



2024:KER:76998

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 16<sup>TH</sup> DAY OF OCTOBER 2024 / 24<sup>TH</sup> ASWINA, 1946

CRL.MC NO. 7715 OF 2023

CRIME NO.729/2022 OF AMBALAMEDU POLICE STATION, ERNAKULAM

SC NO.373 OF 2023 OF FAST TRACK SPECIAL COURT, PERUMBAVOOR

PETITIONERS/ACCUSED 2 AND 3:

1       XXX  
          XXX

2       XXX  
          XXX

BY ADVS.  
P.MARTIN JOSE  
P.PRIJITH  
THOMAS P.KURUVILLA  
R.GITESH  
ANNA LINDA EDEN  
AJAY BEN JOSE  
MANJUNATH MENON  
SACHIN JACOB AMBAT  
RIZLANA NAZAR P.V.  
HARIKRISHNAN S.  
S.SREEKUMAR (SR.)

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

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

2       XXX  
          XXX  
          SRI.M P PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
13.09.2024 AND THE COURT ON 16.10.2024 PASSED THE FOLLOWING:



2024:KER:76998

CRL.MC NO. 7715 OF 2023

2

**CR**

**ORDER**

Dated this the 16<sup>th</sup> day of October, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure to quash Annexure B Final Report in Crime No.729/2022 of Ambalamedu Police Station, Ernakulam, now pending as C.C.No.373/2023 on the files of Fast Track Special Court, Perumbavoor. The petitioners are accused Nos.2 and 3 in the above case.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor in detail. Perused the available records.

3. In this case, the prosecution allegation is that the first accused committed offences punishable under Sections 354, 354A(1)(i), 354A(1)(ii), 354A(i)(iv) and 506 of the Indian Penal Code (hereinafter referred to as 'IPC' for short),



2024:KER:76998

**CRL.MC NO. 7715 OF 2023****3**

Section 8 r/w 7, 10 r/w 9(p) and 12 r/w 11(i) of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'PoCSO Act' for short). The allegation against accused Nos.2 to 4 is that they failed to inform the occurrence soon after getting the complaint from the victim and thereby committed offence punishable under 21 r/w 19 of the PoCSO Act.

4. While canvassing quashment of the proceedings as against the petitioners, who are accused Nos.2 and 3, the learned counsel for the petitioners would submit that regarding an occurrence on 16.11.2022, the student gave a complaint to the Principal on 17.11.2022 and thereafter, FIR was registered at 22.50 hours on 18.11.2022. According to the learned counsel for the petitioners, going by the First Information Statement given by the counsellor, which led to registration of this crime, she stated that on 17.11.2022 the victim forwarded a complaint through WhatsApp of the defacto complainant regarding the occurrence that the first accused



2024:KER:76998

**CRL.MC NO. 7715 OF 2023**

4

subjected her to molestation. But in the First Information Statement given by the school counsellor, nothing was stated to show reluctance on the part of accused Nos.2 and 3 in the matter of failure to inform the police. It is also submitted that in regard to an occurrence on 16.11.2022, it was reported by the victim to the Principal on 17.11.2022, for which crime was registered on 18.11.2022, and there was no willful reluctance on the part of the petitioners herein to inform the matter to the police and therefore, offence under Section 21 r/w 19 of the PoCSO Act would not get attracted in this matter. Hence, the quashment prayer would succeed.

5. Repelling the above contention, the learned Public Prosecutor submitted that even though in the First Information Statement, nothing was stated regarding failure on the part of accused Nos.2 and 3, in the additional statement given by the school counsellor, specific allegation was stated to the effect that there was reluctance on the part of the



2024:KER:76998

**CRL.MC NO. 7715 OF 2023**

**5**

Principal to inform the occurrence to the Police on the assertion that if the occurrence would be reported to the Police, the victim would have to appear before the Court on multiple times, and the same would be an ordeal to her and the Principal also took a stand that the first accused also had family and children and the same would be fatal to him also. It is stated further by the counsellor who had given the FIS that Shylaja Teacher/Accused No.3 had also shown hesitation to report the matter and tried to avoid registration of the case.

6. The learned Public Prosecutor further submitted that the counsellor also stated in the additional statement that, thereafter, there was a meeting at the school at 12 pm on 18.11.2022, including the school staff, PTA President, Municipal Vice Chairman, and at the meeting, it was decided to lodge a complaint.

7. On scrutiny of the materials, it appears that initially in the FIS, delay on the part of the Principal and Shylaja



2024:KER:76998

**CRL.MC NO. 7715 OF 2023**

6

teacher, the petitioners herein, was not disclosed. But in the subsequent statement at the instance of the counsellor, reluctance on the part of them in the matter of reporting the occurrence so as to register case in a sessions matter, for multiple reasons as argued by the learned Public Prosecutor is seen raised. In the additional statement given by the school counsellor, specific allegation was stated to the effect that there was reluctance on the part of the Principal to inform the occurrence to the Police on the assertion that if the occurrence was reported to the Police, the victim would have to appear before the Court on multiple times, and the same would be an ordeal to her and the Principal also took a stand that the first accused also had family and children and the same would be fatal to him and her family. It is stated further by the counsellor who had given the FIS that Shylaja Teacher/Accused No.3 had also shown hesitation to report the matter and tried to avoid the criminal case. In the additional statement of the counsellor,



2024:KER:76998

CRL.MC NO. 7715 OF 2023

7

it was stated that since the victim was a student of the school, the complaint should have to be forwarded through the school Principal and if the Principal would not permit the same, the complaint would be forwarded by the counsellor herself. Accordingly, she reached the police station at 2.30 pm on 18.11.2022 and thereafter FIR was registered.

8. The question poses for consideration is whether there was reluctance on the part of accused Nos.2 and 3 in reporting the matter to the police. It is relevant to refer Sections 19 and 21 of the PoCSO Act and Section 19 of the PoCSO Act reads as under:

***“19. Reporting of offences.—(1)***

*Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—*

- (a) the Special Juvenile Police Unit; or*
- (b) the local police.*

**CRL.MC NO. 7715 OF 2023****8**

(2) *Every report given under sub-section (1) shall be—*  
(a) *ascribed an entry number and recorded in writing;*  
(b) *be read over to the informant;*  
(c) *shall be entered in a book to be kept by the Police Unit.*

(3) *Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.*

(4) *In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.*

(5) *Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.*

(6) *The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a*





## CRL.MC NO. 7715 OF 2023

9

*period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.*

*(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1)."*

Section 21 of the PoCSO Act reads as under:

**"21. Punishment for failure to report or record a case.**—*(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.*

*(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.*

*(3) The provisions of sub-section (1) shall not apply to a child under this Act."*



2024:KER:76998

CRL.MC NO. 7715 OF 2023

10

9. In this context, the decision in **Radhakrishna S. Naik (Dr.) v. State of Kerala**, reported in **2024 KHC 635:2024** is relevant. In the said case, this Court held in paragraph No.11 as under:

*“11. Thus, going through the statutory wording under Section 19(1) of the POCSO Act, it is emphatically clear that a duty is cast upon a person, who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, to provide such information to the Police. But, when a person notices that an offence under the POCSO Act has been committed and failed to inform the same within a reasonable time, definitely he is said to have committed offence punishable under Section 19(1) of the POCSO Act.”*

10. In my view, if there is omission even after getting information to report the crime to the Police atleast within 24 hours, the offence punishable under Section 19(1) of the POCSO Act would get attracted. To be more explicit, on getting information regarding the crime, if the matter is reported



2024:KER:76998

**CRL.MC NO. 7715 OF 2023**

**11**

to the police on the next day, it is harsh to hold that there was failure to inform/report the crime to the police so that offence under Section 19 r/w 21 of the Police Act would get attracted. If the omission is only for a day fastening criminal culpability on the accused for the said short omission could not be justified. Here, the crime was made known to the petitioners on 17.11.2022. But the same was not informed to the police by the petitioners on 17.11.2022, but informed on the very next day. In such view of the matter, I am of the view that willful omission on the part of the petitioners in informing the crime as alleged could not be found to rope the petitioners into this crime with the aid of Section 19 r/w 21 of the Police Act.

In the result, this petition stands allowed and Annexure B Final Report in Crime No.729/2022 of Ambalamedu Police Station, Ernakulam, now pending as C.C.No.373/2023 on the files of Fast Track Special Court, Perumbavoor, as against the petitioners/accused Nos.2 and 3



2024:KER:76998

**CRL.MC NO. 7715 OF 2023**

**12**

stand quashed.

Registry is directed to forward a copy of this order to the jurisdictional court for information and further steps.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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2024:KER:76998

CRL.MC NO. 7715 OF 2023

13

APPENDIX OF CRL.MC. NO.7715/2023

- ANNEXURE A CERTIFIED COPY OF FIR NO.1519/2022 OF HILL PALACE POLICE STATION ON 18.11.2022 AND RENUMBERED FIR NO.729/2022
- ANNEXURE B CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.729/2022 OF AMBALAMEDU POLICE STATION DATED 25.01.2023
- ANNEXURE C TRUE COPY OF THE WRITTEN COMPLAINT GIVEN BY THE VICTIM TO PETITIONER NO.1 DATED 17.11.2022
- ANNEXURE D COPY OF THE LETTER AND REPORT DATED 19.11.2022 FORWARDED TO REGIONAL DEPUTY DIRECTOR OF EDUCATION
- ANNEXURE E TRUE COPY OF COMPLAINT DATED 17.11.2022 SENT TO COUNSELLOR VIA WHATSAPP
- ANNEXURE F TRUE COPY OF LETTER DATED 18.11.2022 WRITTEN BY PETITIONER TO INSPECTOR OF POLICE, HILL PALACE POLICE
- ANNEXURE G TRUE COPY OF 161 STATEMENTS OF CW6
- ANNEXURE G(1) TRUE COPY OF 161 STATEMENT OF CW7
- ANNEXURE G(2) TRUE COPY OF 161 STATEMENT OF CW9
- ANNEXURE H TRUE COPY OF THE 161 STATEMENT OF CW1 TAKEN ON 18.11.2022
- ANNEXURE H(1) TRUE COPY OF THE 161 STATEMENT OF CW1 TAKEN ON 22.11.2022

RESPONDENTS ANNEXURES : NIL