



CRL.MC No. 4268 of 2022

-1-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 10TH DAY OF SEPTEMBER 2024 / 19TH BHADRA, 1946

CRL.MC NO. 4268 OF 2022

PETITIONER/ACCUSED:

M. J SOJAN,
AGED 50 YEARS, S/O JOSEPH,
MECHERI HOUSE, ELANJIPRA, CHALKKUDY,
WORKING AS SUPERINTENDENT OF POLICE,
CRIME BRANCH CENTRAL UNIT-II,
ERNAKULAM, PIN-680721

BY ADVS.
THOMAS J. ANAKKALLUNKAL
JAYARAMAN S.
NIRMAL CHERIYAN VARGHESE
LITTY PETER
ANUPA ANNA JOSE KANDOTH (K/427/2007)
DHANYA SUNNY (K/239/2024)
ANN MILKA GEORGE (K/1014/2024)

RESPONDENTS/COMPLAINANT:

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

2 XXX
AGED 39 YEARS, XXX, PIN-678623

R1 SRI.RENJIT GEORGE, SENIOR PUBLIC PROSECUTOR

R2 ADV.P.V.JEEVESH P.V.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
ON 08.08.2024, THE COURT ON 10.09.2024 PASSED THE FOLLOWING:



CRL.MC No. 4268 of 2022

-2-

'C.R.'

ORDER

Dated this the 10th day of September, 2024

This Crl.M.C. has been filed under Section 482 of the Code of Criminal Procedure (Cr.P.C. for short hereinafter) by the sole accused in S.C. No.551/2022 on the files of the Special Court, Palakkad, under the Protection of Children from Sexual Offences Act (POCSO for short hereinafter), seeking to quash Annexure-A1 complaint, Annexure-A4 order and further proceedings thereof.

2. Heard the learned Senior Counsel for the petitioner, the learned counsel appearing for the 2nd respondent/defacto complainant. Heard the learned Public Prosecutor appearing for the 1st respondent.

3. Here a private complaint was lodged by the 2nd respondent herein before the Special Judge under the POSCO Act, Palakkad under Section 28 read with 33 of the POCSO Act, alleging that the petitioner, who is arrayed as accused in the



above complaint committed an offence punishable under Section 23(1) of the POCSO Act as well as Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. 1989 (SC/ST Act for short hereinafter). Shorn of embellishments, the allegations which would throw light as to commission of the above offences could be gathered from Paragraphs 8 and 9 of the complaint and the same are extracted as under;

“8. After the acquittal of the accused, there were large scale public protests against the action of the police all over Kerala. In the meanwhile on 13.1.2019 the accused who investigated and laid the final report in the death of the two children of the Complainant furnished an information against the two deceased children on the effect that in fact the two children 'enjoyed' the sexual acts committed by the accused. It was given through a programme in 24 news channel which was anchored by Dr. Arun Kumar and the statement was made to the reporter



Shanoob Meerasahib. The accused provided the false information against the children, knowing it to be false and thereby victimized the children again in the same offence. He further stated to the reporter of the 24 channel that the accused person committed sexual assault on the children with their consent. The Complainant submits that the comments made by the accused are absolutely false and frivolous. It is submitted that the accused had no occasion to interact with the children. He gave this comment without having any authoritative information. It is further submitted that the Complainant is a woman belonging to cheruma community which is included in the scheduled caste with respect to Kerala state as per clause 24 of Article 366 r/w article 341 of the Constitution of India. Being the investigating officer in the case of the deaths of the children, the accused was fully aware that the deceased children belong to scheduled caste. The accused made the comment against the children with the



intention to insult and humiliate the children as well as the Complainant within the public view. Copy of that video clipping is produced along with this complaint. The video of the programme is uploaded in their you tube channel.

9. The conversation between the reporter Shanoob Meerasahib and the accused was telecasted in 24 news channel on 13.1.2019 and the same was seen and heard by thousands of people all over Kerala as well as outside Kerala. This statement of the accused have caused ill feelings against the deceased children who met pathetic death from the hands of the murderers. The statement would have harmed the reputation of the children if they were alive. The imputations were intended to be harmful to the feelings of the Complainant who is their mother and guardian. The reputation of the deceased children as well as the Complainant cannot be allowed to be crucified at the altar of the whims and fancies of the accused. It is submitted that the



Complainant is an aggrieved person in this matter. By providing false information against the children, knowing it to be false the accused has committed the offence falling u/s 23(1) of the POCSO Act 2012 and also under sec 3(1)(r) of SC ST (Prevention of atrocities) Act 1989.”

4. While seeking quashment of Annexure-A1 complaint and Annexure-A4 order, whereby the learned Special Judge took cognizance and decided to proceed against the accused for the offence punishable under Section 23(1) read with 23(4) of the POCSO Act, learned Senior Counsel appearing for the petitioner fervently submitted that no offence under Section 23(1) would attract in the facts of the case as borne out from the averments in the complaint as well as from the statement recorded as that of CW1 and CW2. It is submitted further that Section 23 of POCSO Act deals with the caption “procedure for media” and the same is intended to punish media persons who report or present comments on any child from any form of media



or studio or photographic facilities without having complete and authentic information. Referring to Section 23(3) of the POCSO Act, the learned Senior Counsel argued that Section 23(3) makes the position more clear that this Section encompasses the publisher or owner of the media or studio or photographic facilities and not a third person. Therefore, going by the plain meaning of Section 23 as a whole, prima facie offence under Section 23(1) read with Section 4 of the POCSO Act would not attract in the facts of the case. Therefore, the learned Special Judge wrongly took cognizance for the offences on misreading the provision of law and the materials placed by the complainant and the facts involved in this case. Therefore, quashment prayer is liable to succeed.

5. The learned counsel for the 2nd respondent also read out Section 23 in detail to counter the arguments advanced by the learned Senior Counsel on the submission that the term “no person” referred in Section 23 and the term “any person”



referred in Section 23(4) have a wider canvas to include a third person, excluding the media persons, under the purview of the Section when the said person makes any report or present comments on any child from any form of media or studio or photographic facilities and therefore, the petitioner herein who also did the said overt acts through the media, would squarely come under the purview of Section 23 of POCSO Act. Accordingly, cognizance for the said offence by the Special Court as per Annexure-A4 is perfectly justified, for which no interference is necessary.

6. Apart from the above contention, the learned Senior Counsel also would submit that since the punishment provided for the offence under Section 23(1) read with Section 4 is less than 6 months, in relation to an occurrence on 03.01.2017 for which complaint filed on 20.11.2021 is barred by limitation and therefore, the cognizance is hit under Section 468 of Cr.P.C.

7. Repelling this contention, the learned counsel



for the 2nd respondent submitted that in so far as continuing offence/s dealt under Section 473 of Cr.P.C. are concerned, Section 468 has no application. It is also submitted that even otherwise, Section 473 Cr.P.C. would give ample power to the court to condone the delay upon satisfaction of the materials and therefore, it has to be understood that while taking cognizance, the Special Court adverted to the power under Section 473 and therefore, the question of limitation is of no significance and the said contention is liable to fail.

8. Attenuating the arguments on and of the issue, the question to be considered is; who are the persons covered under Section 23 of POCSO Act?

9. In this connection, it is useful to refer Section 23 of POCSO Act and the same reads as under;

23. Procedure for media.—(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete



and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child: Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child. (3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.



10. Section 23(1) provides that making any report or presenting comments on any child through any form of media or studio or photographic facilities which may have the effect of lowering the reputation or infringing upon the privacy of the child/children without having complete and authentic information is an offence. As pointed out by the learned Senior Counsel, Section 23 is put under the caption “procedure for media”. At the same time, the legislature not used “media persons” instead of “no person” in Section 23(1). Similarly, there was no legislative intention to use “media persons”, instead of “any person” in Section 23(4). It is the settled law that 'heading' or 'title' prefixed to sections or group of sections have a limited role to play in the construction of the Statutes. In the decision reported in **Joseph Kuzhinjalil (Fr.) v Visalakshi [2024 KHC OnLine 753]**, this Court considered the same in Paragraph 13 referring to the Apex Court decision in this regard. Paragraph 13 reads as under;



“13. Similarly, another five bench decision of the Apex Court in **Sarah Mathew and Others v. Institute of Cardio Vascular Diseases and Others** reported in **[2013 (4) KHC 806]** with reference to paragraph No.38, where it has been held as under;

38. So far 'heading' of the chapter is concerned, it is well settled that 'heading' or 'title' prefixed to sections or group of sections have a limited role to play in the construction of Statutes. They may be taken as very broad and general indicators or the nature of the subject matter dealt with thereunder but they do not control the meaning of the sections if the meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions. In *M/s. Frick India Ltd. v. Union of India and Others*, 1990 KHC 723: 1990 (1) SCC 400 : AIR 1990 SC 689: 1990 (27) ECC 8: 1990 (48) ELT 627, this Court has observed as under:

"It is well settled that the headings prefixed to sections or entries cannot control the plain



words of the provisions; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or subheading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision.”

11. Going by the legislative intention, even though the title heading of Section 23 is 'procedure for media', it could not be held that the section is limited in operation in relation to media persons alone, since the Section empowers a wide canvass



by referring the offender under the caption “No person” in Section 23(1) and “any person” in Section 23(4), who makes any report or presenting comments on any child through any form of media or studio or photographic facilities without having complete and authentic information.

12. Reverting to the pertinent question, whether the petitioner herein would come within the ambit of Section 23 of the POCSO Act?, it is relevant to refer the factual averments in the complaint. Going by the allegations in the complaint in Paragraphs 8 and 9, as extracted herein above, the statement of CW1, Shanoob Meerasahib, whose sworn statement was recorded as part of the enquiry by the Special Judge is relevant. As per the statement given by CW1 before the Special Court, his version is that he made a talk with the petitioner herein, who was the Investigating Officer and the accused stated that the accused persons engaged in sexual



intercourse with the minor girls with their consent and they enjoyed the same. Further, his version is that at the time when the information was passed during the talk, he was working in 24 News Channel and he had given the statement given by the accused to the News Channel along with the record. Accordingly, on 13.01.2019, the same was telecasted. Going by the statement given by CW1, it is perceivable that the petitioner herein did not give the statement which is derogatory during an interview with the media nor he was talking to the media directly. He made such derogatory statement during a talk in between the petitioner and CW1. But the said talk was recorded by CW1 and it was CW1, who had given the same to the media, in turn, the same was telecasted on 13.01.2019.

13. During inquiry, the learned Special Judge recorded the statement of CW3, one Salil Ahammed. His statement is that he was working as an IT Professional and he



was disturbed after the occurrence. According to him, before the court's verdict, Mr. Sojan, the Investigating Officer, disclosed in an interview that the overt acts were consented by the victims and the same disturbed him. When the complainant decided to lodge the complaint, he downloaded the visuals in his laptop and handed over the CD to the complainant. Here the version of CW1 is very crucial. According to CW1 Shanoob Meerasahib, Sojan disclosed that the accused persons engaged in sexual intercourse with the minor girls with their consent and they enjoyed the same when he asked about him as part of investigative journalism. Later, he handed over the same to the head of the channel along with record. After analysing the crucial question, it is discernible that as per the version of CW1, who recorded the statement of the petitioner herein, it is revealed that the petitioner not directly disclosed anything through the media and he disclosed the derogatory statement



to CW1, who in turn recorded the same and handed over to the channel head.

14. Thus it is perceivable that 24 News Channel telecasted report and comments against the victims of rape which have the effect of lowering the reputation of the children/victims without an authentic information. Be it so, the offence under Section 23(1) may attract against CW1 and other officials responsible for telecasting the same in the channel. But the 1st respondent did not array them as accused in the complaint and they aimed at selective prosecution. On abridging the discussion, it is held that prosecution materials do not support that the petitioner herein divulged anything knowing that the same was intended to be published or telecasted through media so as to attract offence under Section 23(1) of POCSO Act.

15. In view of the above findings, the question of delay doesn't arise for consideration.



CRL.MC No. 4268 of 2022

-18-

16. In the result, this Crl.M.C. stands allowed. Annexure A1 complaint led to Annexure A4 order and the consequential proceedings thereof are hereby quashed.

17. It is specifically made clear that disposal of this petition will not stand as a rider for the complainant to move against CW1 and the channel in accordance with law.

Registry is directed to forward a copy of this order to the Director General of Police, Thiruvananthapuram for considering investigation as against CW1 and others, as per law, in view of the facts of the case discussed herein above, if found necessary.

Sd/-
A. BADHARUDEEN
JUDGE

bpr



CRL.MC No. 4268 of 2022

-19-

APPENDIX OF CRL.MC 4268/2022

PETITIONER'S ANNEXURES

- Annexure A1 A CERTIFIED COPY OF THE COMPLAINT IN CMP NO.3313/2021 DATED 20.11.2021, WHICH IS NOW PENDING AS SC NO.551/2022 ON THE FILES OF 1ST ADDITIONAL SESSIONS COURT (POCSO), PALAKKAD.
- Annexure A2 A CERTIFIED COPY OF THE SWORN STATEMENT OF THE 2ND RESPONDENT.
- Annexure A3 A CERTIFIED COPY OF THE DEPOSITION OF VW1 IN CMP NO.3313/2021 BEFORE THE SPECIAL COURT FOR POCSO CASES, PALAKKAD ON 06.01.2022.
- Annexure A4 A TRUE COPY OF THE ORDER DATED 11.05.2022 IN THE CMP NO.3313/2021 BY THE SPECIAL JUDGE FOR POCSO CASES, PALAKKAD.