



2025:KER:10062

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA, 1946

CRL.MC NO. 8923 OF 2023

CRIME NO.54/2020 OF CHEVAYUR POLICE STATION, KOZHIKODE

IN SC NO.860 OF 2022 OF ADDITIONAL DISTRICT COURT KOZHIKODE- II

PETITIONER/7TH ACCUSED:

SIDHIQUE CHUNDAKADAN,
AGED 51 YEARS
S/O MUHAMMED KUTTY, SUPERINTENDENT
HOME FOR THE MENTAL DEFICIENT CHILDREN, VELLIMADUKUNNU,
KOZHIKODE, RESIDING AT NELLIKAPOK HOUSE, KONDOTTY P.O,
MALAPPURAM, PIN - 673638

BY ADVS.
S.MOHAMMED AL RAFI
THAJUNA MARIA FRANCIS

RESPONDENT/STATE:

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

BY ADV.SMT.MAYA M.N., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06.02.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



‘C.R.’

C. JAYACHANDRAN, J.

Cr1.M.C. No.8923 of 2023

Dated, this the 06th day of February, 2025

ORDER

The petitioner is the 7th accused in Crime no.54/2020 of Chevayur Police Station, Kozhikode, now pending before the IInd Additional Sessions Court, Kozhikode as S.C. No.860/2022. The petitioner seeks quashment of the said crime, as also, all further proceedings therefrom, on the premise that the offence alleged under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, ‘J.J. Act’) will not lie in the given facts and circumstances.

2. Heard the learned Counsel for the petitioner and the learned Public Prosecutor. Perused the records.

3. The prosecution allegations are as follows:

One Ajin, aged 6 years, who was inmate of the Home for Mentally Deficient Children (HMDC) at Vellimadukunnu,



Kozhikode, urinated while sleeping. Infuriated by the same, certain other inmates (accused nos.1 to 4) have assaulted the said Ajin and he succumbed to death. Accused nos.5 and 6 are the Multi Task Care Providers of the said institution, who permitted children who have attained majority to stay along with the minor children, contrary to specific instructions in this regard. The specific allegation against petitioner/A7 is that he has committed supervisory lapse in permitting major inmates to stay along with the minors. On such premise, the third accused, who was a major at the time of incident, was mulcted with charge under Section 302 of the Penal Code and accused nos.5 to 7, including the petitioner, was called upon to answer the charge under Section 75 of the J.J. Act.

4. Learned Counsel for the petitioner submits that, even going by the prosecution allegations, the only charge against the petitioner is with respect to supervisory lapse, which cannot attract the offence under Section 75 of the J.J. Act. Learned Counsel would submit that disciplinary action has already been initiated against the



petitioner, which culminated in withholding two increments. Supervisory lapse alleged, simultaneous with absence of knowledge that inmates who have attained majority are staying with minor inmates, cannot amount to willful neglect in the context of Section 75 of the J.J. Act, is the argument advanced.

5. Refuting the above submissions, the learned Public Prosecutor would point out that, it was on account of the willful neglect of petitioner/A7 that the victim Ajin had to face the extreme fate of death, at the hands of accused nos.1 to 4, among whom, one has attained majority at the time of incident. It was pointed out that there were other major inmates, who were permitted to stay along with the minor inmates, contrary to the circular/instructions in this regard. Learned Public Prosecutor would point out that, if the person, who is having actual charge or control of the child, acts in a negligent manner, so as to cause unnecessary mental or physical suffering, the offence under Section 75 of the J.J. Act is committed.



6. Having heard the learned Counsel appearing for the respective parties, this Court finds considerable force in the submissions made by the learned Counsel for the petitioner. That part of the final report, which constitute the allegations against the petitioner/A7 is extracted here below:

"24.01.20 തിയ്യതി ടി സ്ഥാപനത്തിൽ രാത്രി ഡ്യൂട്ടിക്ക് ഉണ്ടായിരുന്ന കേരളം സാമൂഹ്യ സുരക്ഷാ മിഷൻ (KSSM) ന്റെ കീഴിൽ ഉള്ള . Multi Task Care Provider എന്ന താൽക്കാലിക ജീവനക്കാരായ 5-ാം പ്രതിയും 6 -ാം പ്രതിയും കൂടി പ്രായം കുറവുള്ള കുട്ടികളെ മുതിർന്ന കുട്ടികളുടെ കൂടെ രാത്രിയിൽ ഒരേ മുറിയിൽ താമസിപ്പിക്കരുത് എന്ന നിർദ്ദേശം അവഗണിച്ച് കൊല്ലപ്പെട്ട 6 വയസുള്ള അജിൻ എന്ന കുട്ടിയെ തിയ്യതി രാത്രിയിൽ ഒരേ മുറിയിൽ 19 വയസ്സുവരെയുള്ള കുട്ടികളുടെ കൂടെ പാർപ്പിക്കുകയും ടി സുപ്രണ്ടായ 7 -ാം പ്രതി ഇപ്രകാരം കുട്ടികളെ ഒന്നിച്ചിടുന്ന കാര്യം അറിയാതെ മേൽ നോട്ടത്തിൽ വരുത്തിയ വീഴ്ചയും ആണ് മേൽ പറഞ്ഞ സംഭവം ഉണ്ടാകുന്നതിന് കാരണമായത് എന്നതിനാലും മേൽ പറഞ്ഞ 3 -ാം പ്രതി 302 r/w 34 IPC വകുപ്പ് പ്രകാരവും 5, 6, 7 പ്രതികൾ Sec 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 പ്രകാരവും ശിക്ഷാർഹമായ കുറ്റം ചെയ്തിരിക്കുന്നു."

(underlined for emphasis)

7. It is clear from the above final report that, even as per the prosecution version, petitioner/A7 was not aware of the fact that the major inmates are also permitted to stay



along with the minor inmates during night; and all what is seen alleged is supervisory lapse, albeit being unaware of the above fact.

8. This Court will now extract the offence under Section 75 of the J.J.Act.

“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.”

9. It may be true that the petitioner/A7 was having actual charge and control over the deceased. However, in order to constitute an offence under Section 75, the objectionable conduct should be an assault, abandonment, abuse, exposition or ‘willful neglect’ of the child; or causing or procures the doing of any of the above act to



the child, in a manner so as to cause unnecessary mental and physical suffering to the child. The specific objectionable conduct canvassed by the prosecution is 'willful neglect' in the instant facts, insofar as the petitioner/A7 is concerned.

10. Black's Law Dictionary, 6th Edn.(p.1599) defines "willful" in the following manner:

"Willful. - Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass . . .

* * *

An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..."

11. In Celir LLP v. Sumati Prasad Bafna and others [2024 SCC Online SC 3727], the Hon'ble Supreme Court spoke thus, as regards the scope of expression 'willful'.



“185. Hence, the expression or word “willful” means act or omission which is done voluntarily or intentionally and with the specific intent to do something which the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.”

12. As early as on 1977, a learned Single Judge of the Madras High Court took stock of the legal position, in the context of willful negligence in Subbammal Alia Rajammal and others v. The President, the Tenkasi Co-operative Urban Bank Ltd., Tenkasi (in liquidation) through its Special Officer, having its office at Kokirakulam, Tirunelveli [AIR 1977 Mad 92]. Paragraph 8 of the judgment is extracted here below:

“8. The scope of the expression “wilful negligence” occurring in various statutes had come up for consideration before Courts. In R. v. Downes (1875) 1 Q.B.D. 25 it was held that the statutory words “wilfully neglects such child” are not satisfied by proof of



some omission to provide medical aid. In Reg v. Senior (1899) 1 Q.B. 283 while dealing with the same expression "wilfully neglects" occurring in Section 1 of the Prevention of Cruelty to Children Act, 1894, Lord Russel, C.J., expressed that whether the words are taken together or separately, the meaning is very clear, that "wilfully" means an act done deliberately and intentionally, not by accident or inadvertence so that the mind of the person who does the act can be said to go with it and that 'neglect' is the want of reasonable care, that is, the omission of such steps as a reasonable person would take. While dealing with the scope of the expression "wilful neglect" occurring in Section 2 of the Married Women's Protection Act, 1922, the High Court of Australia in Cooper v. Cooper 65 C.L.R. 162 stated that the phrase connotes a deliberate and intentional act of a culpable nature and that it imports an intention to act or omit to act in a way which the person charged knows, or ought if he is not recklessly careless to have known, will amount to a breach of duty, P.R. Ramanatha Iyer in his "Law Lexicon" has collected the various decisions interpreting the expressions "wilful neglect" and "wilful negligence". According to the author the expression "wilful neglect" means an act done deliberately and intentionally and not by



accident or inadvertence so that it can be said that the mind of the person who does the act goes with it, that it implies an intentional and purposeful omission" to do a certain act, and that it is an even more extreme term than gross and culpable negligence. The expression "wilful negligence" according to the author means a conscious acting or failing to act in a reprehensible manner.

13. It is therefore clear that to constitute willful neglect, these acts should be done deliberately and intentionally, not by accident or inadvertence. If the very prosecution case itself is to the effect that the petitioner/A7 was not aware of the fact that major inmates are permitted to stay along with the minors, the question of willful neglect does not arise at all. All what can be alleged in the instant facts is supervisory lapse, which, by itself, cannot constitute the offence under Section 75 of the J.J. Act. Apart from Section 75 of the J.J. Act, no other offence is seen canvassed in the final report. This Court is of the definite opinion that the offence under Section 75 of the J.J. Act will not lie against the



petitioner/A7 in the given facts.

14. The upshot of the above discussion is that this Cr1.M.C. succeeds and Annexure-A F.I.R., Annexure-B final report and all further proceedings in S.C. No.860/2020 before the IInd Additional Sessions Court, Kozhikode will stand quashed, as against the petitioner/A7.

The Cr1.M.C. is allowed as above.

Sd/-

C. JAYACHANDRAN

JUDGE



APPENDIX OF CRL MC 8923/2023

PETITIONER'S ANNEXURES:

ANNEXURE A CERTIFIED COPY OF THE F.I.R. IN CRIME
NO.54/2020 OF CHEVAYUR POLICE STATION,
KOZHIKODE DISTRICT

ANNEXURE B CERTIFIED COPY OF THE S.C. NO.860/2022 ON
THE COURT OF ADDITIONAL SESSIONS JUDGE-II,
KOZHIKODE

ANNEXURE C CERTIFIED COPY OF THE STATEMENT OF THE
WITNESS IN THE ABOVE CRIME NO.54/2020 OF
CHEVAYUR POLICE STATION, KOZHIKODE DISTRICT

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.A. TO JUDGE