

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 16<sup>TH</sup> DAY OF DECEMBER 2024 / 25<sup>TH</sup>

AGRAHAYANA, 1946

CRL.MC NO. 60 OF 2024

CRIME NO.810/2022 OF Kunnathunadu Police Station,

Ernakulam

SC NO.371 OF 2023 OF FAST TRACK SPECIAL COURT,

PERUMBAVOOR

PETITIONER/ACCUSED:

AKHIL MOHANAN, AGED 23 YEARS  
S/O. MOHANAN, MUNDEKKUDI HOUSE,  
VENGOLA KARA, ARAKKAPPADY VILLAGE,  
PERUMBAVOOR, PIN - 683556.

BY ADVS.  
C.P.UDAYABHANU  
NAVANEETH.N.NATH

RESPONDENTS/STATE & DEFACTO COMPLAINANT

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN -  
682031.
- 2 XXX  
XXXXX

SENIOR PUBLIC PROSECUTOR SRI RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY  
HEARD 22.11.2024, THE COURT ON 16.12.2024 PASSED THE  
FOLLOWING:

“C.R”

*A. BADHARUDEEN, J.*

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*Crl.M.C.No.60 of 2024*  
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*Dated this the 16<sup>th</sup> day of December, 2024*

***O R D E R***

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure seeking the relief to quash Annexure-1 FIR, final report thereof and further proceedings in S.C.No.3/712023 on the files of Fast Track Special Court, Perumbavoor, against the petitioner.

2. Heard the learned counsel for the petitioner, the learned counsel for the defacto complainant and the learned Public Prosecutor in detail. Perused the relevant records.

3. Here the prosecution alleges commission of offences punishable under Sections 450, 376(2)(n), 354, 354A(1)(i), 354D(1)(i), 354D(1)(ii) of the Indian Penal



Code ('IPC' for short), Section 4 r/w 3, 6(1) r/w 5(1), 8 r/w 7, 10 r/w 9(1), 12 r/w 11(iv), 15 of Protection of Children from Sexual Offences Act ('POCSO Act' for short) and Section 66E of Information Technology Act ('IT Act' for short).

4. The prosecution case is that the victim, who was aged 17 years, while studying for B.Sc Chemistry, the accused made acquaintance with her through, one of her friends during her schools days. Thereafter the accused used to accompany her while she was going to school and used to talk to her. Further the accused promised to marry the victim. During the period of COVID 19 pandemic, in order to attend online classes, the parents of the victim purchased and gave a mobile phone to the victim. Then the accused started to call her and sent messages through WhatsApp. When parents of the victim detected the same, the accused stopped calling and sending messages to her. Later the accused called the defacto complainant directly and thereafter the accused started to reach the house of the victim in the absence of her parents. On 14.02.2021 when her parents went for job, the accused reached her house at 10.30 a.m with an ice cream for her and they had talk between them for a long time.



Thereafter, he compelled the victim to have sexual intercourse with him, despite her protest. Then on the promise of marriage, he forcefully subjected the victim to sexual intercourse ignoring her resistance and he left her home at 11.45 a.m. He continued the same at 10.30 a.m on 22.04.2021 and continued the same thereafter on subsequent dates. According to the victim, the accused used condom while they were having coitus. This is the base on which prosecution alleges commission of the above offences.

5. While seeking quashment of the proceedings, the learned counsel for the petitioner zealously argued that the allegations are false and none of the offence made out, *prima facie* against the petitioner. That apart, it is argued that the victim filed an affidavit stating that the matter has been settled. Therefore, the prayer for quashment is liable to be allowed.

6. The learned counsel for the petitioner relied on a decision of Madras High Court reported in [2021 ICO 2134], *Vijayalakshmi & Ors. v. State & Ors.*, where Madras High Court allowed quashment of the proceedings after observing in paragraphs 112 and 18 as



under:

*“12. As rightly recognized by the Learned Single Judge of this Court in Sabari’s Case (cited supra), incidences where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of this Court. A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India, 1950 and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.*

*18. In the present case, the 2nd petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2<sup>nd</sup> Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2<sup>nd</sup> Respondent, who was placed in a very precarious situation decided to concede to the demand of the 2<sup>nd</sup> Petitioner. Thereafter, they eloped from their respective homes, got married and consummated the marriage. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally*



*in cities. After the parents or family lodge a complaint, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being registered, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defence if the criminal case is taken to its logical end. Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act. An adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act."*

According to the learned counsel for the petitioner, since the relationship and consensual sex are during the period of adolescence of the parties in continuation of a romantic relationship, this is a fit case to quash the



proceedings.

7. Whereas the learned Public Prosecutor strongly opposed quashment of a case under the POCSO Act on the submission that POCSO Act cases could not be settled on the strength of an affidavit filed by the victim subsequently. In the instant case, it is discernible that the accused started relationship with the victim offering to marry her and continued the same. In the meanwhile, on offering promise of marriage he had coitus with the victim repeatedly. In such a case, *prima facie*, the above offences are made out. In fact, serious offences under the POCSO Act could not be settled on the strength of affidavit filed by the victim at a subsequent stage even after attaining majority.

8. In the decision reported in [2024 INSC 846], ***Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.*** the Apex Court considered a case where prosecution alleged commission of offences punishable under Sections 354A, 342, 509 and 504 of IPC and Sections 7 and 8 of the POCSO Act as well as Sections 3(1)(r), 3(1)(s), 3(1)(b) and 3(2)(vii) of the Schedule Cast and Schedule Tribe (Prevention of Atrocities) Act, 1989 ('SC/ST Act' for short), where a minor child victim was patted on her



cheeks by the accused and he put his hand inside her bodice and rubbed her breast, where the High Court of Rajasthan quashed the proceedings despite the opposition of the learned Public Prosecutor where the dispute has been settled in between the victim and the accused. After discussing the matter at length, the Apex Court held in paragraphs 32 and 33 as under:

*“32. In the decision relied on by the High Court to quash the proceedings viz., Gian Singh's case (supra) and the decision in Laxmi Narayan's case (supra) in unambiguous terms this Court held that the power under Section 482 Cr.P.C could not be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society. When an incident of the aforesaid nature and gravity allegedly occurred in a higher secondary school, that too from a teacher, it cannot be simply described as an offence which is purely private in nature and have no serious impact on the society.*

*33. In view of the reasons as aforesaid and in the light of the decisions referred supra, the impugned order dated 04.02.2022 of the High Court in S.B.C.R.M.P No.1348/2022, quashing the FIR No.6/2022 dated 08.01.2022 and all further proceedings pursuant thereto solely on the ground that the accused and the complainant had settled the matter, invites interference. We have no hesitation to hold that in cases of this nature, the fact that in view of compromise entered into between the parties, the chance of a conviction is remote and bleak also cannot be a ground to abruptly terminate the*





*investigation, by quashing FIR and all further proceedings pursuant thereto, by invoking the power under Section 482, Cr.P.C. In the said circumstances, this appeal is allowed. The impugned order dated 04.02.2022 of the High Court in S.B.C.R.M.P.No.1348/2022 is hereby quashed and set aside. Consequently, the FIR No.6/2022, investigation and criminal proceedings pursuant thereto subject to the nature of the report to be filed under Section 173(2), Cr.P.C., be proceeded with against the accused, in accordance with law.”*

9. In view of the Supreme Court decision as discussed, the ratio in *Vijayalakshmi's* case (*supra*) is *per- incurium*. Thus the legal position is apparent and comprehensive that criminal proceedings involving very serious offences under the POCSO Act could not be quashed on the ground that the accused and the complainant had settled the matter. That apart, in cases of this nature, the fact that in view of compromise entered into between the parties, the chance of a conviction is remote and bleak also cannot be a ground to abruptly terminate the investigation, by quashing FIR and all further proceedings pursuant thereto, by invoking the power under Section 482, Cr.P.C. An important aspect to be noted is that in cases where the victim's statement under Section 164 of Cr.P.C was recorded, despite hostility of the victim on the premise of settlement, the prosecution can make use of the 164 statement



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to corroborate the evidence of the victim to get support for the prosecution allegations.

10. In the instant case, the prosecution records would show the offences alleged by the prosecution against the petitioner, *prima facie*, and therefore, quashment on merits also would fail.

11. Hence this Crl.M.C fails and is accordingly dismissed.

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

*Sd/-*

**A. BADHARUDEEN, JUDGE**

*rtr*



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A P P E N D I X

PETITIONER'S EXHIBITS

ANNEXURE 1 : CERTIFIED COPY OF THE FINAL REPORT IN S.C.NO.371/2023  
DATED 02.02.2023 ON THE FILES OF FAST TRACK SPECIAL COURT,  
PERUMBAVOOR.

ANNEXURE 2 : A COPY OF THE STATEMENT DATED 07.12.2022 OF THE 2ND  
RESPONDENT/DE FACTO COMPLAINANT.

ANNEXURE 3 : THE AFFIDAVIT SWORN BY R2/DE FACTO COMPLAINANT.