



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

CRL.MC NO. 9228 OF 2024

CRIME NO.491/2023 OF MELPARAMBA POLICE STATION, Kasargod
SC NO.1022 OF 2023 OF SPECIAL COURT UNDER POCSO ACT, HOSDURG,
KASARAGOD

PETITIONER/ACCUSED:

ABOBACKER P. M, AGED 77 YEARS
S/O. PULLUR MUHAMMED, PULLUR -HOUSE, PUTHARIYADUKKAM,
CHATTANCHAL, THEKKIL, KASARGODE DIST, PIN - 671314.

BY ADVS.
BIJU ANTONY ALOOR
KRISHNASANKAR D.
SREELAKSHMI K.
G.DEVAPAL
REBIN VINCENT GRALAN
ASHIK JONU M.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA
HIGH COURT P.O, ERNAKULAM DISTRICT, PIN - 682018.
- 2 STATION HOUSE OFFICER
MELPARAMBA POLICE STATION,
KASARAGOD-DISTRICT, PIN - 671317.
- 3 XXXXXXXXXXXX
XXXXXXXXXXXX, XXXXXXXXXXXX, XXXXXXXX

SENIOR PUBLIC PROSECUTOR SRI RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
18.11.2024, THE COURT ON 21.11.2024 PASSED THE FOLLOWING:



A. BADHARUDEEN, J.

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Crl.M.C.No.9228 of 2024
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Dated this the 21st day of November, 2024

ORDER

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short). Prayer is to quash and set aside final report in S.C.No.1022/2023 pending before the Special Court under the Protection of Children from Sexual Offences Act ('POCSO Act' for short), Hosdurg, Kasargode.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the relevant documents.

3. Coming to the prosecution allegations, the survivor is a minor boy, aged 10 years. The prosecution allegation is that on one day, before 10 days of 31.07.2023, at 17.30 hours, while the survivor was returning to his house after his tuition, the petitioner, with sexual intent and to exploit him sexually, transported him to his house and at the car shed, shown Rs.200/- and enticed him, and after that with sexual intent



held his shirt and hand. Thereby he has committed offences punishable under Section 370(4) of the Indian Penal Code and Section 10 r/w 9(m), Section 12 r/w 11(vi) of the POCSO Act.

4. It is argued by the learned counsel for the petitioner that none of the offences under the POCSO Act would attract in the facts of this case. Therefore, the entire proceedings would require quashment as against the petitioner, who is an age old man. It is argued by the learned counsel for the petitioner further that going by the 164 statement given by the victim, none of the offences made out and, therefore, the entire prosecution is false and the same is liable to be quashed. He also would submit that the matter is about to be settled.

5. The learned Public Prosecutor strongly opposed quashment of the proceedings where the ingredients of the offences are made out, *prima facie*, contending that the matter would require trial.

6. In this case, crime was registered recording the statement of one Noushad, who is the uncle of the victim boy, on 31.07.2023, when he reported sexual assault against the minor boy, aged 10 years. Accordingly, statement of the minor was recorded. His statement is to the



effect that he used to go to school daily and thereafter he would go to tuition to the house of one XXX teacher. 10 days before 30.07.2023, while he was returning after tuition at about 5.30 hours, the accused came in a scooter, stopped nearby him and instructed that the accused would give money to the victim if he would reach his quarters. He was instructed to enter through the other gate and the accused agreed to enter through another gate. The accused went to his quarters and the victim also reached the quarters through the other gate. Then the accused took him to the car shed and put a mat on the ground and he laid there in supine position and asked the minor to lay on his body. The victim resisted the same and then the accused caught him and moved towards him. Then the accused gave two notes of Rs.100/- to the victim and forcefully took the victim towards him. When the victim was not ready for the same, he returned therefrom and then the accused instructed him to reach next day at the same time and the victim escaped therefrom agreeing to return on the next day. Thereafter he discontinued the tuition, afraid of the petitioner's overt acts and informed the same to Noushad. In the 164 statement also, the victim exactly stated what he had divulged in the initial statement. Thus it



appears that the overt acts alleged to be committed by the petitioner would come within the purview of sexual assault defined under Section 7 of the POCSO Act. Section 7 provides as under:

“7. “Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

7. In fact, the legislature dealt with 3 overt acts as offences of sexual assault. The first one is touching the vagina, penis, anus or breast of the child with sexual intent; the second one is making the child touching the vagina, penis, anus or breast of such person or any other person and the third one is doing any other act with sexual intent which involves physical contact without penetration. In the instant case, the petitioner alleged to have committed the offences punishable under Section 370(4) of the Indian Penal Code and Section 10 r/w 9(m), Section 12 r/w 11(vi) of the POCSO Act. Section 11 deals with sexual harassment. A person is said to commit sexual harassment upon a child when such person with sexual intent repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or



any other means. Section 9(m) deals with sexual assault on a child below 12 years. In the instant case, the accused physically contacted the child victim, who is below age of 12 years, with sexual intent and caught towards him, to lay on his body after he was laying on the mat in a supine position. Therefore, it could not be held that the said offence under the POCSO Act not made out, *prima facie*. Apart from the POCSO Act offences, offence under Section 370(4) of the IPC also is alleged to have committed by the accused. Section 370(4) provides as under:

“Section 370: Trafficking of persons:

(1) xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxxx

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

8. On perusal of the records, on no stretch of imagination, it could be held that offences are not made out, *prima facie*. But the prosecution materials would suggest, *prima facie*, the offence alleged. Therefore, quashment prayer could not succeed. Besides that, offences under the POCSO Act could not be settled otherwise.



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In view of the above, the petition is liable to fail. Accordingly, this Cr1.M.C is dismissed.

Registry is directed to 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 9228/2024

PETITIONER' S ANNEXURES

**SEALED COVER 1 CERTIFIED COPY OF THE FINAL REPORT
DT.19.10.2023.**

**SEALED COVER 2 A TRUE COPY OF THE FIR NO.491/2023 OF
MELPARAMBA P S DATED 31.07.2023.**

**Annexure 3 A TRUE COPY OF ORDER OF IST ADDL. SESSIONS
JUDGE, KASARAGOD IN CRL. M. P. NO.4534/2023
DATED 21/08/2023.**

**Annexure 4 A TRUE COPY OF THE ORDER IN B.A. NO.
7492/2023 DATED 12/09/2023.**