



2024:KER:49601

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 25TH DAY OF JUNE 2024 / 4TH ASHADHA, 1946

CRL.MC NO. 714 OF 2022

CRIME NO.784/2020 OF PANAMARAM POLICE STATION, WAYANAD
SC NO.134 OF 2021 OF SPECIAL COURT UNDER POCSO ACT, WAYANAD
PETITIONER/ACCUSED IN S.C.NO.134/2021 ON THE FILES OF THE
ADDITIONAL SESSIONS COURT - I, KALPETTA:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADVS.
NIRMAL V NAIR
M.ANEESH

RESPONDENTS/STATE AND VICTIM:

- 1 STATE OF KERALA
REPRESENTED BY THE STATION HOUSE OFFICER , PANAMARAM
POLICE STATION, WAYANAD DISTRICT, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN
- 682031
- 2 XXXXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

R1 BY SR.PUBLIC PROSECUTOR SRI.RENJIT GEORGE

R2 BY ADVS.
MADHUSOODANAN K.S
M.M.VINOD KUMAR(K/1685/2000)
P.K.RAKESH KUMAR(K/384/2008)
K.S.MIZVER(K/333/2007)
M.J.KIRANKUMAR(K/000201/2017)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
25.06.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



CR

ORDER

Dated this the 25th day of June, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, to quash Annexure 10 Final Report and all further proceedings against the petitioner herein in S.C.No.134/2021 on the files of the Special Court for the Trial of Offences under the Protection of Children from Sexual Offences Act, (for short 'the PoCSO Act' hereinafter), Kalpetta, arose out of Crime No.784/2020 of Panamaram police station, Wayanad. The petitioner is the sole accused in the above case.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the de facto complainant and the learned Public Prosecutor, in detail.

3. I have perused the case diary including the statements of witnesses.

4. The prosecution allegation is that, at about 8.30



a.m. on 17.11.2020, while the victim was sweeping the courtyard of her house, the accused, who was returning to his house from Anjukunnu, stopped in front of the courtyard of the victim's house and made hissing sounds to invite the attention of the victim and then, uttered obscene words to the victim. This is the base on which, the prosecution alleges commission of offences punishable under Sections 294(b) and 509 of the Indian Penal Code (for short, 'the IPC' hereinafter) and Section 12 r/w Section 11(i) of the PoCSO Act, against the accused.

5. The learned counsel for the petitioner argued to convince this Court that, no materials prima facie attracting commission of offences punishable under Sections 294(b) and 509 of the IPC and Section 12 r/w Section 11(i) of the PoCSO Act, are made out. He read out the one and only statement, whereby, the police registered this crime. It is argued that, even though there is allegation that the accused uttered a word, which prima facie contain an abusive element, the same was at the courtyard of the house



of victim and the said place is not a public place or near a public place to attract offence under Section 294(b) of the IPC. That apart, nothing done by the accused so as to outrage the modesty of the victim to attract offence under Section 509 of the IPC. Further, it is submitted that, in order to attract offence under Section 11(i) of the PoCSO Act, the ingredients therein must be prima facie made out and Section 12 provides punishment for the commission of offence punishable under Section 11 of the PoCSO Act.

6. Whereas, the learned counsel appearing for the de facto complainant would submit that the prosecution allegation contained two parts, first is use of abusive words and the other is, showing a gesture by using the tongue of the accused with sexual intent. He also argued that, explanation to Section 11 of the PoCSO Act says that, *any question which involves "sexual intent" shall be a question of fact*. Accordingly, it is submitted that the prosecution case is made out prima facie, warranting trial and the prayer for quashment is liable to be rejected.



7. The learned Public Prosecutor would submit that, prima facie, there are allegations to justify the prosecution case and he supported the argument at the instance of the learned counsel for the de facto complainant.

8. In view of the rival arguments, the ingredients to attract Sections 294(b) and 509 of the IPC and Section 11 (i) of the PoCSO Act, required to be addressed. For this purpose, reference to Sections 294(b) and 509 of the IPC and Section 11(i) of the PoCSO Act, is necessary. The same are as under:

S.294 IPC: Obscene acts and songs.

Whoever, to the annoyance of others

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or



with fine, or with both.

S.509 IPC: Word, gesture or act intended to insult the modesty of a woman.

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

S.11(i) of PoCSO Act:

11. *A person is said to commit sexual harassment upon a child when such person with sexual intent:-*

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child.



9. In order to attract an offence under Section 294(b) of the IPC, *whoever, with intention to annoy others, sings, recites or utters any obscene song, ballad or words, in or near any public place sites shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.* Here, the place of occurrence is the courtyard of the house of the victim and the same is not a public place or near any public place so as to attract offence under Section 294(b) of the IPC.

10. Insofar as the offence under Section 509 of the IPC is concerned, *whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.*



11. In the decision in **Joseph M.V. v. State of Kerala** reported in [**2024 KHC OnLine 440 : 2024 KER 36566**], in paragraph Nos.11 to 13, this Court held as under:

“11. In order to bring home an offence punishable under S.509 IPC, the ingredients are; utterance of any word, makes any sound or gesture, or exhibits any object, with an intention to insult the modesty of a woman, or with intention to intrude upon the privacy of such a woman.

12. Coming to the definition of the word 'modesty', the same has not been defined in the Indian Penal Code. So it is worth to look into its dictionary meaning. As per Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third new International Dictionary of the English Language defines modesty as



"freedom from coarseness, indelicacy or indecency' a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1993 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

13. To sum up, mere utterance of unpleasant or abusive words without an intention either to insult the modesty of the woman or to intrude upon the privacy of such woman would not attract offence under S.509 of IPC. Here the allegation is confined to use of a proverb which contains an abusive element, as extracted herein above. Merely because the accused made a comment/proverb which contains an abusive element, in reply to a humiliating comment made by the defacto complainant, stating that the sim seemed like one bitten by a dog, it could not be held that the accused either insulted the modesty of a woman or intruded on her privacy."

12. Coming to the prosecution allegations, the one



and only sentence allegedly to be uttered by the accused is one with an abusive word, while enquiring about the father of the victim and showing a gesture by using the tongue of the accused. It is on this premise, the prosecution alleges commission of the above offences by the petitioner/accused herein.

13. On perusing the sentence uttered, the same in no way suggest any sexual intent or words to outrage the modesty or to intrude upon the privacy of the victim. Even though there is allegation that some gestures shown by the accused using his tongue, what is the gesture, not disclosed to analyse whether the said gesture poses any sexual intent or something to outrage the modesty of the victim or intrude upon her privacy.

14. Going by the prosecution allegations and ingredients of the offences discussed hereinabove, prima facie, it could not be held that the above offences are made out in the facts of this case, where the statement of the mother of the victim itself shows rivalry in between the



father of the victim and the accused in the matter of road works regarding Mayyampaavu road. Thus, the prosecution allegation in this case not made out prima facie and in such view of the matter, the quashment, as sought for, is liable to be allowed.

15. Before parting, it is inevitable to say something regarding the way and the manner, in which, offences coming under the PoCSO Act, were registered and investigated. No doubt, the provisions of the PoCSO Act are so harsh and the punishment also too severe. Thus, misuse of the provisions could be resorted to, by falsely implicating innocent persons with ulterior motives, due to rivalry in between somebody connected with minor/s. Similarly, in matrimonial disputes in between husband and wife, their minor child/children would be meddled and weaponized to wreck vengeance at the teeth of the PoCSO Act, to avoid claim for custody by the father. Remotely, for other reasons also, misuse of the provisions of the PoCSO Act is being opted by some ill motivated litigants. Thus, chagrined and



frustrated litigants should not be allowed to give vent to their frustration, by cheaply misusing the provisions of penal law. Therefore, the police officers and courts should always be very vigilant, while addressing the allegations, so as to separate husk from the grist.

In the result, this Criminal Miscellaneous Case stands allowed. Annexure 10 Final Report and all further proceedings against the petitioner in S.C.No.134/2021 on the files of the Special Court for the Trial of Offences under the PoCSO Act, Kalpetta, arose out of Crime No.784/2020 of Panamaram police station, Wayanad, stand quashed.

Sd/-
A. BADHARUDEEN
JUDGE

Bb

APPENDIX OF CRL.MC 714/2022

PETITIONER'S ANNEXURES

- ANNEXURE1 A TRUE COPY OF THE FIR DATED 19-11-2020 IN CRIME NO.784/2020 OF THE PANAMARAM POLICE STATION, WAYANAD DISTRICT
- ANNEXURE 2 A TRUE COPY OF THE FIR IN CRIME NO. 44/2020 OF THE PANAMARAM POLICE STATION
- ANNEXURE 3 A TRUE COPY OF THE REPORT DATED 19-2-2020 SUBMITTED BY THE SHO, PANAMARAM POLICE STATION BEFORE THE JMFC-I, MANANTHAVADY
- ANNEXURE 4 A TRUE COPY OF THE FIR DATED 18-11-2020 IN CRIME NO.781/2020 OF THE PANAMARAM POLICE STATION
- ANNEXURE 5 A TRUE COPY OF THE FIR DATED 14-12-2020 IN CRIME NO.798/2020 OF THE PANAMARAM POLICE STATION
- ANNEXURE 6 A TRUE COPY OF THE LETTER DATED 15-7-2020 ADDRESSED TO THE PETITIONER BY THE ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE, WAYANAD
- ANNEXURE 7 A TRUE COPY OF THE SHOW CAUSE NOTICE NO. PCB/WND/COMP/MNDY/76/2015 DATED 15-7-2020 ISSUED BY THE ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE, WAYANAD
- ANNEXURE 8 A TRUE COPY OF THE NOTICE OF REVOCATION OF CONSENT NO.PCB/WND/COMP/MNDY/76/2015 DATED 30-1-2021 ISSUED BY THE ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE, WAYANAD
- ANNEXURE 9 A TRUE COPY OF THE ORDER DATED 18-12-2020 IN CRL.M.C.NO.803/2020 ON THE



FILES OF THE ADDITIONAL SESSIONS COURT - I (SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER THE POCSO ACT), KALPETTA

- ANNEXURE 10 A TRUE COPY OF THE FINAL REPORT DATED 26-3-2021 IN S.C.NO.134/2021 OF THE ADDITIONAL SESSIONS COURT - I (SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER THE POCSO ACT), KALPETTA
- ANNEXURE 11 A TRUE COPY OF THE STATEMENT DATED 20-11-2020 OF THE VICTIM RECORDED UNDER SECTION 164 CRPC
- ANNEXURE 12 A TRUE COPY OF THE STATEMENT DATED 25-2-2021 GIVEN BY THE VICTIM
- ANNEXURE 13 A TRUE COPY OF THE STATEMENT DATED 20-11-2020 GIVEN BY CW3
- ANNEXURE 14 A TRUE COPY OF THE STATEMENT DATED 25-11-2020 GIVEN BY CW4
- ANNEXURE 15 A TRUE COPY OF THE STATEMENT DATED 29-11-2020 GIVEN BY CW5