



2024:KER:85980

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 12TH DAY OF NOVEMBER 2024 / 21ST KARTHIKA, 1946

CRL.REV.PET NO. 884 OF 2024

CRIME NO.818/2015 OF CHANDERA POLICE STATION, KASARGOD

AGAINST THE ORDER DATED 02.08.2024 IN CRL.M.P.NO.414/2024 IN S.C. NO.143

OF 2017 OF SPECIAL COURT UNDER POCSO ACT, KASARAGOD

REVISION PETITIONER/PETITIONER/ACCUSED:

AJITH PRASAD EDACHERRY
AGED 58 YEARS
S/O YESUMITHRAN, EDACHEERY HOUSE, PALLIKKARA, THAVAM KANNUR,
NOW RESIDING NEAR SREENILAYAM ALP SCHOOL, PAYYOLI,
KOZHIKODE DISTRICT, PIN - 673552

BY ADVS.
PRAJIT RATNAKARAN
ABDUL RAOOF PALLIPATH
RAJESH V.NAIR
E.MOHAMMED SHAFI

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031

SR PP - RENJIT GEORGE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
12.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 12th day of November, 2024**

This Criminal Revision Petition has been filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the order dated 02.08.2024 in CrI.M.P. No.414/2024 in S.C. No.143/2017 on the files of the Special Court for the trial of offences under the Protection of Children from Sexual Offences Act [hereinafter referred as ‘POCSO Act’ for short], Kasaragod. The revision petitioner herein is the accused in the above case.

2. Heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor, in detail. Perused the impugned order and relevant records from part of the case diary placed by the learned Public Prosecutor.

3. The prosecution allegation in this case is that, the accused, who is none other than the teacher of



St.Paul's A.U.P. School, Thrikkaripur, subjected the minor victim, studying in the 1st std., to sexual assault and when he disobeyed his command, he was beaten by the accused. The specific allegation as per the FIS and 164 statement as that of the victim is that, the accused, who is the teacher of the victim, brought the victim to the staff room and directed him to lay on his body. When the victim refused, the accused beaten on his leg and when he was called again to lay on his body, afraid of further assault, he laid on the body of the accused. Thus, the prosecution alleges commission of offences punishable under Sections 9(f),(m) and 10 of POCSO Act and under Section 23 of the Juvenile Justice (Care and Protection of Children) Act [hereinafter referred as 'JJ Act' for short].

4. While disposing of CrI.M.C. No.2525/2018, this Court found that, offence under Section 23 of the JJ Act is made out, *prima facie* and directed the Special Court to consider whether the ingredients to attract offence under Section 9(f) and (m) of the POCSO Act, has been made



out to frame charge and to frame charge for the offences made out from the prosecution records to proceed with trial. Even though this Court directed consideration of materials to frame charge for the offences under Sections 9(f) and (m) read with 10 of the POCSO Act, before framing charge, the petitioner filed CrI.M.P. No.414/2024 seeking discharge from the said offences. The learned Special Judge as observed in paragraph No.8 of the order, dismissed the petition as under:

8. The specific case of the prosecution is that the petitioner/accused being the teacher took the victim child around three times into the staff room and forcibly caused him to lie down on his body and whenever refused the child was beaten with cane. A plain reading of Section 7 of the POCSO Act would make it clear that whatever forms of contact would include a sexual assault. As explicit from the definition touching of a private parts of a child with sexual intent would prima facie attract the offence of sexual assault. However, the definition of the offence is not



*limited to the touching or doing of anything on or with the private parts such as vagina, penis, anus or breast but also **any other act** with sexual intent which involves physical contact without penetration. In the instant case, it is prima facie shown that the petitioner/accused has caused physical contact with the victim child more than once by lying the child upon his body while he was in a lying position upon the desk in the staff room while nobody in the staff room other than the child and the petitioner/accused. So, the special Court is bound to draw the presumptions U/s. 29 & 30 of the Protection of Children from Sexual Offences Act that the said act has been done with a sexual intent as canvassed by the prosecution since there is no probable and plausible explanation is forthcoming from the side of defence so as to eschew the elements of a sexual intent. Therefore, I am of the considered view that the petitioner/accused is not entitled to get an order of discharge U/s. 227 of Cr.P.C as prayed for herein. Accordingly, the point is found against the petitioner/accused.*



5. Challenging the said order, the learned counsel for the petitioner reiterated the statements of the victim recorded under Sections 161 and 164 of Cr.P.C, to contend that the only allegation as against the petitioner/accused is that, the petitioner, who is the teacher of the victim, brought the victim to the staff room, while he was lying alone and directed him to lay on his body. When the victim refused, the petitioner beaten on his leg and when he was called again, afraid of further assault, he laid on the body of the petitioner. Accordingly, the petitioner/accused had caused physical contact on the child victim by lying the child upon his body, while he also was lying on the desk.

6. According to the learned counsel for the petitioner, the Special Court relied on Sections 29 and 30 of the POCSO Act, dealing with presumptions regarding culpable mental state, while dismissing the discharge petition. Accordingly, the learned counsel for the petitioner submitted that, going by the allegations herein,



prima facie, none of the offences under the POCSO Act is made out. Therefore, the petitioner is entitled for discharge for the offences punishable under Sections 9(f), (m) and 10 of the POCSO Act.

7. Justifying the order of the learned Special Judge, the learned Public Prosecutor submitted that, the learned Special Judge addressed the overt acts within the ambit of the last part of Section 7 of the POCSO Act, which provides that, whoever does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault, to hold that *prima facie* offence of sexual assault with sexual intent is foreseeable in this matter, so that charge is liable to be framed under Sections 9(f)(m) and 10 of the POCSO Act also.

8. Addressing the challenge raised by the learned counsel for the petitioner and the learned Public Prosecutor, it is profitable to refer Section 7 of the POCSO Act. The same is as under:

7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast



of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

9. Thus, dividing the act of sexual assault, the legislature dealt with three instances. The third part is, doing any other act with sexual intent which involves physical contact without penetration. Then the said overt act alone is also sexual assault for the purpose of Sections 9(f),(m) and 10 under the POCSO Act. Here, the accused who is the teacher of the victim, brought him to the staff room and the accused had caused physical contact on the child victim by lying the child upon his body, while he also was lying on the desk. Therefore, the overt acts at the instance of the accused would show physical contact between the minor child and the accused. Hence, as submitted by the learned Public Prosecutor and found by the learned Special Judge, the culpable mental state is a matter to be presumed by the Special Court, since Section 30 of the POCSO Act provides that, in any prosecution for



any offence under the Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

10. Thus, this Court could not held from the records that, offences punishable under Sections 9(f),(m) and 10 of the POCSO Act are not made out, *prima facie* to frame charge and to proceed with trial. Therefore the order impugned dismissing the discharge plea at the instance of the petitioner/accused does not require any interference.

11. Accordingly, this revision petition stands dismissed. Interim order in this matter stands vacated.

Registry is directed to forward a copy of this order to the Special Court, within three days, for information and further steps.

**Sd/-
A. BADHARUDEEN
JUDGE**



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APPENDIX OF CRL.REV.PET 884/2024

PETITIONER ANNEXURES :

Annexure 2

**A TRUE COPY OF THE ORDER IN BAIL APPLICATION
8231/2016 DATED 02/12/2016 PASSED BY THE
HON'BLE HIGH COURT OF KERALA PRODUCED**