



2024:KER:85371

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

CRL.REV.PET NO. 1450 OF 2012

AGAINST THE ORDER/JUDGMENT DATED 27.04.2012 IN CRA NO.288

OF 2010 OF ADDITIONAL DISTRICT & SESSIONS COURT, VADAKARA

ARISING OUT OF THE ORDER/JUDGMENT DATED 30.04.2010 IN CC

NO.216 OF 2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS,

NADAPURAM

REVISION PETITIONER/DEFACTO COMPLAINANT:



BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENTS/APPELLANT/ACCUSED/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031, (CRIME NO.44/2007 OF
VALAYAMPOLICE STATION, KOZHIKODE).



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Crl.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

2 **A.K.HARIDASAN**
 S/O.CHATHU, PATTANINTEVIDA HOUSE, NADAPURAM
 AMSOM, KUMMANGODE AMSOM, VATAKARA TALUK-673101.

SRI.NOUSHAD K.A., PUBLIC PROSECUTOR
SRI.P.A.HARISH
SRI.V.V.SURENDRAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 04.11.2024, ALONG WITH
Crl.Rev.Pet.1490/2012, 1491/2012 AND CONNECTED CASES, THE
COURT ON 14.11.2024 DELIVERED THE FOLLOWING:



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CrI.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

CRL.REV.PET NO. 1490 OF 2012

AGAINST THE ORDER/JUDGMENT DATED 27.04.2012 IN CRA
NO.287 OF 2010 OF ADDITIONAL DISTRICT & SESSIONS COURT,
VADAKARA ARISING OUT OF THE ORDER/JUDGMENT DATED IN CC
NO.215 OF 2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS

NADAPURAM

REVISION PETITIONER/DEFACTO COMPLAINANT:



BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENTS/APPELLANT/ACCUSED/STATE:

1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM - 682 031.



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CrI.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

2 **A.K. HARIDASAN**
 AGED 43 YEARS, S/O. CHATHU, PATTANINTEVIDA
 HOUSE, NADAPURAM AMSOM, KUMMANGODE DESOM,
 VATAKARA TALUK - 673 101.

SRI.NOUSHAD K.A., PUBLIC PROSECUTOR
ADV SRI.V.V.SURENDRAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 04.11.2024, ALONG WITH
CrI.Rev.Pet.1450/2012 AND CONNECTED CASES, THE COURT ON
14.11.2024 DELIVERED THE FOLLOWING:



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CrI.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

CRL.REV.PET NO. 1491 OF 2012

AGAINST THE ORDER/JUDGMENT DATED 27.04.2012 IN CRA
NO.286 OF 2010 OF ADDITIONAL DISTRICT & SESSIONS COURT,
VADAKARA ARISING OUT OF THE ORDER/JUDGMENT DATED
30.04.2010 IN CC NO.214 OF 2007 OF JUDICIAL MAGISTRATE OF
FIRST CLASS , NADAPURAM

REVISION PETITIONER/S:



BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT/S:

1 STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.



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Crl.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

2 **A.K.HARIDASAN**
 AGED 43 YEARS
 S/O.CHATHU, PATTANINTEVIDA HOUSE, NADAPURAM
 AMSOM, KUMMANGODE DESOM, VATAKARA TALUK-673103.

SRI.NOUSHAD K.A., PUBLIC PROSECUTOR
SRI.P.A.HARISH
SRI.V.V.SURENDRAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 04.11.2024, ALONG WITH
Crl.Rev.Pet.1450/2012 AND CONNECTED CASES, THE COURT ON
14.11.2024 DELIVERED THE FOLLOWING:



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CrI.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

CRL.REV.PET NO. 1492 OF 2012

AGAINST THE ORDER/JUDGMENT DATED 27.04.2012 IN CRA NO.285
OF 2010 OF ADDITIONAL DISTRICT & SESSIONS COURT, VADAKARA

ARISING OUT OF THE ORDER/JUDGMENT DATED IN CC NO.213 OF
2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, VADAKARA

REVISION PETITIONER/S:



BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT/S:

- 1 STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.
- 2 A.K.HARIDASAN
AGED 43 YEARS
S/O.CHATHU, PATTANINTEVIDA HOUSE, NADAPURAM
AMSOM, KUMMANGODE DESOM, VATAKARA TALUK-673103.



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Crl.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

SRI.NOUSHAD K.A., PUBLIC PROSECUTOR
SRI.P.A.HARISH
SRI.V.V.SURENDRAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 04.11.2024, ALONG WITH
Crl.Rev.Pet.1450/2012 AND CONNECTED CASES, THE COURT ON
14.11.2024 DELIVERED THE FOLLOWING:



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CrI.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

CRL.REV.PET NO. 1493 OF 2012

**AGAINST THE ORDER/JUDGMENT DATED 27.04.2012 IN CRA NO.283
OF 2010 OF ADDITIONAL DISTRICT & SESSIONS COURT, VADAKARA**

**ARISING OUT OF THE ORDER/JUDGMENT DATED 30.04.2010 IN CC
NO.167 OF 2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS**

NADAPURAM

REVISION PETITIONER/DEFACTO COMPLAINANT:



**BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN**

RESPONDENTS/APPELLANT/ACCUSED/STATE:

**1 STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.**



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Crl.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

2 **A.K.HARIDASAN**
 S/O.CHATHU, PATTANINTEVIDA HOUSE, NADAPURAM
 AMSOM, KUMMANGODE DESOM, VATAKARA TALUK-673101.

SRI.NOUSHAD K.A., PUBLIC PROSECUTOR
SRI.P.A.HARISH
SRI.V.V.SURENDRAN

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 04.11.2024, ALONG WITH
Crl.Rev.Pet.1450/2012 AND CONNECTED CASES, THE COURT ON
14.11.2024 DELIVERED THE FOLLOWING:**



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CrI.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

CRL.REV.PET NO. 1494 OF 2012

AGAINST THE ORDER/JUDGMENT DATED IN CRA NO.284 OF 2010 OF

ADDITIONAL DISTRICT & SESSIONS COURT, VADAKARA ARISING

OUT OF THE ORDER/JUDGMENT DATED 30.04.2010 IN CC NO.212

OF 2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,NADAPURAM

REVISION PETITIONER/S:



BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT/S:

- 1 STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.
- 2 A.K.HARIDASAN
AGED 43 YEARS
S/O.CHATHU, PATTANINTEVIDA HOUSE, NADAPURAM
AMSOM, KUMMANGODE DESOM, VATAKARA TALUK-673101.



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Crl.R.P.Nos.1450, 1490, 1491,
1492, 1493 and 1494 of 2012

SRI.NOUSHAD K.A., PUBLIC PROSECUTOR
SRI.P.A.HARISH
SRI.V.V.SURENDRAN

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR FINAL HEARING ON 04.11.2024, ALONG WITH
Crl.Rev.Pet.1450/2012 AND CONNECTED CASES, THE COURT
ON 14.11.2024 DELIVERED THE FOLLOWING:



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1492, 1493 and 1494 of 2012

P.G. AJITHKUMAR, J.

**Crl.R.P.Nos.1450, 1490, 1491, 1492,
1493 and 1494 of 2012**

Dated this the 14th day of November, 2024

ORDER

The victims of the offence respectively in C.C.Nos.167, 212, 213, 214, 215 and 216 of 2007 on the files of the Judicial Magistrate of the First Class, Nadapuram have filed these revision petitions invoking the provision of Sections 397 read 401 of the Code of Criminal Procedure, 1973 (Code). They challenge the common judgment of the Additional Sessions Judge, Vatakara in Crl.Appeal Nos.283, 284 285, 286, 287 and 288 of 2010 dated 27.04.2012, by which the judgments of conviction and the orders of sentence rendered by the learned Magistrate in the aforesaid calendar cases were set aside. The learned Sessions Judge remanded the matter to the trial court for a fresh trial in accordance with law.

2. The judgments of the trial court were set aside on the sole ground that before pronouncing the said judgments,



children's court was notified under Section 25 of the Commissions for Protection for Child Rights Act, 2005 (for short "the Child Rights Act"). The petitioners would contend that having trial before the Magistrate already begun and the children's court notified for the purpose of speedy trial alone, the appellate court ought not to have set aside the judgments of the trial court.

3. Heard the learned counsel for the revision petitioners, the learned Public Prosecutor and the learned counsel for the common 2nd respondent.

4. Common are the offences alleged in all the said cases. Offences under Section 354, 377 and 506(i) of the Indian Penal Code, 1860 (IPC) were the offences. The 2nd respondent was the common accused. The allegations were also similar. That, the 2nd respondent, on various days in 2007, subjected respective victims aged around 10 years to sexual assault, unnatural offence and put to threat. The 2nd respondent was their teacher in Std.IV.



5. On the 2nd respondent denying the charge, the learned Magistrate commenced trial. Pending trial in all the cases, the Government of Kerala issued G.O.(P) No.22/2009/SWD dated 03.06.2009 notifying the Sessions Courts in the State as Children's' Court for the purpose of Section 25 of the Child Rights Act. Trial was concluded thereafter and the proceedings terminated in the judgment of conviction dated 30.04.2010 in all the cases. The appellate court took the view that having the children's court being the specified court, been notified on 03.06.2009, the learned Magistrate lost jurisdiction and the cases should have been committed to the children's court, invoking the provisions of Section 323 of the Code. The decision of this Court in **Abdul Aziz v. Circle Inspector of Police [2011 (4) KLT 1003]** was placed reliance on in that regard.

6. Section 25 of the Child Rights Act reads as follows:

"25. Children's Courts.- For the purpose of providing speedy trial of offences against children or of violation



of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences: Provided that nothing in this section shall apply if-

- (a) a Court of Session is already specified as a special court; or
- (b) a special court is already constituted, for such offences under any other law for the time being in force."

7. The purpose of notifying children's courts was for the specific purpose of speedy trial of offences against children or of violation of child rights. Either in Section 25 or in any other provision in the Child Rights Act, no exclusivity for the children's court in the matter of trial of such offences has been created. Therefore, the question is by notification of children's court, whether an ordinary criminal court having jurisdiction to try an offence in terms of the first schedule to the Code, lost the jurisdiction altogether. A further question to be considered is, keeping in mind the purpose for which Section 25 of the Child Rights Act was enacted, can a trial



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concluded before an ordinary criminal court after specifying a children's court be set aside?

8. This Court in **Jijimon v. state of kerala [2024 (5) KLT 279]** held that in cases where the offences triable by a Magistrate are concerning an offence against a child or of violation of a child right, the court of the Magistrate becomes only a wrong forum and not a court of inherent lack of jurisdiction after the date of notification specifying a children's court.

9. The learned counsel for the petitioner place reliance on **Rattiram v. State of M.P. [(2012) 4 SCC 516]** to fortify his contention that the trial held by the Magistrate are not vitiated. That was a case where the special court constituted under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 took cognisance of the offence without the case being committed and held trial. The contention was that for non-compliance of the mandatory provision of Section 193 of the Code, the trial held by the



special court, which being a sessions court, was invalid. Conflicting views taken in that regard were considered by a three Judge Bench of the Apex Court and held that the trial was not vitiated only for the reason of such a procedural infraction. The said decision has no direct application here. However, the following principles laid down by the Apex Court have relevance,-

- i) When the special court is constituted for speedy trial, the procedural errors, omissions or irregularities which did not result in a failure of justice are not reasons for setting aside the judgment.
- ii) If the court which held the trial is a court of competent jurisdiction, the superior court shall be slow in interfering with the judgment of the trial court on the ground of procedural infraction.
- iii) Speedy trial and fair treatment of a victim based on the constitutional paradigm and principles are two essential requirements of criminal trial.
- iv) It is the sacrosanct obligation of all concerned to see that the administration of criminal justice is not protracted thereby resulting in oppression and denial of rights of not only the accused but also the victim.



10. The aforesaid principles can have no application if the judgment in question was rendered by a court having inherent lack of jurisdiction. The Magistrate who held trial in these cases, is the forum competent ordinarily to try such offences. For the purpose of speedy trial only, the children's courts were specified. By such notification, jurisdiction was conferred upon the children's court in respect of offences against children or of violation of child rights. It cannot be said as result of such an interdiction, jurisdiction of the Magistrate to try the offences was taken away. But propriety demands that such offence should be tried by the children's courts.

11. Be that as it may, if the judgments of the trial courts in these cases are set aside, the result would be a second trial which has the devastating effect of causing inordinate delay, asking the 2nd respondent to stand trial anew and compelling the victims to give evidence again, which is against the jurisprudential principle underlying the provisions



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of the Protection of Children from Sexual Offences Act, 2012 (PoCSO Act). Although the provisions of the PoCSO Act have no application in these matters, the spirit of incorporating provision for a speedy trial in the cases under the PoCSO Act; similar are the cases here, shall be borne in mind.

12. Having regard to the aforesaid aspects in the light of the principle laid down by the Apex Court in **Rattiram [(2012) 4 SCC 516]**, I am of the view that the learned Additional Sessions Judge went wrong in setting aside the judgments of the learned Magistrate dated 30.04.2010. What was held in **Abdul Azeez (2011 (4) KLT 1003]** is the parameters for deciding what kind of cases are liable to be tried by the children's court and the proper procedure for committing such a case to the children's court. That decision did not lay down a proposition that the judgment rendered by a Magistrate after notifying children's court is invalidate. So the view taken by the appellate court relying on that decision is untenable.



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13. In the circumstances, the judgments dated 27.04.2012 in Crl.Appeal Nos.283, 284 285, 286, 287 and 288 of 2010 of the Additional Sessions Judge, Vatakara are set aside. The appeals are remitted to that court. The 2nd respondent in person or through counsel shall appear before the appellate court on 09.12.2024. The learned Sessions Judge shall restore the appeals on file and proceed to dispose of the same in accordance with law.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr