



2024:KER:93199

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 10TH DAY OF DECEMBER 2024 / 19TH AGRAHAYANA, 1946

CRL.MC NO. 9315 OF 2022

CRIME NO.0759/2021 OF PULPALLY POLICE STATION, WAYANAD

IN S.C. NO.69 OF 2022 OF SPECIAL COURT UNDER POCSO ACT [ADDITIONAL

DISTRICT AND SESSIONS COURT (ADHOC I), KALPETTA, WAYANAD

PETITIONER:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADVS.
M.P.ASHOK KUMAR
BINDU SREEDHAR
ASIF N

RESPONDENTS:

1 STATE OF KERALA
 REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
 PIN - 682031

2 XXXXXXXXXXXX
 XXXXXXXXXXXX XXXXXXXXXXXX

BY ADV MATHEW KURIAKOSE
PP - M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22.11.2024,
THE COURT ON 10.12.2024 PASSED THE FOLLOWING:

**“C.R.”****ORDER****Dated this the 10th day of December, 2024**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash Annexure.A1 Final Report in Crime No.759/2021 of Pulpally Police Station, Wayanad, now pending as S.C. No.17/2022 on the files of the Special Court for the trial of cases under the Protection of Children from Sexual Offences Act [hereinafter referred as 'POCSO Act' for short], Wayanad. The petitioner herein is the accused in the above case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor, in detail. Also heard the learned counsel appearing for the defacto complainant. Perused the relevant materials available.

3. In this matter, the case of the prosecution is that, the victim aged 8 years, who was studying in the 3rd standard, while residing along with her parents and relatives at their residence, at about 08.00 pm on



06.12.2021, the accused herein, who has been residing in the nearby house, lifted his dhoti and showed his nakedness to the victim by standing on the courtyard of his house. The further allegation is that, the overt acts at the instance of the accused made the victim mentally shocked and she sat at the sitout for a while. All at once, the accused again lifted his dhoti and showed his groin to the victim. On this premise, the prosecution alleges commission of offences punishable under Section 509 of the Indian Penal Code and under Section 12 read with 11(i) of the POCSO Act by the petitioner/accused.

4. While assailing the prosecution case, the learned counsel for the petitioner vehemently argued that, the family of the victim and the accused are in rivalry and there are multiple litigations in between them. According to the learned counsel for the petitioner, the present FIR was registered on 11.12.2021, recording the statement of the minor victim regarding an occurrence on 06.12.2021. Prior to that, another crime vide Crime No.519/2021 was registered in relation to an occurrence on 23.08.2021 against the brother of the defacto complainant by the



petitioner's father. According to the learned counsel for the petitioner, Crime No.519/2021 was registered at Pulpalli Police Station, as per Annexure.A2 FIR against the brother of the defacto complainant, when he threatened and abused the petitioner's father. Thereafter, the petitioner's father filed a complaint before the Joint Regional Transport Officer, Sulthan Batheri on 25.10.2022 to take appropriate action against the brother of the defacto complainant for creating nuisance to the petitioner's family by rising noise of the bike. Cancellation of the license of the brother of the defacto complainant was sought for therein. Copy of the said complaint is Annexure.A3. According to the learned counsel for the petitioner, later an agreement had been entered into between the families to settle the pending cases, with the intervention of mediators and Annexure.A4 is the copy of the said agreement dated 28.09.2021.

5. Later the victim's father has filed a false complaint against the petitioner, his father, mother and sister, alleging that they had harassed his mentally challenged child and for which a complaint was lodged before the Kerala State Commission for Protection of Child



Rights, Thiruvananthapuram. True copy of the complaint dated 08.11.2021 is Annexure.A5.

6. Thereafter the victim's father installed CCTV cameras at his house, focusing two cameras towards the residential house and kitchen of the petitioner's house to catch all befall springs in his house so as to affect his privacy. Accordingly, the accused has filed O.S. No.28/2022 before the Munsiff Court, Sulthan Bathery. An advocate commissioner visited the place and filed report. In the report, it was stated that the live view of camera 2 and 3 is focused on the front portion of the house of the petitioner and the commissioner viewed the same in the monitor. The Commission Report is marked as Annexure.A6.

7. According to the learned counsel for the petitioner, it is in the midst of these litigations, the present crime was registered against the petitioner, without any basis. The learned counsel for the petitioner submitted that the entire allegations are false and foisted with a view to implicate the petitioner in a very serious case under the POCSO Act to wreak vengeance against him. The learned counsel for the petitioner further submitted that, now the



petitioner left the residence and has been residing at a different place, since he could not live at his house because of the nuisance of the victim's family.

8. The learned counsel for the petitioner placed decision of the Apex Court reported in [2020 ICO 203] ***Ahmad Ali Quraishi and Others v. State of Uttar Pradesh and Others***, wherein the Apex Court dealt with a case involving the facts as under:

(ii) On 19.07.2016, a quarrel took between the parties. The police went on the spot of incident on 19.07.2016 itself and initiated proceedings under Section 151, 107 and 116 Cr.P.C. Proceedings were drawn under Cr.P.C. against both the parties to maintain peace at the spot.

(iii) On 29.08.2016, an application under Section 156(3) Cr.P.C. was filed by the complainant Sajjad Quraishi against the accused Ahmad Ali Quraishi, and Liyakar Ali Quraishi as well as their father Anwarul Haq and their three other brothers referring to incident dated 19.07.2016 at about 06:00 PM. Allegation in the complaint was that two daughters of complainant Firdaus Bano and Gulishta Bano had gone to public hand



pump outside the house of the complainant for fetching water at that time Ahmad Ali and Liyakat Ali accused indulge in indecent gestures towards them and started pressing their breasts. The daughter Firdaus Bano sustained nail injuries. The girls were also beaten. On alarm being raised the complainant, his wife and others reached the spot and intervened.

(iv) It was further alleged that on the same day, Anwarul Haq, the accused and their brothers with common intentions forcibly entered the house of complainant and hurld filthy abuses and starting beating the daughters inside the house. Application further alleged that applicant gave information about the incident but neither application was taken nor medical got conducted. Application was also sent through Registered Post to Superintendent of Police, Jaunpur, D.G.P., Lucknow and National Human Right Commission, New Delhi. In the application, offence alleged against accused were under Section 323, 354, 504, 506, 452 IPC and Section 4 of POSCO Act.



9. In the said case, in paragraph Nos.20, 23 and 24 the Apex Court quashed the proceedings against the accused persons. Paragraph Nos.20, 23 and 24 are as under:

20. From the sequence of the events as noticed above, it is clear that dispute regarding property between complainant and father of the appellant is pending much before the alleged incident dated 19.07.2016. The fact that on the same date of the incident Police visited the spot and has drawn proceeding under Section 151, 107, 116 Cr.P.C. against both the parties and both the parties were required to maintain peace is a clear pointer to the nature of quarrel between the parties. It was more than six weeks thereafter that for the first time an application under Section 156(3) Cr.P.C. was filed by the complainant against the accused in the court of Session Judge.

23. In the facts of present case, we are fully satisfied that present is a case where criminal proceedings have been initiated by complainant with an ulterior motive due to private and personal grudge. The High Court although noticed the judgment of this Court



in State of Haryana v. Bhajan Lal (supra) in the impugned judgment but did not examine the facts of the case as to whether present is a case which falls in any of the category as enumerated in Bhajan Lal's case. The present case clearly falls in category VII of Bhajan Lal's case and the High Court failed to exercise jurisdiction under Section 482 Cr.P.C. in quashing the criminal proceeding initiated by the complaint.

24. In view of the foregoing discussions, we are of the view that in permitting Criminal proceedings against the appellant shall be permitting a criminal proceeding which has been maliciously instituted with ulterior motives, permitting such criminal proceeding to go on is nothing but the abuse of the process of the Court which needs to be interfered by this Court.

10. According to the learned counsel for the petitioner, facts of this case are similar to the facts dealt by the Apex Court in **Ahmad Ali Quraishi's** case (supra), though offences under the POCSO Act not involved therein. Therefore, quashment sought for is liable to be allowed.

11. The learned counsel for the defacto complainant



strongly opposed quashment of the proceedings on the submission that, even though there are litigations in between the family members of the victim and the accused, as pointed out by the learned counsel for the petitioner, the present occurrence is one regarding lifting the dhoti of the accused and showing his groin to the victim, aged 8 years. Therefore, the offence punishable under Section 11(i) of the POCSO Act would attract, apart from the offence under Section 509 of IPC, *prima facie*. In such a case, mere pendency of previous litigations is not a ground to quash the proceedings.

12. As on 27.06.2024, when the matter came up for hearing, the learned counsel for the petitioner submitted that, if there was an occurrence as alleged, that should have found a place in the CCTV footage from the cameras placed at the house of the victim. Accordingly, a report of the Investigating Officer has been called for and a report in this regard was placed. In the report, it has been specifically reported that, when the pendrive/CCTV footage containing visuals in between 20.02 hours and 20.04 hours on 06.12.2021 were scrutinized, there is visual whereby the



accused showing his bum, after lifting his dhoti without wearing brief, turning towards the house of the victim by standing on the courtyard of his house.

13. The learned Public Prosecutor given much emphasis to the report of the Investigating Officer so submitted, while opposing quashment by sharing the argument advanced by the learned counsel for the defacto complainant, on the point that as far as the present crime is concerned, the allegation as to commission of offences punishable under Sections 11(i) of the POCSO Act and 509 of IPC are fully made out, *prima facie*, necessitating trial of the matter. Therefore, the quashment is liable to fail.

14. At this juncture, the learned counsel for the petitioner pointed out that, even though the CCTV visuals in the pendrive would show lifting of his dhoti and showing his bum at the instance of the accused, as submitted by the learned Public Prosecutor and reported by the Investigating Officer, there is no corresponding evidence to see that the same was witnessed by the victim to attract the offences alleged. He has placed the CD before this Court to negative the said contention.



15. On evaluating the evidence, it is true that the parties are in rivalry as evident from Annexures.A1 to A4. As per Annexure.A5 the disputes between them were once settled. It was thereafter the present occurrence alleging commission offences punishable under Sections 11(i) of the POCSO Act and 509 of IPC was generated.

16. Evaluating the ingredients to attract the offence under Section 11(i) of the POCSO Act, it has been provided that, *a person is said to commit sexual harassment upon a child when such person with sexual intent,— (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child.*

17. In the present case, the allegation of the prosecution is that, the accused lifted his dhoti and showed his groin to the victim. Now the question arises for consideration is that, whether the allegation *prima facie* made out or the same is raised as a retaliatory measure to wreak vengeance against the petitioner, since the parties are in rivalry?



18. It is true that, when the parties are in rivalry, false implication of one among them in a serious crime would be resorted to wreak vengeance and to see the obliteration of the opponent. At the same time, there may be occurrences otherwise also. In this case, though the parties are in rivalry, the CCTV footage would show the overt acts at the instance of the petitioner. Therefore, the prosecution case is well made out, *prima facie*. In such a case, for the reasons argued by the learned counsel for the petitioner, quashment could not be resorted to. Therefore, quashment sought for is liable to fail and the matter would require trial. Even though, the learned counsel for the petitioner argued that, the overt acts seen in the CCTV footage is there, no corresponding evidence forthcoming to see that the victim seen the same. This argument cannot be considered for two reasons. The first and foremost reason is that, the same is a matter of evidence. The second one is; the specific case of the victim is that she had seen the same. However, this is a good defense for the petitioner during trial.

19. Accordingly, this petition stands dismissed.



Interim order in this matter stands vacated. However, it is specifically made clear that, the petitioner is at liberty to raise his contentions before the Special Court, with the aid of documentary and digital evidence, to prove his innocence, as per law. It is also made clear that the observations in this order are purely to decide the quashment sought for and the same have no binding effect. Therefore, the trial court is specifically directed to decide case on the basis of evidence fetterless of the observations in this order.

Registry is directed to forward a copy of this order to the Special Court, forthwith, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE