



CRL.MC NO. 2948 OF 2022

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2024:KER:74290

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.MC NO. 2948 OF 2022

CRIME NO.1328/2021 OF WADAKKANCHERY POLICE STATION,
THRISSUR

PETITIONER/ACCUSED:

SINDHU SIVADAS
AGED 45 YEARS
W/O.SIVADAS, MULLAPPARAMBIL HOUSE, ENKAKKAD
VILLAGE, WADAKKANCHERY DESOM, ENKAKKAD.P.O.,
THRISSUR DISTRICT-680582.

BY ADVS.
P.VIJAYA BHANU (SR.)
K.R.ARUN KRISHNAN
P.M.RAFIQ
M.REVIKRISHNAN
AJEESH K.SASI
MITHA SUDHINDRAN
SRUTHY K.K.
SRUTHY N.BHAT
RAHUL SUNIL

RESPONDENTS/STATE:

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

*ADDL.R2 NIHARIKA (MINOR)
AGED 15 YEARS,D/O.SUDHEER BABU, PERUMAL
EZHUTHACHAN, NEEHARAM, VILLA NO.36, KATTUKARAN,
DREAM HOME,VELLAPAZHA ROAD, KILLANNUR VILLAGE,
THRISSUR - 680 581 REPRESENTED BY FATHER SUDHEER
BABU, PERUMAL EZHUTHACHAN, NEEHARAM, VILLA NO.36,
KATTUKARAN, DREAM HOME,VELLAPAZHA ROAD, KILLANNUR
VILLAGE,
THRISSUR - 680 581

*ADDL.R2 IS IMPEADED AS PER ORDER DATED
7.10.2024 IN CRL.M.A.NO.1/2022 IN CRL.M.C.NO.2948
OF 2022

R1 BY SR.PUBLIC PROSECUTOR SRI.RENJIT GEORGE
ADDL.R2 BY K.R.ARUN KRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
07.10.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



CR

ORDER

Dated this the 7th day of October, 2024

Sole accused in C.C.No.347/2022 on the files of the Judicial First Class Magistrate Court, Wadakkanchery, arising out of Crime No.1328/2021 of Wadakkanchery Police Station, Thrissur, who is the petitioner herein, seeks quashment of the proceedings on the submission that the allegation as to commission of offence under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the JJ Act' hereinafter), is not prima facie made out.

2. Heard the learned senior counsel for the petitioner and the learned Public Prosecutor, in detail. Perused the statement of the juvenile including relevant records.

3. According to the prosecution, the petitioner herein committed offence punishable under Section 75 of the JJ Act, and the substratum where from the prosecution case emanates is that, the juvenile, who is an 8th Std. student of Bharathiya Vidya Bhavan School, Akamala, Thrissur, reached the school at 10.00 a.m. on 2.3.2020, to know about her result



and also to purchase books for 9th Std., in the school bus, by wearing colour dress. According to the juvenile, there was no compulsion to wear colour dress during vacation. When she met the Principal on the corridor of the school, she wished the Principal. Thereafter, the Principal asked the juvenile, why she came in colour dress without wearing uniform and also commented that, since the juvenile is a person, having bulky physique, she should have worn the uniform. Later, she was sent back after getting uniform from the house and wearing the same. This is the way, in which, prosecution alleges commission of the above offence.

4. While pursuing quashment of the entire proceedings, the learned senior counsel for the petitioner pointed out that, the juvenile's mother and the petitioner herein, are working in the same school as teacher and Principal, respectively. Prior to registration of this crime, the juvenile's mother was given memo when it was noticed that she was careless in attending the examination duty. Thereafter, this crime was registered without any substance, as a retaliatory shield. The learned senior counsel also submitted that, insisting a student to wear uniform of the school, that too, during the



academic period covered by the month of March, would not attract offence under Section 75 of the JJ Act and therefore, the entire prosecution is unwarranted and the same is liable to be quashed.

5. Although the learned Public Prosecutor read out the statement of the juvenile in support of the prosecution case, the one and only allegation is questioning of arrival of the juvenile at the school without wearing colour dress instead of uniform and the insistence made by the Principal to change the dress by substituting uniform.

6. Section 75 of the JJ Act provides as under:

75. *Punishment for cruelty to child.*- *Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both.*

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their



control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases.

Provided further that if such offence is committed by any person employed by or managing an organization, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees.

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.

7. On scanning the above penal provision, unnecessary mental or physical suffering to a child, on account of assault, abandonment, abuse, exposure or wilful neglect of the child or causing or procuring the child to be assaulted, abandoned, abused, exposed or neglected, are the essentials to constitute the said offence. When a teacher insists for wearing



uniform, on seeing a student, who reached the school in colour dress, the same is intended for the purpose of maintaining the discipline of the school in the matter of uniform dress code, and the same, in no way, could be held as as an act, which would cause unnecessary mental or physical suffering to the child, so as to attract the offence under Section 75 of the JJ Act. If, as part of maintenance of the discipline of the school when wearing of uniform dress is made mandatory, it is the duty of the students to obey the same, so as to keep the dignity and discipline of the school to impart education effectively. If such acts are given the colour of an offence under Section 75 of the JJ Act, the discipline of the school would become topsy-turvy and the same would disdainfully affect the discipline and the regiment of the school. Therefore, such disciplinary measures cannot be ushered into the purview of Section 75 of the JJ Act. In such view of the matter, the case at hand would require quashment, as offence under Section 75 of the JJ Act, is not made out, prima facie.

In the result, this Crl.M.C. stands allowed. Annexure 8 Final Report and all further proceedings in C.C.No.347/2022 on the files of the Judicial First Class Magistrate Court,



CRL.MC NO. 2948 OF 2022

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Wadakkanchery, arising out of Crime No.1328/2021 of
Wadakkanchery Police Station, Thrissur, against the petitioner
herein, stand quashed.

Sd/-
A.BADHARUDEEN
JUDGE

Bb



APPENDIX OF CRL.MC 2948/2022

PETITIONER'S ANNEXURES

- ANNEXURE 1 COPY OF THE COMPLAINT FILED BY ONE NIHARIKA M.SUDHEER BEFORE THE KERALA STATE COMMISSION FOR PROTECTION OF CHILDREN'S RIGHTS
- ANNEXURE 2 COPY OF REPLY SUBMITTED BY THE PETITIONER DATED 31/05/2021 TO THE KERALA STATE COMMISSION FOR PROTECTION OF CHILDREN'S RIGHTS
- ANNEXURE 3 COPY OF ORDER PASSED BY THE KERALA STATE COMMISSION FOR PROTECTION OF CHILDREN'S RIGHTS 28/09/2021
- ANNEXURE 4 COPY OF THE RELEVANT PAGE OF THE PROCEEDINGS OF THE PETITIONER AS AGAINST THE DE FACTO COMPLAINANT'S MOTHER WHO WAS ALSO WORKING AS A TEACHER IN THE VERY SAME INSTITUTION DATED 18/01/2021
- ANNEXURE 5 COPY OF MEMO GIVEN BY THE PETITIONER TO MRS.HIMA DATED 08/03/2021
- ANNEXURE 6 COPY OF THE APPLICATION FOR TRANSFER CERTIFICATE SUBMITTED BY THE PARENT OF THE DE FACTO COMPLAINANT DATED 28/05/2020
- ANNEXURE 7 COPY OF FIR IN CRIME NO.1328/2021 DATED 04/12/2021 OF WADAKKANCHEY POLICE STATION, THRISSUR
- ANNEXURE 8 COPY OF FINAL REPORT DATED 28/02/2021 IN CRIME NO.1328/2021 DATED 04/12/2021 OF WADAKKANCHEY POLICE STATION, THRISSUR

RESPONDENTS' ANNEXURES : NIL