

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 9<sup>TH</sup> DAY OF DECEMBER 2024 / 18TH AGRAHAYANA, 1946

CRL.MC NO. 9852 OF 2024

CRIME NO.491/2016 OF Vanitha Police Station Irinjalakuda,

Thrissur

CC NO.310/2016 OF FAST TRACK SPECIAL COURT, (POCSO)

IRINJALAKUDA

PETITIONER/DEFACTO COMPLAINANT:

XXXXXXXXXX  
XXXXXXXXXX XXXXXXXXXXXX

BY ADV PADMINIDEVI.C

RESPONDENT/STATE:

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

SENIOR PUBLIC PROSECUTOR SRI RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
25.11.2024, THE COURT ON 09.12.2024 PASSED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.******Crl.M.C No.9852 of 2024******Dated this the 9<sup>th</sup> day of December, 2024******O R D E R***

This Criminal Miscellaneous Case has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short), by the victim in C.C.No.310 of 2016 on the files of Fast Track Special Court, Irinjalakuda, to quash the proceedings.

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

3. In Annexure-A2, the specific allegation of the prosecution is that the victim, while studying in the 6<sup>th</sup> standard and residing along with her father, mother and grandmother at the family house, the accused, who is none other than the father of the victim, subjected the victim to sexual assault at 23.45 hours on 20.02.2016. That apart, during a day in April, 2013, the accused hugged and kissed the



victim and also lifted her skirt and panties and put his finger into her vagina. The specific allegation is that starting from April, 2013 till 21.02.2016, the accused subjected the victim to aggravated penetrative sexual assaults. This is the base on which the prosecution alleges commission of offences punishable under Sections 4 r/w 3, 6 r/w 5(n)(l), 8 r/w 7 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short). The further allegation is that the accused also threatened the victim that if the matter would be disclosed, she would be killed.

4. Now the victim wants to quash the proceedings after completion of the evidence and the contention raised by the victim is that, in this matter, during examination of the victim as PW1 and her mother as PW10, they were compelled to give evidence in tune with the statements recorded by the police. Therefore, the petitioner in this petition would state that the petitioner was very poor in her studies and accordingly she was referred for counseling at the school. When the Counsellor instructed the concept of 'good touch and bad touch', the petitioner revealed her bitter experience from her father, before the Counsellor and pursuant to the said revelation, complaint has been filed, which led to registration of this crime. In fact, the allegations of POCSO offences committed by the father was



revealed by the minor victim during counselling and thereafter the present crime was registered. During trial, the victim gave evidence as PW1 and her mother gave evidence as PW10, supporting the prosecution case. In such a case, now the victim wants to quash the proceedings on the submission that evidence, she had given as PW1 and her mother as PW10, were as told by the police and the evidence so given are not true. The learned counsel for the petitioner pressed for relief reiterating the contentions.

5. Whereas the learned Public Prosecutor zealously opposed quashment of the proceedings at the instance of the victim, involving very serious offences, where this Court while considering challenge against dismissal of a petition filed under Section 311 of Cr.P.C filed by the accused to recall PW1 and PW10, which was dismissed by the trial court, discussed the matter in extenso and dismissed the plea. Now the attempt of the petitioner is to efface the evidence she had given before the court on oath, by quashing the proceedings. According to the learned Public Prosecutor, now evidence was completed, and what remains is pronouncement of judgment; and at the fag end there was attempt on the part of the accused to avoid pronouncement of judgment on the strength of



evidence given by her, by filing 311 petition, which ended in dismissal of Crl.M.C.No.9524/2023 vide order dated 05.07.2024 by this Court, as per Annexure-A2.

6. Going by the prosecution allegations at par with the present stage of the crime, it is well discernible that in this case PW1 to PW10 were examined by the prosecution and they were cross examined in detail and the entire prosecution evidence was closed on completion of the prosecution evidence. The accused filed CMP 931/2023 to recall PW1 and PW10 on the submission that at the time when PW1 and PW10 were examined, certain relevant questions were omitted to be asked to them. Further it is submitted by the learned Public Prosecutor that the learned Special Judge dismissed the petition and challenge against the said order also ended in dismissal as per Annexure-A2 as per order dated 05.07.2024.

7. In this matter, a relevant aspect to be noted is that accused is none other than the father of the victim. This is a case of the year 2016. When the evidence of the victim as well as the mother were recorded as PW1 and PW10, they gave evidence in support of the prosecution in tune with the FIS and 164 statement earlier given by the police. Thereafter, at the fag end, an attempt was made to recall PW1 and



PW10 to efface their evidence and the same also went in vain. Now the attempt of the victim is to quash the proceedings and to retract from the evidence tendered while seeking quashment of the proceedings.

8. In the decision reported in [2024 INSC 846], ***Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.*** the Apex Court considered a case where prosecution alleged commission of offences punishable under Sections 354A, 342, 509 and 504 of IPC, Sections 7 and 8 of the POCSO Act as well as Sections 3(1)(r), 3(1)(s), 3(1)(b) and 3(2)(vii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ('SC/ST Act' for short), where a minor child victim was patted on her cheeks by the accused and he put his hand inside bodice and rubbed her breast, where the High Court of Rajasthan quashed the proceedings despite the opposition of the learned Public Prosecutor where the dispute has been settled in between the victim and the accused. After discussing the matter at length, the Apex Court held in paragraphs 32 and 33 as under:

*“32. In the decision relied on by the High Court to quash the proceedings viz., **Gian Singh's** case (supra) and the decision in **Laxmi Narayan's** case (supra) in unambiguous terms this Court held that the power under Section 482 Cr.P.C could not be used to quash proceedings based on compromise if it is in respect of heinous*



*offence which are not private in nature and have a serious impact on the society. When an incident of the aforesaid nature and gravity allegedly occurred in a higher secondary school, that too from a teacher, it cannot be simply described as an offence which is purely private in nature and have no serious impact on the society.*

33. *In view of the reasons as aforesaid and in the light of the decisions referred supra, the impugned order dated 04.02.2022 of the High Court in S.B.C.R.M.P No.1348/2022, quashing the FIR No.6/2022 dated 08.01.2022 and all further proceedings pursuant thereto solely on the ground that the accused and the complainant had settled the matter, invites interference. We have no hesitation to hold that in cases of this nature, the fact that in view of compromise entered into between the parties, the chance of a conviction is remote and bleak also cannot be a ground to abruptly terminate the investigation, by quashing FIR and all further proceedings pursuant thereto, by invoking the power under Section 482, Cr.P.C. In the said circumstances, this appeal is allowed. The impugned order dated 04.02.2022 of the High Court in S.B.C.R.M.P.No.1348/2022 is hereby quashed and set aside. Consequently, the FIR No.6/2022, investigation and criminal proceedings pursuant thereto subject to the nature of the report to be filed under Section 173(2), Cr.P.C., be proceeded with against the accused, in accordance with law.”*

Applying the same ratio in the present case, where very serious allegations of aggravated penetrative sexual assault and many other offences are alleged, quashment of the proceedings at the instance of the defacto complainant, that too, with a view to efface the evidence already recorded,



could not be allowed. In view of the matter, the quashment prayer must fail.

9. Having considered the factual matrix of the case, where evidence was already completed, quashment of the proceedings, involving very serious offences under the POCSO Act, sought for by the victim before pronouncement of judgment, could not be allowed and hence this petition must fail and is accordingly 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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CRL.M.C.NO.9852/2024

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**A P P E N D I X**

PETITIONER'S EXHIBITS

ANNEXURE A1 : TRUE COPY OF CHARGE DATED 28.03.2016 FILED BEFORE  
FAST TRACT SPECIAL COURT (POCSO) IN CC.310/2016.

ANNEXURE A2 : TRUE COPY OF ORDER IN CRL.M.C.NO.9524/2023 OF THIS  
COURT.