



2024:KER:68148

Cr1.M.C.Nos.8460 & 8469 of 2022 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 3<sup>RD</sup> DAY OF SEPTEMBER 2024 / 12TH BHADRA, 1946

CRL.MC NO. 8460 OF 2022

CRIME NO.72/2022 OF Palluruthy Police Station, Ernakulam

S.C.NO.497/2022 OF ADDL.DISTRICT & SESSIONS COURT (SPECIAL COURT  
FOR TRIAL OF CASES RELATING TO ATROCITIES & SEXUAL VIOLENCE  
AGAINST WOMEN & CHILDREN), ERNAKULAM

PETITIONER/2nd ACCUSED:

SHEELA

AGED 56 YEARS

WIFE OF RAJU AUGUSTINE, KUTHUKUZHY HOUSE, MALAYINKEEZHU  
BYEPASS, THATTEKAD, KOTHAMANGALAM, PIN - 686681.

BY ADV PEEYUS A.KOTTAM

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

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

2 STATION HOUSE OFFICER, PALLURUTHY POLICE STATION,  
ERNAKULAM DISTRICT, PIN - 682006.

3 XXX XXX XXX XXX  
BY ADVS.  
Ramesh P  
SANGEERTHANA M. (K/002738/2022)

SENIOR PUBLIC PROSECUTOR SRI RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
14.08.2024, ALONG WITH Cr1.MC.8469/2022, THE COURT ON 03.09.2024  
PASSED THE FOLLOWING:



2024:KER:68148

CrI.M.C.Nos.8460 & 8469 of 2022 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 3<sup>RD</sup> DAY OF SEPTEMBER 2024 / 12TH BHADRA, 1946

CRL.MC NO. 8469 OF 2022

CRIME NO.198/2022 OF Palluruthy Police Station, Ernakulam  
S.C.NO.444/2022 OF ADDL.DISTRICT & SESSIONS COURT (SPECIAL COURT  
FOR TRIAL OF CASES RELATING TO ATROCITIES & SEXUAL VIOLENCE  
AGAINST WOMEN & CHILDREN), ERNAKULAM

PETITIONER/2ND ACCUSED:

SHEELA  
AGED 56 YEARS  
WIFE OF RAJU AUGUSTINE, KUTHUKUZH HOUSE,  
MALAYINKEEZHU BYEPASS, THATTEKAD,  
KOTHAMANGALAM, PIN - 686681.

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RESPONDENTS/STATE:

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REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, COCHIN, PIN - 682031.
- 2 STATION HOUSE OFFICER  
PALLURUTHY POLICE STATION, ERNAKULAM DISTRICT,  
PIN - 682006.
- 3 XXX XXX  
(ADDL R3 (DEFACTO COMPLAINANT) IMPEADED AS PER ORDER  
DATED 13/12/2022 IN CRL.MA.1/2022)  
BY ADVS.  
PUBLIC PROSECUTOR SRI M.P.PRASANTH  
PEEYUS A.KOTTAM

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD 14.08.2024  
ALONG WITH CRL.M.C.NO.8460/2022, THE COURT ON 03.09.2024 PASSED  
THE FOLLOWING:

**“C.R”**

***A. BADHARUDEEN, J.***

=====  
*Crl.M.C. No.8460 of 2022*

*and*

*Crl. M.C. No. 8469 of 2022*  
=====

*Dated this the 3<sup>rd</sup> day of September, 2024*

***C O M M O N   O R D E R***

Criminal Miscellaneous Case No. 8460/2022 has been filed under Section 482 of the Code of Criminal Procedure (‘Cr.P.C.’ for short), to quash Annexure-A4 final report against the petitioner/2<sup>nd</sup> accused in S.C. No. 497/2022 on the files of Special Court for the Trial of Cases under the Protection of Children from Sexual Offences Act (‘POCSO Act’ for short) arose out of Crime No. 72 of 2022 of Palluruthy Kasaba Police Station.

2.           The same petitioner has filed Crl. M.C. No. 8469/2022 seeking quashment of Annexure-A4 final report in Crime No. 192/2022 of Palluruthy Police Station, now pending as S.C. No. 444/2022 on the files of Special Court under POSCO Act, Ernakulam.

3.           Heard the learned counsel for the



petitioner and the learned Public Prosecutor in detail. Perused Annexure-A4 final report and the relevant documents.

4. In Crl. M.C. 8460/2022, prosecution alleges commission of offences punishable under Sections 376(2)(n) and 376(3) of the Indian Penal Code ('IPC' for short), under Sections 4(2) r/w 3(a), 6(1) r/w 5(l), 5(j)(ii), 8 r/w 7, 21 r/w 19(1) of the POCSO Act as well as under Section 3(1) r/w 180 of the Motor Vehicles Act. The prosecution case is that the 1<sup>st</sup> accused, who made acquaintance with a minor girl aged 15 years, with intention to subject her to sexual assault and to satisfy his lust, reached the residence of the victim and subjected her to sexual intercourse on a day in December 2021 and also at 3.30 hours on 31.12.2021. The specific allegation further is that the 1<sup>st</sup> accused brought the minor victim in a car bearing registration number KL-43-H-9406, to Budgies Cottage on 21/10/2021 and she was subjected to rape inside a room provided by the 2<sup>nd</sup> accused / petitioner herein, and it is specifically alleged that 2<sup>nd</sup> accused failed to inform the occurrence to the police. Further allegation is that in the said relation, the victim became pregnant.

5. In Crl. M.C. 8469/2022, the prosecution alleges



commission of offences punishable under sections 336A, 354A, 376(3) of IPC, 4(2) r/w 3(a), 8 r/w 7, 12 r/w 11(iv) and 21 r/w 19(1) of the POCSO Act. The specific allegation of the prosecution is that the 1<sup>st</sup> accused brought the minor girl aged 15 years, with the intention to subject her to sexual assault and thereby to satisfy the lust after having maintained a relationship with her through mobile phone, in his car bearing registration number KL-48-F-6567 on 20.10.2021 and thereafter at about 2 p.m. on 21.10.2021, the minor was taken to Budgies Cottage in ward no. 17 of Kuttampuzha Grama Panchayat and subjected her to aggravated form of sexual assault inside a room provided by the 2<sup>nd</sup> accused. Failure on the part of the 2<sup>nd</sup> accused to inform the same to the police is another allegation.

6. In both crimes, the prosecution alleges commission of offence punishable under Section 21 r/w Section 19(1) of the POCSO Act by the petitioner/2<sup>nd</sup> accused on the premise that the 2<sup>nd</sup> accused, who is a friend of the 1<sup>st</sup> accused, provided room in Budgies Cottage to the 1<sup>st</sup> accused, without satisfying the requirements to run such a cottage, and thereby facilitated sexual assault against the



respective victims by the 1<sup>st</sup> accused and also failed to inform the same to the police in tune with the mandate of Section 19(1) of the POCSO Act and therefore she is liable to be prosecuted for the offence punishable under Section 19(1) r/w 21 of the POCSO Act.

7. While seeking quashment of the proceedings in both crimes, the learned counsel for the petitioner argued that in the respective FIRs and FISs given by the victims, there is no allegation raised against the petitioner and the petitioner got arrayed as 2<sup>nd</sup> accused in both crimes without any basis, with ill-motivated intention.

8. The learned counsel for the petitioner would submit further that the petitioner, who got arrayed as 2<sup>nd</sup> accused in both these crimes, alleged to have committed the above offences on the premise that she had given room to the 1<sup>st</sup> accused in both these crimes to subject the respective victims to aggravated form of sexual assault. According to the learned counsel for the petitioner, as per Annexure-A1, copy of license issued by Kuttampuzha Grama Panchayat dated 21.12.2020, license to run Budgies Cottage situated in the eastern side of Thattekkad, Njayappilli, as a home stay, is in the name of Raju



Augustine, Palakkal, Kothamangalam, who is none other than the husband of the petitioner/2<sup>nd</sup> accused. In such a case, instead of arraying the husband of the 2<sup>nd</sup> accused as an accused, in this crime the petitioner is being roped into these crimes, without any materials. He also submitted that the petitioner/2<sup>nd</sup> accused has no connection with 'Budgies Cottage' and license of the same is in the name of her husband. Therefore, for want of primary materials, criminal proceedings in both the crimes as against the petitioner are liable to be quashed.

9. The learned Public Prosecutor opposed quashment of the proceedings in both crimes as against the petitioner herein/2<sup>nd</sup> accused. The learned Public Prosecutor submitted that the prosecution materials are sufficient, *prima facie*, to find commission of the above offences by the petitioner herein/2<sup>nd</sup> accused. In such a case, quashment could not be considered.

10. The prosecution alleges commission of offence punishable under Section 21 r/w Section 19(1) of the POCSO Act by the petitioner/2<sup>nd</sup> accused on the premise that she provided room in



Budgies Cottage to the 1<sup>st</sup> accused to subject the minor victims to sexual assault and also failed to inform the same to the police in tune with the mandate of Section 19(1) of the POCSO Act, and therefore she is liable to be prosecuted for the offence of Section 19(1) r/w 21 of the POCSO Act.

11. First of all, it is necessary to address what are the ingredients necessary to constitute an offence punishable u/s. 21 of the POCSO Act? Section 21 of the POCSO Act provides as follows:

***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.*

Section 19(1) of the POCSO Act which deals with reporting of





offences stipulates as follows:

**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*

Section 20 of the POCSO Act provides as follows:

**20. Obligation of media, studio and photographic facilities to report cases.—**

*Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.*

Similar obligation is cast upon media, studio and photographic



facilities to report such cases.

12. Thus, the ingredient to constitute offence u/s. 21(1) is mere failure to report the commission of an offence u/s. 19(1) or u/s. 20. Similarly, section 21(1) would attract when the Special Juvenile Police or police authorities fails to register crime on getting such information. As per section 21(2), failure to report commission of an offence u/s. 19(1) by any person being in charge of any company or an institution (by whatever name called) in respect of a subordinate under his control, is an offence.

13. As regards the role of the petitioner/2<sup>nd</sup> accused in both the crimes in concerned, statement of one Mr. Abhilash K. Nambiar assumes significance. His statements were recorded as CW5 in Crime No. 198/2022 and as CW7 in Crime No. 72/2022. His statement recites that he was the manager of Budgies Cottage during the relevant time, and the same is owned by Raju Augustine and his wife Sheela. Further, Sheela had been running the cottage during the relevant time, and there are 15 employees there. He also gave statement that police inspected Budgies Cottage on 22.10.2021 along with 2



victim girls who suffered sexual assault at Budgies Cottage. Further, his version is that he was not there when room was provided to the 1<sup>st</sup> accused and the same was given by the petitioner/2<sup>nd</sup> accused Sheela, the owner of Budgies Cottage. He also gave statement that if he had been there, he would not have provided room to the 1<sup>st</sup> accused who brought the minor victims, since on their appearance itself the minor victims found to be not attained majority. His statement was recorded in the presence of the minor victims.

14. That apart, in Crime No. 72/2022, CW8 also is cited as prosecution witness to prove the allegation against the petitioner/2<sup>nd</sup> accused.

15. The specific allegation of the prosecution is that the 2<sup>nd</sup> accused has been running Budgies Cottage for which license was obtained in her husband's name. Annexure-A1 license would show that the same was issued by Kuttampuzha Grama Panchayat dated 22.11.2020, in the name of Raju Augustine, Palakkal, Kothamangalam, who is none other than the husband of the 2<sup>nd</sup> accused. Admittedly, the license in the name of the husband of the 2<sup>nd</sup> accused was valid for the



period from 21.12.2020 till 31.03.2021. In Crl.M.C. 8460/2022, the date of occurrence was on 21.10.2021 as regards the occurrence at Budgies Cottage. Similarly, in Crl. M.C.No.8469/2022 also, the date of occurrence pertaining to Budgies Cottage was on 21.10.2021. Thus, it is relevant to note that Anneure-A1 license in the name of the husband of the 2<sup>nd</sup> accused had expired on 31.03.2021 and on the date of the occurrence in both crimes, Raju Augustine was not the licensee of Budgies Cottage. In this context, the prosecution has a specific case that the petitioner herein was the person who was running Budgies Cottage as on the date of occurrence in both crimes, and the materials collected during investigation would, *prima facie*, endorse the same. The statement of Abhilash K. Nambiar is more crucial in this regard. That apart, in Crime No. 72/2022, CW8 also is cited as prosecution witness to prove the allegation against the petitioner/2<sup>nd</sup> accused. Thus, it appears that Anneure-A1 license issued was valid upto 31.03.2021 cannot be the sole foundation to hold that during the date of occurrence, the husband of the petitioner was the licensee of Budgies Cottage. Even though the learned counsel for the petitioner placed



heavy reliance on Annexure-A1 license, he also failed to take note of the fact that the license was available in the name of Raju Augustine only upto 31.03.2021 and not on 21.10.2021. Thus, going by the prosecution allegations, the involvement of the 2<sup>nd</sup> accused in the matter of providing room to the 1<sup>st</sup> accused to subject the respective victims to aggravated forms of sexual assault, and failure to inform this to the police can be gathered *prima facie*.

16. It is discernible from the final report that during investigation, the Investigating Officer collected bill No.12, Guest registration card, sales report, computer generated print outs and I.D proof attested by the 7<sup>th</sup> witness and produced the same before the court to substantiate the involvement of the petitioner herein.

17. Thus it is clear that the petitioner herein failed to inform the case before the police as mandated u/s. 19(1) of the POCSO Act, after providing room to the 1<sup>st</sup> accused to commit serious offences. Therefore, the prosecution allegation as to commission of the offence punishable under Section 19(1) r/w 21 of the POCSO Act against the petitioner/2<sup>nd</sup> accused is, *prima facie*, made out and in such a case,



quashment cannot be considered since, *prima facie*, materials are in abundance to go for trial.

18. Accordingly this Crl.M.C stands dismissed.

19. Interim orders granted in both these matters stand vacated.

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

*Sd/-*

**A. BADHARUDEEN, JUDGE**

*rtr/*



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APPENDIX OF CRL.MC 8469/2022

**PETITIONER ANNEXURES**

**Annexure A1**

**THE TRUE COPY OF THE LICENSE ISSUED BY THE  
KUTTAMPUZHA PANCHAYAT FOR CONDUCTING RESORT  
BUSINESS IN THE NAME OF THE PETITIONER'S  
HUSBAND.**



APPENDIX OF CRL.MC 8460/2022

**PETITIONER ANNEXURES**

- Annexure A1** THE TRUE COPY OF THE LICENSE DATED 21.12.2020  
ISSUED BY THE KUTTAMPUZHA PANCHAYAT FOR  
CONDUCTING RESORT BUSINESS IN THE NAME OF THE  
PETITIONER'S HUSBAND
- Annexure A2** THE TRUE COPY OF THE FIR IN CRIME NO. 72/2022  
OF PALLURUTHY KASABA POLICE STATION
- Annexure A3** THE TRUE COPY OF FI STATEMENT GIVEN BY THE  
VICTIM IN CRIME NO. 72/22 OF PALLURUTHY  
KASABA POLICE STATION
- Annexure A4** THE TRUE COPY OF THE FINAL REPORT SUBMITTED  
BY INVESTIGATION OFFICER IN S.C.497/2022  
BEFORE THE ADDITIONAL DISTRICT AND SESSIONS  
COURT (FOR THE TRIAL OF CASES RELATING TO  
ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN &  
CHILDREN) ERNAKULAM