



2024:KER:85237

CRL.MC NO.361 OF 2023

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

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

CRL.MC NO. 361 OF 2023

CRIME NO.884/2021 OF OLLUR POLICE STATION, THRISSUR
AGAINST THE ORDER/JUDGMENT DATED IN SC NO.929 OF 2021
OF ADDITIONAL DISTRICT COURT, THRISSUR

PETITIONER:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADVS.
P.SANJAY
RAHUL RAJ P.
KIRAN NARAYANAN
PRASOON SUNNY
AMRUTHA M. NAIR
PAUL VARGHESE (PALLATH)
BIJU MEENATTOOR

RESPONDENT:

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

OTHER PRESENT:

PP M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 14.11.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



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ORDER

C.R.

Dated this the 14th day of November, 2024

The petitioner in this Crl.MC is the 2nd accused in S.C.No.929 of 2021 on the files of Special Court under the Protection of Children from Sexual Offence Act, 2012 (for short 'PoCSO Act', hereinafter) Thrissur. The petitioner seeks quashment of the above proceedings by invoking power under Section 482 of the code of Criminal Procedure.

2. In this matter, the prosecution alleges commission of offences punishable under sections 4(1) r/w 3(a), 6(ii) r/w 5(j)(ii) of PoCSO Act and sections 540 and 376 of the Indian Penal Code, 1860 (for short 'IPC' hereinafter) by the 1st accused, and offence under section 21 r/w 19(1) of PoCSO Act by the 2nd accused, who is the mother of the victim. In a nut shell the prosecution allegation is that when the



victim aged 17 years felt abdominal pain and there was no menstruation for a period of five months, the 2nd accused, mother took her to XXX Hospital, XXX, and the Gynaecologist therein advised her to have scan examination doubting PCOD. On scan examination, it was found that the victim had completed 18 weeks of pregnancy and she was immediately referred to Government Medical College for further management. But the doctor failed to inform the same to the police on 31.5.2021. Later, on 3.6.2021, the doctor informed the same to police treating the case as medico-legal case (MLC) and on 4.6.2021 FIR was registered recording the statement of the victim in the presence of the mother, the petitioner herein. The allegation against the petitioner, who is none other than the mother of the victim is that she failed to intimate the occurrence to the police in tune with the mandate of section 19(1)



of POCSO Act, thereby she committed offence under section 21 r/w 19(1) of PoCSO Act.

3. While, seeking quashment of the proceedings against the 2nd accused, the mother, it is pointed out by the learned counsel for the petitioner that it is true that as stated by the doctor and as alleged by the prosecution, initially the minor was taken to XXX hospital on 31.5.2021 and on scan examination it was found that she was pregnant. Soon, she was referred to Government Medical College for further management and care. However, the victim was taken to a private hospital, and treated. It is submitted by the learned counsel for the petitioner that on knowing the pregnancy of her unmarried minor girl aged 17 years, the petitioner become shocked and in the midst of shock, she was assigned with the task of saving the life of her daughter and thereby, the minor was taken to a private hospital



and given proper treatment. While so, the doctor informed the matter to the police on 3.6.2021 and accordingly, without much delay the statement of the victim was recorded on 4.6.2021 in the presence of the petitioner and crime was registered on 4.6.2021 itself. The learned counsel pointed out the ordeal and trauma of the mother who also is forced to face trial along with the 1st accused who destroyed the life of her daughter, for an offence for which she has no mens-rea.

4. According to the learned counsel for the petitioner, section 19(1) of PoCSO Act does not stipulate a specified time to provide the information regarding commission or apprehension that an offence under PoCSO Act is likely to be committed. According to the learned counsel for the petitioner, in cases where allegation of non-compliance of Section 19(1) is alleged against the parents of the victim, the



mental strain as well as the deseperating emotions that immediately wave through the mind of the parents as such are to be taken into consideration while addressing the question as to whether there is any deliberate omission in providing the information, on their part. According to the learned counsel, since the pregnancy was detected on 31.5.2021 and FIS was given on 4.6.2021, a delay of 4 days could not be the foundation to send the mother of victim to gallows who suffered a lot due to the trauma suffered by her daughter. Accordingly, it is submitted by the learned counsel for the petitioner that in the facts of this case, the petitioner may be exonerated from the penal consequence of section 21 r/w 19(1) of the PoCSO Act.

5. The learned Public Prosecutor submitted that Section 19(1) does not provide any specified time and therefore the intention of the legislature is to be



understood as reporting the matter at the earliest and without any delay. The learned Public Prosecutor also expressed his view that, on noticing the pregnancy of an unmarried minor girl, naturally the mother would have the feelings of tension, shock and indecisiveness. However, the same would not save the mother from penal consequence, when there is deliberate failure to comply the mandate of Section 19(1) of PoCSO Act.

6. Coming to the crux of the matter, pregnancy of the minor aged 17 years was first detected after conducting scan examination on 31.5.2021. Immediately, the doctor advised the mother to take the minor to the Government Medical College, for further management to give proper medical attention to the victim and to save her life. It is true that instead of taking her to Government Medical College, the mother took her to a Private Hospital, to give



effective treatment to the daughter. However, on 3.6.2021 the doctor reported the matter to the police and accordingly the statement of the minor victim was recorded by the police and crime registered. True that mother failed to inform the occurrence to the police, but it is to be noted that, as argued by the learned counsel for the petitioner, the trauma and shock in the mind of the mother when she hears information that her unmarried daughter is 18 weeks pregnant would normally marque the mind of a mother to indecisiveness, inactiveness and dilemma. In such cases, the mother would definitely need some reasonable time to return to normalcy. Then also the trauma may dangle on the intellectual capabilities of the mother for quite a long time. During the initial stages of the said period, omission, if any, to inform the matter to the police, is justifiable from the attending circumstances as discussed, penalizing the



mother who is, in fact, indirectly another victim of the crime, with the aid of section 21 r/w 19(1) of PoCSO Act is to be avoided. If such penalization is permitted blindly ignoring the attendant circumstances, the same is putting chilly powder on the deep wound and such an option should be avoided to the extent possible in the interest of justice. Viewing so, when the mother fails to inform the same to the police, it could not be held as deliberate or willful as discernible from the facts of the instant case. In fact, here on 4.6.2021 the police registered the case as informed by the doctor. Therefore, in this case, it could not be held that there is deliberate or willful failure on the part of the mother to report the case as alleged, and therefore, the criminal proceedings against the mother in the facts of this particular case cannot be justified.

7. In such view of the matter, the proceedings



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are liable to be quashed.

In the result, this CrI.MC is allowed. All further proceedings against the petitioner herein in SC.No.925/2021 on the files of the Special Court under the PoCSO Act, Thrissur, arising out of Crime No. 884/2021 of Ollur Police Station, Thrissur, stand quashed.

Registry is directed to forward a copy of this order to the jurisdictional court within a period of three weeks from the date of receipt of a copy of this order, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE

Pvv



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APPENDIX OF CRL.MC 361/2023

PETITIONER'S ANNEXURES

SEALED COVER 3 TRUE COPY OF THE FIR NO.884/2021

**SEALED COVER 4 CERTIFIED COPY OF THE FINAL REPORT IN
S.C. NO.929/2021**