



2025:KER:15952

CrI.R.P.No.971/2024

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 24TH DAY OF FEBRUARY 2025 / 5TH PHALGUNA, 1946

CRL.REV.PET NO. 971 OF 2024

CRIME NO.1770/2020 OF Kunnankulam Police Station, Thrissur

AGAINST THE ORDER DATED 18.07.2024 IN CRMP.72/2023 IN SC
NO.287 OF 2022 OF FAST TRACK SPECIAL COURT, CHAVAKKAD

REVISION PETITIONER/2ND ACCUSED

DR DITTO TOM P, AGED 48 YEARS
S/O TOM, PULIKOTTIL HOUSE, NO 29, INDIRA NAGAR 1ST
AVENUE, KANNIPPAYYUR VILLAGE, KUNNAMKULAM P.O,
THRISSUR, KERALA, PIN - 680503.

BY ADVS.
SARATH BABU KOTTAKKAL
RENJITH B.MARAR
ARCHANA VIJAYAN

RESPONDENT/STATE:

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

PUBLIC PROSECUTOR SRI JIBU T S

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
14.02.2025, THE COURT ON 24.02.2025 DELIVERED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

=====
Crl.R.P.No.971 of 2024
=====

Dated this the 24th day of February, 2025

O R D E R

This Revision Petition has been filed under Sections 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short), challenging the order in Crl.M.P No.72/2023 in S.C.287/2022 on the files of Special Court under the Protection of Children from Sexual Offences (POCSO) Act cases, Chavakkad. The revision petitioner is the 2nd accused in the above case.

2. Heard the learned counsel for the revision petitioner/2nd accused and the learned Public Prosecutor in detail. Perused the order impugned and the case diary as such placed by the learned Public Prosecutor along with decisions placed by the learned counsel for the revision petitioner.



3. Prosecution allegation herein is that on 02.10.2020 and 19.10.2020 a child in conflict with law in this crime committed aggravated penetrative sexual assault on the first witness, a female child, aged 13 years, and accordingly she became pregnant. The allegation against accused 1, 3 and 4 is that despite having knowledge regarding aggravated penetrative sexual assault against the minor victim, which would attract POCSO Act offences, they failed to inform the same to the police and also with a view to cause disappearance of evidence regarding commission of the offence, they jointly carried miscarriage and thereby accused 1, 3 and 4 committed offences punishable under Sections 312, 313, 315 and 201 of the Indian Penal Code ('IPC' for short) and under Section 19(1) r/w 21(1) of the POCSO Act. The allegation against the 2nd accused/revision petitioner herein is that he also had occasion to treat the victim on 25.11.2020 and 02.12.2020



and thereby the pregnancy of the minor victim and involvement of POCSO Act offence are made known to the revision petitioner on 25.11.2020 itself. But he failed to inform the occurrence to the police and thereby committed offence punishable under Section 21(1) r/w 19(1) of the POCSO Act.

4. After taking cognizance for the said offence against the 2nd accused/the revision petitioner, on his appearance, the revision petitioner filed an application under Section 227 of the Criminal Procedure Code ('Cr.P.C' for short hereafter) seeking discharge raising plea of absolute innocence and the learned Special Judge dismissed the same holding that the prosecution materials would justify commission of offence under Section 19(1) r/w 21(1) of the POCSO Act by the revision petitioner so as to frame charge for the said offence and to try him.

5. Impeaching the said order, the present



Criminal Revision Petition has been filed. As on 12.09.2024, this Court admitted this Revision Petition to hear a legal question argued by the learned counsel for the revision petitioner. The legal question posed is; whether when offences under the POCSO Act are alleged to be committed by an accused, who is a Government servant, sanction required under Section 197 of Cr.P.C is necessary or not to prosecute him?

6. The learned counsel for the revision petitioner argued to substantiate necessity of sanction under Section 197 of Cr.P.C on one end and attempted to establish otherwise that the petitioner is innocent and, therefore, he is otherwise entitled for discharge.

7. Whereas it is submitted by the learned Public Prosecutor that in the instant case, as per the case records and in the FIS given by the victim, it has been stated that the victim after having sexual intercourse with the child in conflict with



law, became pregnant and thereafter she was treated by a Homoeo doctor, who is one among the accused, with a view to abort the pregnancy and the said statement of the victim is supported by the statement given by her mother, who stated that on 10.11.2020 when she noticed vomiting by the victim, the victim and her child met Dr.Ranjit at Taluk Hospital and taken medicine for the same. Thereafter, her urine test was conducted at the laboratory and met Dr.Harish and treatment was taken. Thereafter when scanning was conducted at Royal Hospital, pregnancy was found. Accordingly, they met Dr.Lathya on 17.11.2020 and she had given homoeo medicine for aborting the pregnancy. But on taking medicine, bleeding substantially increased and accordingly the victim was taken before the revision petitioner herein, on 25.11.2020. When the doctor asked, it was initially informed him that there was no stop for menses and the same would require attention. Thereafter the doctor advised medicine and later the mother



disclosed to the doctor that there was pregnancy and she was taking medicine from the Homoeo doctor to abort the pregnancy. Then the doctor opined that the matter would be informed to the police, but the victim and her mother requested the doctor not to do so. Thus, *prima facie*, it appears that as on 25.11.2020, the revision petitioner gathered knowledge from the victim and her mother that the victim was sexually assaulted by a child in conflict with law and thereby she became pregnant and the same was aborted. To put it otherwise on 25.11.2020 the revision petitioner came to know involvement of POCSO Act offences in this matter. But the revision petitioner did not inform the same to the police and thereby timely registration of FIR did not happen. Thus in the instant case, FIR was registered only on 12.12.2020.

8. Coming to the first question argued by the learned counsel for the revision petitioner as to want of sanction under Section 197 of Cr.P.C for prosecuting a public



servant, who alleged to have committed offence under Sections 21 r/w 19(1) of the POCSO Act is concerned, in fact, in the decision reported in [2025 (1) KHC 32 : 2024 KHC OnLine 7351 : 2024 KER 96686 : 2024 KLT OnLine 3088], ***George P.O v. State of Kerala***, another learned Single Judge of this Court considered the same question and held in paragraph 53 as under:

“S.19 of the POCSO Act casts a mandate on any person to report the commission of an offence. The mandate to report does not relate to his official character. The mandate to report contained in S.19 of the POCSO Act is to be performed in his private capacity.”

9. The learned counsel for the revision petitioner placed decision of this Court reported in [2024 KHC OnLine 635 : 2024 KHC 635 : 2024 KER 53255 : 2024 LiveLaw (Ker) 451 : 2024 KLT OnLine 2268], ***Radhakrishna S.Naik (Dr.) v. State of Kerala***, wherein this Court dealt with a case where the facts of the case is as under:

“Petitioner/accused, who is doctor, is alleged



to have committed the offence punishable under Section 19(1) of the Protection of Children from Sexual Offences Act, 2012. Allegation against the petitioner is that, he being a person, who examined the victim got an apprehension that an offence under the POCSO Act had been committed or had knowledge that such an offence had been committed failed to provide such information to the Special Juvenile Police or local Police. Petitioner filed a discharge application before trial court. Trial court dismissed the same. Aggrieved by the said order, petitioner filed the present revision petition.”

In the above case, this Court held as under allowing the plea for quashment:

“In my view, if there is omission even after getting information to report the same to the Police after 24.00 hours at least, the offence punishable under Section 19(1) of the POCSO Act would get attracted. If the mission is only for a period less than 24.00 hours, similar to 7.15 hours in the present case, fastening criminal culpability on the doctor for the said short omission could not be justified. In this case, by the time, CW10, who conducted scanning test informed the pregnancy of the minor victim to the Police and the Police reached the hospital and crime was registered,



without any delay. In such a case, the 2nd accused, who only advised the minor victim to have blood and urine tests and also had occasion to see the scan report after 11.45 am, could not said to have committed any willful omission in reporting the matter to the Police in tune with the mandate of Section 19(1) of the POCSO Act. In such view of the matter, I am of the view that there is no materials to show willful omission on the part of the petitioner/2nd accused informing the crime as alleged, to rope the petitioner into this crime.”

10. Another decision of this Court reported in [2025 KHC OnLine 80], ***Ambujakshi T. (Dr.) v. State of Kerala***, also has been placed by the learned counsel for the revision petitioner wherein the facts of the case is as under:

“First accused was charged with subjecting a minor victim to repeated sexual intercourse, while the petitioner-doctor was charged under Section 21 read with Section 19(1) of Protection of Children from Sexual Offences Act for failing to report the crime and under Sections 312 and 313 of Penal Code for allegedly conducting abortion without consent. When victim had visited the petitioner’s hospital with profuse bleeding and symptoms of miscarriage, both the victim and her parents had declared her age as 18 years, which was recorded in all hospital documents. Only after the registration of the crime was her actual



age determined to be 15 years and 11 months through a subsequent medical examination. Present petition is filed by the petitioner seeking to quash the criminal proceedings in the said case. The question that arose for consideration was; whether a doctor could be criminally liable under POCSO Act for failing to report a crime when the victim and guardians had declared the age as above 18 years, and whether emergency medical intervention to save a patient with profuse bleeding could constitute illegal abortion.”

In the above case, this Court, to substantiate the quashment sought for, held as under:

“Doctors are bestowed with the duty to save the life of the patients and have been busily engaged in their vow. Therefore, while implicating doctors in criminal cases with the aid of Section 19 of the POCSO Act, the investigating officer must apply his mind from the materials collected and form an unbiased opinion to see, prima facie, that there is deliberate intention or omission to report the crime. Unless the said deliberate intention not divulged from the records, unwanted implication of doctors in crime shall be avoided. It is noticed that doctors got arrayed as accused with the aid of Section 19 of the POCSO Act mechanically, without applying the mind of the investigating officer. This is nothing but absolute injustice and putting the doctors



under mental trauma of criminal prosecution and the same would stand as a rider for the doctors in doing their duties promptly. Therefore, the investigating officers are specifically directed to be more cautious when doctors' involvement is doubted in POCSO offences and implication of doctors in criminal cases under the POCSO Act shall be avoided unless relevant materials do not justify the same."

11. The learned Public Prosecutor produced decision of the Apex Court reported in [2022(6) KLT OnLine 1002 (SC) : 2022 (6) KLT OnLine 1002 (SC) : 2022 (6) KLT SN 29 (C.No.23) SC)], ***State of Maharashtra v. Dr.Maroti***, where the Apex Court considered the impact of Sections 19(1) and 21(1) and held in paragraph 15 as under:

"15. Prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act. We say so taking into account the various provisions thereunder. Medical examination of the victim as also the accused would give many important clues in a case that falls under the POCSO Act. Section



27(1) of the POCSO Act provides that medical examination of a child in respect of whom any offence has been committed under the said Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offence under the Act, be conducted in accordance with Section 164A of the Cr.P.C, which provides the procedures for medical examination of the victim of rape. In this contextual situation, it is also relevant to refer to Section 53A of Cr.P.C that mandates for examination of a person accused of rape by a medical practitioner. It is also a fact that clothes of the parties would also offer very reliable evidence in cases of rape. We refer to the aforesaid provisions only to stress upon the fact that a prompt reporting of the commission of an offence under POCSO Act would enable immediate examination of the victim concerned and at the same time, if it was committed by an unknown person, it would also enable the investigating agency to commence investigation without wasting time and ultimately to secure the arrest and medical examination of the culprit. There can be no two views that in relation to sexual offences medical evidence has much corroborative value.”

12. Inasmuch as sanction required under Section 197 of Cr.P.C or under Section 218 of BNSS, is concerned, the



legal position is not in dispute that when a question arose as to whether an act or omission which constitutes an offence in law has been done in discharge of official functions by a public servant, for which sanction under Section 197 of Cr.P.C is mandatory then the said question is to be considered based on facts of the case and overall analysis of the materials available. If the act or omission is distinct and it has no connection with the official duty, sanction to prosecute a public servant under Section 197 of Cr.P.C is not mandatory. This Court considered this issue in the decision reported in [2023 KHC OnLine 521 : 2023 KHC 521 : 2023 (2) KLD 419 : 2023 KER 45097 : 2023 KLT OnLine 1747 : ILR 2023 (3) Ker. 827], *Anoop A. v. Baby Joseph*, after referring various decisions of the Apex Court in paragraphs 8 to 17.

13. In the instant case, as far as the POCSO Act offence is concerned, as per Section 19(1), it has been provided that notwithstanding anything contained in the Code of Criminal



Procedure, 1973(2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, (a) the Special Juvenile Police Unit; or (b) the local police, and failure to comply the mandate under Section 19(1) and 19(2) is an offence punishable with imprisonment of either description which may extend to six months or with fine or with both in terms of Section 21 of the POCSO Act. Section 19 starts with the *non-obstante* clause that 'notwithstanding anything contained in the Code of Criminal Procedure, 1973'. In fact, a statutory obligation is cast upon persons, who have apprehension that an offence under the POCSO Act is likely to be committed or have knowledge that such an offence has been committed, so that they shall provide such information to the police and when the information is given, it is the duty of the police to register crime. This provision mandates even a child to report the crime. But in view of Section



21(3) of POCSO Act, the provisions of sub section (1) of Section 21 shall not apply to a child under the POCSO Act for imposing conviction and sentence. When a statute imposes a duty upon a public servant to do something, the omission when comes within the ambit of the POCSO Act under Section 19(1) and (2) r/w 21, in view of the *non-obstante* clause which specifically excludes the provision of the Cr.P.C to Section 19 of the POCSO Act, sanction under Section 197 of Cr.P.C or Section 218 of BNSS is not mandatory. It is true that as per Section 42A of POCSO Act the provisions of POCSO Act shall be in addition to and not in derogation of any other case for the time being in force. But Section 42A of the POCSO Act to be read in exclusion of the provision where *non-obstante* clause is provided, for its applicability. The rationale is, it is the primal principle of interpretation that while interpreting the provisions of a statute effort must be taken to give operation to all the provisions without repugnancy and making any of the provisions as



redundant. Applying the same principle when interpreting Section 42A of the POCSO Act, the same would apply generally, where its application is not specifically excluded. When a *non-obstante* clause is used specifically in Section 19, as far as Sections 19 and 21 are concerned, Section 42A would not apply, thereby Section 197 of Cr.P.C or Section 218 of BNSS would not have any application to Section 19 r/w 21 of the POCSO Act. The precept of the discussion leads to hold that in order to prosecute a public servant for the offence under Section 21 r/w Section 19 of POCSO Act, sanction under Section 197 of Cr.P.C or under Section 218 of BNSS is not mandatory.

14. Now coming to the second question: Whether, *prima facie*, offence under Section 21(1) r/w 19(1) of POCSO Act is made out against the petitioner in the facts of this case? As pointed out by the learned Public Prosecutor, initially, the victim was shown to Dr.Ranjit at Taluk Hospital and the victim had taken medicine on 10.11.2020. Subsequent to scan examination



at Royal Hospital, pregnancy was found and the victim met Dr.Lathya and taken Homoeo medicine for aborting the pregnancy. But on taking medicine, bleeding substantially increased and the victim was taken before the revision petitioner herein on 25.11.2020. Even though the facts were suppressed initially before the revision petitioner, the mother informed the Doctor that there was pregnancy to the victim and the victim had been taking medicine from a Homoeo doctor. Thus as on 25.11.2020, the revision petitioner got knowledge regarding the offence under the POCSO Act. Be it so, he is duty bound to report the same to the police in view of mandate under Section 19(1) of the POCSO Act. Otherwise, the same is an offence punishable under Section 21 of the POCSO Act. Even though it is argued by the learned counsel for the revision petitioner that no deliberate omission could be noticed in this matter and the doctor was not inclined to report the same acceding to the humble request of the victim and her mother, the same is not sufficient to



avoid prosecution of the revision petitioner. It is discernible that, in this matter crime was registered only on 12.12.2020 because of the failure of the revision petitioner in informing the matter to the police on 25.11.2020. As held by the Apex Court in *State of Maharashtra v. Dr.Maroti's* case (*supra*), prompt and proper reporting of commission of the offence under the POCSO Act is of utmost importance and the same would enable immediate registration of case and examination of the victim concerned so as to trace even an unknown accused when on bail. Therefore, even though in cases where deliberate omission is not noticeable, quashment is liable to be allowed as held in *Radhakrishna S.Naik (Dr.) v. State of Kerala's* case (*supra*), when deliberate omission was perceivable, the prayer for quashment or discharge must fail. In the instant case, the revision petitioner, who got knowledge regarding the crime on 25.11.2020, failed to inform the same and accordingly registration of crime was delayed for a period of three weeks. That must have attenuated timely



investigation of the case without elements of lacuna. In the instant case, the prosecution materials would show that the offence alleged against the revision petitioner is made out, *prima facie*, from prosecution records, warranting trial. Therefore, discharge plea as well as quashment plea would necessarily fail. Therefore, no interference is called for in the order impugned and hence the Revision Petition stands dismissed.

15. Interim order of stay stands vacated.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/