



2024:KER:74330

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 7TH DAY OF OCTOBER 2024 / 15TH ASWINA, 1946

CRL.REV.PET NO. 1046 OF 2024

CRIME NO.883/2023 OF CHAVAKKAD POLICE STATION, THRISSUR

IN S.C. NO.649 OF 2024 OF FAST TRACK SPECIAL COURT, CHAVAKKAD

REVISION PETITIONER/ACCUSED:

MUHAMMAD ILIYAS
AGED 23 YEARS
S/O ISMAYIL, VALIYAKATH HOUSE, PANCHAVADI DESOM,
PUNNAYUR VILLAGE, THRISSUR, PIN - 679562

BY ADVS.
M.R.SASITH
M.R.SARIN
R.K.CHIRUTHA
ANJANA SURESH.E
PARVATHI KRISHNA
REETHU JACOB
RIYA KOCHUMMAN
NANMA.B.B
LIDHIYA GEORGE

RESPONDENT/STATE:

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

SR PP - RENJIT GEORGE

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
07.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 7th day of October, 2024**

This Criminal Revision Petition has been filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the charge framed by the Special Court for the trial of cases under the Protection of Children from Sexual Offences Act [hereinafter referred as ‘POCSO Act’ for short], Chavakkad, dated 09.07.2024 and 13.08.2024 in S.C. No.649/2024 arose out of Crime No.883/2023 of Chavakkad Police Station, Thrissur. The revision petitioner herein is the accused in the above case.

2. Heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor, at the time of admission. Perused the charge framed by the Special Court dated 09.07.2024 and 13.08.2024 and relevant materials available.

3. In this matter, after investigation of the crime,



registered alleging sexual assault against a minor girl aged 4 and half years, by the driver of the school van bearing registration No.KL-46-L-2544, who used to take the minor to the school regularly, the Police filed Final Report alleging commission of offences punishable under Section 354(B) of IPC, under Section 75 of the Juvenile Justice (Care and Protection) of Children Act and under Sections 8 read with 7, 10 read with 9(m) and 9(n) of the POCSO Act, by the revision petitioner/accused. After filing of the Final Report, the trial court framed two charges as on 09.07.2024 and 13.08.2024.

4. According to the learned counsel for the petitioner, the second charge was framed without mentioning anything as to alteration of the charge framed initially. The learned counsel for the petitioner also would submit that, even though there is no substantial difference in between the two charges, except with regard to charge No.9, where as per the initial charge framed by the court, offence punishable under Section 5(n) read with



6(1) of the POCSO Act was alleged and in the second charge the same was altered to one under Section 5(p) read with 6(1) of the POCSO Act. According to the learned counsel for the petitioner, going by the charge framed against the petitioner, for which, the petitioner is answerable, the Special Court framed charge for the offences not incorporated in the Final Report. According to him, as per the Final Report filed by the Police, aggravated sexual assault as against the victim is not alleged and by framing charge as Item Nos. 7 and 9, the court framed charge for aggravated sexual assault also.

5. According to the learned counsel for the petitioner, even though the Special Court is empowered to frame charge based on the prosecution materials, in the instant case, nothing made out from the Final Report to see commission of offences punishable under sections 5(n) and 5(p) read with 6(1) of the POCSO Act. Therefore, the charge framed for the said offences, by the Special Court is liable to be interfered.



6. The learned Public Prosecutor opposed interference in the charge, on the submission that the second charge dated 13.08.2024 is the altered charge, since there was a mistake in the first charge, while describing the offences under section 5(p) read with 6(1) as 5(n) read with 6(1) of the POCSO Act. He also pointed out that, going by the prosecution records, the said offences also made out apart from the other offences, for which, charge has been altered by the court. Therefore, no interference in the court charge is necessary.

7. While addressing the contentions raised by the learned counsel for the petitioner, I have gone through the statements of the victim. As per the statements, the version of the victim is that the accused/revision petitioner, after removing her dress, used to kiss on her face, neck and vagina. Further, it is stated that the accused/revision petitioner touched on the vagina of the victim and also put his fingers inside the vagina, after closing her mouth. Going by the statements of the victim,



aggravated sexual assault dealt under section 5(p) read with 6(1) of the POCSO Act also could be gathered, even though the Police failed to file charge for aggravated sexual assault, for the reasons known to the Investigating Officer.

8. The question arises for consideration is whether a Criminal Court is empowered to frame charge for the offence/s, for which, the Police failed to file Final Report? In this connection, it is relevant to refer Section 228 of Cr.P.C. as far as sessions cases are concerned and Section 240 of Cr.P.C. as far as the trial of warrant of cases by the Magistrates are concerned. The provisions read as under:

228. Framing of charge.—(1) *If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and



direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

240. Framing of charge.—*(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*

(2) The charge shall then be read and explained to the accused, and he shall be



asked whether he pleads guilty of the offence charged or claims to be tried.

9. Reading the above provisions, it is clear that, after consideration of the prosecution records, if the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the Judge can frame charge for the said offence, disclosed from the prosecution records. To express differently, a Criminal Court can frame charge for the offence/s made out from the prosecution records, excluding the offence/s incorporated by the Police in the Final Report and also including any offence/s not included by the Police in the Final Report.

10. Coming back, though the details regarding framing of charge as on 13.08.2024, is not available from the records placed by the learned counsel for the petitioner, it is discernible that the learned Special Judge, after framing charge initially, noticed that charge for the offence punishable under Section 5(n) of the POCSO Act, which deals with sexual assault at the instance of a relative of the child, would not attract in the facts of this case, where the



accused person is the driver of the school van of the victim, being in a position of trust or authority of a child and the appropriate section would be Section 5(p) of the POCSO Act. Accordingly, charge was altered on 13.08.2024.

11. On scrutiny of the prosecution records, the same would show that the accused is liable to be prosecuted for the altered court charge dated 13.08.2024, as borne out from the prosecution records and no prejudice caused to the revision petitioner/accused, in this matter. Therefore, the challenge in the revision petition is liable to fail.

12. Accordingly, this revision petition stands dismissed, with direction to the trial court to go for trial, as per the charge framed on 13.08.2024, as per law.

Registry is directed to forward a copy of this order to the trial court, within three days, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE