala and Another** [2024 SCC Online Ker 3595], this Court observed that in matrimonial disputes in between husband and wife, their minor child/children would be meddled and weaponized to wreck vengeance at the teeth of POCSO Act to avoid claim for custody by the father. Same is the situation here also. In this case, when the father files a petition stating that his child is missing, a false case is filed by the mother of the child stating that the father sexually abused the child. A Division Bench of this Court



in **Suhara and Others v. Muhammed Jaleel** [2019 (2) KHC 596] observed that the Family Court has to apply its mind and unless there are reliable materials capable enough to convince the allegation of sexual abuse to be well founded, mere registration of crime shall not be reckoned as a ground for rejecting the claim of the parent for custody of the child.

16. I am of the considered opinion that the POCSO Courts which try cases like this in which an accusation of sexual abuse is made against the father of the minor child, especially when there is a custody dispute, the court should look into the facts again and again before deciding the cases. All cases will be decided by all courts with great caution. But these types of cases should be dealt with very seriously because if the allegations are correct, that is serious; but if the allegations are false, a man is crucified without any substance and he will be defamed in the society because of such allegations. Therefore it is the duty of the court to see that there is no false allegation against parents especially when there is a dispute regarding the custody. Moreover, Section 22 of the POCSO Act provides



punishment for false complaint or false information. In appropriate cases, the court should inform the police for investigation, if a prima facie case under Section 22 of the POCSO Act is made out. This is a fit case in which the Investigating Officer in Crime No.668/2015 has to consider whether any offence under Section 22 of the POCSO Act is committed by the 2nd respondent. Section 22 of the POCSO Act says that any person who makes false complaint or provides false information against any person in respect of an offence under Sections 3, 5, 7 and 9 solely with the intention to humiliate, extort, threaten or defame shall be punished with imprisonment for a term which may extend to six months or with fine or with both. This is a matter to be looked into by the investigating officer in this crime. All the POCSO Courts should take appropriate steps in this regard if it is found that there is any false complaint or false information submitted by the complainants. If the POCSO Court found after trial that there is substance in the case of the accused that it is a false accusation, the POCSO Court should direct the Police authorities



to register a case under Section 22 of the POCSO Act and proceed in accordance with the law.

17. The above discussion would lead to the definite conclusion that the prosecution against the petitioner in this case, who is the father of the minor victim is a frivolous, false complaint from the 2nd respondent to get the custody of the child from the petitioner. I am more disturbed because the child gave a Section 164 Cr.P.C. statement, which is extracted in the earlier paragraph of this judgment, in which she stated that she likes her father and mother and she likes her father more. Such a loving father is prosecuted by the mother of the child alleging serious allegations of the POCSO Act. These types of culprits' names should be disclosed to the public, so that the man who was defamed because of their complaint could stand before his child and society with dignity. But considering the privacy of the child I refrain from doing so. The Apex Court in **Nipun Saxena and Anr. v. Union of India and others** [2019 (1) KHC 199], also said so.

18. Every parent loves their children. Children are the



same; they would love their parents just as much. The question of who loves their children more than the other and vice versa would never arise. But in certain situations, the same is also relevant. Here is a case where the child says that I like my father more than my mother. Here, the mother filed a complaint against the father stating that the father sexually misused the minor child aged 3 years. This Court found that the case is false. This Court imagines the mental agony faced by the petitioner, who is the father of the child. Here, I like to quote a small film song by Sri.Kaithappam Damodaran Namboothiri.

"സൂര്യനായ്
 തഴുകിയുറക്കുമുണർത്തുമെൻ
 അച്ഛനെയാണെന്നിരിക്കിപ്പും
 ഞാനൊന്നു കരയുമ്പോളറിയാതെ
 ഉരുകുമെൻ
 അച്ഛനെയാണെന്നിരിക്കിപ്പും

കല്ലെടുക്കും കണിത്തമ്പിയെ
 പോലെ
 ഒരുപാടു നോവുകൾക്കിടയിലും
 പുഞ്ചിരിചിറകു വിടർത്തുമെൻ
 അച്ഛൻ

എന്നുമെൻ പുസ്തകത്താളിൽ



മയങ്ങുന്ന
 നന്മ തൻ പീലിയാണച്ഛൻ
 കടലാസ്സു തോണിയെ പോലെന്റെ
 ബാല്യത്തിലൊഴുകുന്നാരോർമ്മ
 യാണച്ഛൻ
 ഉടലാർന്ന കാരുണ്യമച്ഛൻ
 കൈ വന്ന ഭാഗ്യമാണച്ഛൻ

അറിയില്ലെന്നിടേതു വാക്കിനാ-
 ലച്ഛനെ വാഴ്ത്തുമെന്നറിയില്ല
 ഇന്നും
 എഴുതുമി
 സ്നേഹാക്ഷരങ്ങൾക്കുമപ്പുറം
 അനുപമ സങ്കല്പമച്ഛൻ
 അണയാത്ത ദീപമാണച്ഛൻ
 കാണുന്ന ദൈവമാണച്ഛൻ.”

This song beautifully describes the love of a child for his father. Let the petitioner-father be proud that he is the hero of his child.

19. The upshot of the above discussion is that the prosecution against the petitioner is to be set aside.

20. Therefore, this Criminal Miscellaneous case is allowed. All further proceedings against the petitioner in SC No. 205/2016 on the file of Fast Track Special Court, Attingal arising



from Crime No. 668/2015 of Mangalapuram Police Station are quashed.

The Registry will forward a copy of this judgment to the Station House Officer, Mangalapuram for taking appropriate action, in accordance with law based on the above judgment. I make it clear that if any crime is registered against the 2nd respondent, the investigating officer is free to investigate the same, untrammelled by any observation in this judgment.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**



APPENDIX OF CRL.MC 5582/2016

PETITIONER ANNEXURES

ANNEXURE A : CERTIFIED COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.668/2016 OF MAGALAPURAM POLICE STATION.

ANNEXURE B : CERTIFIED COPY OF THE FINAL REPORT IN SC 205 OF 2016 BEFORE THE FIRST ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM.

ANNEXURE C : TRUE COPY OF THE CASE STUDY REPORT OF THE CHILD LINE CENTRE, THIRUVANANTHAPURAM.

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE