2024:KER:71322

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 24TH DAY OF SEPTEMBER 2024 / 2ND ASWINA, 1946

CRL.MC NO. 6180 OF 2017

CRIME NO.580/2017 OF Cantonment Police Station, Thiruvananthapuram

AGAINST THE ORDER IN CP NO.24 OF 2017 OF JUDICIAL

MAGISTRATE OF FIRST CLASS -III,THIRUVANANTHAPURAM

PETITIONERS/ACCUSED NO 1 AND 2:

1 SURESH, AGED 30 YEARS
S/O VINCENT, KOTTAMUKAL, KIZHAKKUMKARA
VEEDU,VILANKARATHALA, OORUTTAMBALAM,
THIRUVANANTHAPURAM RURAL,PIN CODE NO.695507.

2 REMYA, AGED 25 YEARS
W/O SURESH, KOTTAMUKAL, KIZHAKKUMKARA VEEDU,
VILANKARATHALA, OORUTTAMBALAM,
THIRUVANANTHAPURAM RURAL,PIN CODE NO.695507.

BY ADV SRI.P.V.VENUGOPAL

RESPONDENTS/DEFACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN CODE NO.682011.

2 SUB INSPECTOR OF POLICE
CANTONMENT P.S.
THIRUVANANTHAPURAM CITY, PIN CODE NO.695039.

OTHER PRESENT:

SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.09.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

2024:KER:71322

CR

P. V. KUNHIKRISHNAN, J.

Crl.M.C.No.6180 of 2017

Dated this the 24th day of September, 2024

ORDER

The petitioners herein are the father and mother of a 3 year old child. It is the case of the petitioners that they are the victims of medical negligence by which their another child died on 10.07.2016 at S.A.T. Hospital, Thiruvananthapuram. The petitioners decided to protest against the same and also decided to claim financial help from the Government. They conducted a continued protest for 59 days in front of the main gate of the Government Secretariat at Thiruvananthapuram. On 03.05.2017, the Sub Inspector of Police, Cantonment Police Station and his party were on duty near Secretariat main gate and at that time, the petitioners were seen with the 3 year old child in the footpath under the blazing sun in a sizzling temperature. They were sitting with the child at 10 a.m in the open space. The police approached the

petitioners, collected their names and enquired why they were keeping the child in an open space under the sunlight. The petitioners informed that, they are protesting for getting financial help from the Government. The Sub Inspector of Police persuaded them to withdraw from the protest because the child is aged 3 years, but the petitioners refused. Hence Crime No.580/2017 was registered by the Cantonment Police alleging offences under Sections 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 [for short, 'JJ Act 2000']. The question to be decided in this case is whether Section 23 of the JJ Act 2000 is attracted in the facts and circumstances of the case.

2. It is now a trend to take small children for protest, dharna, satyagraha etc,. The children are unaware of the reason for the protest, dharna or satyagraha. The parents are taking them for these protest and other agitations mainly to get attention to their agitation. The parents are not taking the seriousness of the situation when small children are taken for agitations, protest, dharna, satyagraha etc,. There are several reasons to stop this practice of taking small children for these types

of protest, dharna, satyagraha etc. Exposure to extreme temperatures without sanitation and crowded conditions can lead to illness in children. The agitations can disrupt the child's regular routine including meals, sleep, play, education etc. If a child is taken to a protest, there are chance for violence in the protest putting the child at the risk of physical harm. Moreover, loud noises, crowds and conflicts can cause emotional trauma to a child. When the parents are participating in agitations, protest, dharna, satyagraha etc, they may be distracted and unable to provide proper care during the agitations. Children are not only the assets of the parents but also of the society. Therefore, it is the duty of the parents to avoid the presence of small kids who are not aware of the purpose for which they are protesting or conducting dharnas, satyagrahas etc. Therefore, the commonsense of the parents should stand above their grievance in such situations, even if the grievance is genuine. If the law enforcing authority finds that the children are taken for protest, satyagraha, dharna etc at their tender age and if the intention is to attract attention to their protest, they have every right to proceed in accordance with the law. A small child below the

age of 10 may not know the purpose of the protest, satyagraha, dharna etc. Let them play with their friends or go to school or sing and dance according to their wishes during their childhood. If any such willful acts from the parents by taking the child for such protest, satyagraha, dharna etc, stringent action should be taken by the law enforcing authorities.

3. Coming back to the facts of this case, the offence alleged is under Section 23 of the JJ Act 2000. Section 23 of the JJ Act 2000 is extracted hereunder:

> '23. Punishment for cruelty to juvenile or child. - Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.'

4. This Court in **Amal and Another v. State of Kerala and Another [2020(4) KHC 781]** considered the ingredients of Section 23 of the JJ Act 2000. It will be better to extract the relevant portion of the judgment:

> '6. It is not the scheme and spirit of S.23 that every doing of an act by the person in charge or control of the juvenile, which affects the body and mind of the child would constitute an offence punishable under the section despite it lacks criminal intention. The expression 'willfully' in S.23 of the JJ Act must be given meaningful consideration. Likewise, the expression 'unnecessary' preceding the words 'mental or physical suffering' is also relevant. In short, what Section must be deemed to convey is that unless the alleged act which has resulted in mental suffering of the child is preceded by mens rea also, it cannot be treated as a criminal act made punishable under S.23 of the Act.'

5. Similarly in **Muhammed Nizam P. v. State of Kerala [2024 KHC 437]** also, this Court considered the ingredients of Section 23 of the JJ Act 2000. The relevant portion of the above judgment is extracted hereunder:

> 7. On a perusal of the statutory wordings, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures the juvenile to be assaulted, abandoned, exposed or neglected in a manner likely to cause unnecessary mental or physical suffering is an offence. So, in order to bring home an offence punishable under S.23 of the Act, 2000, the above acts should be one either to cause or likely to cause mental or physical suffering to the minor. Any act/acts which would not either cause or likely to cause mental or physical suffering is not an offence. Here, the place of occurrence itself is a

> beach and the intent behind taking a child to a beach is to provide happiness to the child. Children often expresses happiness through a sense of wonder, innocence, exposition and playfulness. They can find joy in simple things - by playing with toys, exploring the world around them, and spending time with loved ones. When a child is taken to a beach, the intention of the parents or somebody having actual charge or control over the minor, is obviously to provide opportunity to the minor to explore the world and its wonders to assimilate positive emotions and life satisfaction, unless contrary intention is specifically made out. Here, the petitioners, having control over the minor, reached the beach along with the minor to have happiness during leisure. While enjoying the seashore exposure to absorb positive energy, the minor was allowed to have parasailing. In fact, the intention of the petitioners is nothing but to provide happiness to the minor and not to cause or likely to cause unnecessary mental or physical suffering to the minor, since no such intention is otherwise to be gathered.
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> 8. On going through the materials, it could not be held prima facie that the petitioners intended to cause or were likely to cause unnecessary mental or physical suffering to the child in any manner by allowing the minor to have parasailing. In such a case, the available materials did not constitute an offence punishable under S.23 of Act, 2000.

6. In the light of the above principle laid down by this Court, it is clear that a willful act from the parents is necessary

to attract Section 23 of the JJ Act 2000. The parents should willfully neglect the juvenile or cause or procure him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering and then only it is punishable under Section 23 of the JJ Act 2000.

7. In this case, the Public Prosecutor made available the case diary. This Court perused the case diary. In the case diary, it is seen that the Government as per G.O(R.T) No.941/2017 dated 31.03.2017 sanctioned an amount of Rs.2 lakhs to the petitioners in connection with the death of their child at S.A.T Hospital, Thiruvananthapuram. That order was on 31.03.2017. The police registered the case on 03.05.2017, which is subsequent to the above G.O. That shows that, even the amount sanctioned by the Government is not paid to the petitioners. The death of another child of the petitioners may be the reason why the petitioners were forced to conduct the protest in front of the Government Secretariat but, the petitioners ought not have carried the 3 year old child for the protest, that also, in an open space in the month of May which

is the peak time of summer. But, it cannot be said that the intention of the petitioners is to give unnecessary mental or physical suffering to the child. Considering the facts and circumstances of the case, I am of the considered opinion that the continuation of the prosecution against the petitioners is not necessary. But this need not be taken as a precedent. If such incidents happen in future the law enforcing machinery can take strict action in accordance with the law.

With the above observation, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioners in C.P.No.24/2017(now pending as CC No.924/2017) on the file of the Judicial First Class Magistrate Court-III, Thiruvananthapuram arising from Crime No.580/2017 of Cantonment Police Station are quashed.

Sd/-

P. V. KUNHIKRISHNAN
JUDGE

Sbna/25.09.2024

APPENDIX OF CRL.MC 6180/2017

PETITIONER ANNEXURES

ANNEXURE A1	A COPY OF NEWSPAPER REPORT IN MALAYALAM DAILY MONORAMMA DATED 3.05.2017.
ANNEXURE A2	A COPY OF NEWSPAPER REPORT WITH PHOTOGRAPH DAILY MONORAMMA DATED 22.10.2016.
ANNEXURE A3	A COPY OF ORDER IN PROCEEDINGS BEARING NO.393/A2/2016 KSYC DATED 31.08.2016 BY KERALA STATE YOUTH COMMISSION, VIKAS BHAVAN, THIRUVANANTHAPURAM.
ANNEXURE A4	A CERTIFIED COPY OF FIR IN CRIME NO.580/2017 OF CANTONMENT P.S.THIRUVANANTHAPURAM CITY DATED 03.05.2017.
ANNEXURE A5	A CERTIFIED COPY OF FINAL REPORT IN CRIME NO.580/2017 OF CANTONMENT P.S THIRUVANANTHAPURAM CITY DATED 3.5.17.