



2024/KER/53255

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

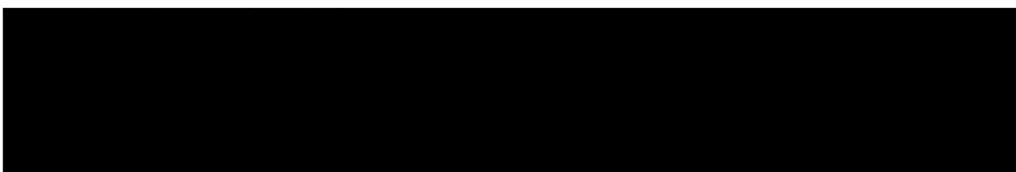
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946

CRL.REV.PET NO. 1064 OF 2023

CRIME NO.528/2022 OF HOSDURG POLICE STATION, KASARGOD
AGAINST THE ORDER DATED 05.09.2023 IN CRL.M.P. NO.330/2023 IN S.C.
NO.542 OF 2022 OF FAST TRACK SPECIAL COURT, HOSDURG

REVISION PETITIONER/1ST PETITIONER/2ND ACCUSED:



BY ADVS.
S.RAJEEV
M.S.ANEER
V.VINAY
ANILKUMAR C.R.
PRERITH PHILIP JOSEPH
SARATH K.P.

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031
(CRIME NO. 528/2022 OF HOSDURG POLICE STATION),
BY ADV PUBLIC PROSECUTOR
SR PP - RENJIT GEORGE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

This revision petition has been filed under Sections 397 and 401 of Code of Criminal Procedure (hereinafter referred as Cr.P.C. for convenience) challenging the order dated 05.09.2023 in CrI.M.P. No.330/2023 in S.C. No.542/2022 on the files of the Special Court for trial of cases under the Protection of Children from Sexual Offences Act (hereinafter referred as ‘POCSO Act’ for short) cases, Hosdurg. The petitioner herein is the 2nd accused in the above case.

2. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor, in detail. Perused the case diary and relevant materials available.

3. In this matter, the petitioner herein is answerable for offence punishable under Section 19(1) of the POCSO Act, on the allegation that, he being a person, who examined the victim herein, though got an apprehension that an offence



under the POCSO Act had been committed or had knowledge that such an offence had been committed, he failed to provide such information to the Special Juvenile Police or the local Police.

4. The prosecution allegation is that, when the victim, a minor aged 17 years, faced difficulty in urination, as advised by her friend, she reached Lakshmi Meghan Hospital on 21.04.2022, then the doctor therein examined her and found that she was pregnant. The father of the victim, who is responsible for the pregnancy threatened the victim, not to disclose this occurrence and stated that, if so, he would commit suicide. Later, the father took her to Manzoor Hospital, Kanhangad. A doctor examined her and stated that abortion could not be performed therein and directed to go to Mangalapuram. Accordingly, at 11.45 am on 22.04.2022 the victim along with her father reached Bhat's Nursing Home, Mangalapuram to abort the pregnancy. Then, the 2nd accused advised to have blood test and also did see the scan report, suggestive of pregnancy. As advised by the 3rd accused, she was admitted in the hospital and a tablet was put on her



vagina by the 3rd accused, so as to abort the pregnancy. The specific allegation against the 2nd accused/petitioner is that, even after obtaining the scan report and having knowledge regarding pregnancy of the minor victim, the same was not informed by the 2nd accused to the Police and accordingly the 2nd accused committed offence punishable under Section 19(1) of the POCSO Act.

5. According to the learned counsel for the revision petitioner/2nd accused, when the victim reached along with her father, the 2nd accused advised to have urine test and blood test and the same no way indicated pregnancy. It is further submitted that the prosecution failed to produce any documents or materials to show that the 2nd accused had apprehension regarding commission of offence under the POCSO Act or had knowledge that such an offence had been committed. Thus, the 2nd accused could not be penalized for the offence under Section 19(1) of the POCSO Act. The learned counsel for the petitioner placed decision of the Apex Court reported in ***Dr.Sr. Tessy Jose v. State of Kerala [2018 (3) KLT 934 (SC)]*** to substantiate this point.



Therefore, he pressed for the relief sought for.

6. The learned Public Prosecutor would submit that, going by the blood test report, the age of the victim was shown as 17 years. Therefore, the petitioner had knowledge as contemplated under Section 19(1) of the POCSO Act. Therefore, the impugned order does not require any interference.

7. In this matter, in fact, in the blood report nothing stated suggesting pregnancy. It is discernible from the witness statement of CW10 that she had conducted scanning test of the minor and according to her, on knowing the pregnancy of the minor, aged 17 years, the same was informed to the Hosdurg Police on 21.04.2022 at about 7.00 pm. Later, when the victim was in Bhat's Nursing Home on 22.04.2022 the Police reached there and brought the victim and father to the Police Station and FIR also registered on 22.04.2022 itself.

8. As pointed out by the learned counsel for the petitioner, in ***Dr.Sr. Tessy Jose's*** case (supra), the Apex Court considered a similar issue, where also offence under



Section 19(1) of the POCSO Act was alleged and in paragraph Nos.9 and 10 it has been held as under:

9. The entire case set up against the appellants is on the basis that when the victim was brought to the hospital her age was recorded as 18 years. On that basis appellants could have gathered that at the time of conception she was less than 18 years and was, thus, a minor and, therefore, the appellants should have taken due care in finding as to how the victim became pregnant. Fastening the criminal liability on the basis of the aforesaid allegation is too far fetched. The provisions of S.19(1), reproduced above, put a legal obligation on a person to inform the relevant authorities, inter alia, when he/she has knowledge that an offence under the Act had been committed. The expression used is "knowledge" which means that some information received by such a person gives him/her knowledge about the commission of the crime. There is no obligation on this person to investigate and gather knowledge. If at all, the appellants were not careful enough to find the cause of pregnancy as the victim was only 18 years of age at the time of delivery. But that would not be translated into criminality.



10. The term "knowledge" has been interpreted by this Court in A.S.Krishnan & Ors. v. State of Kerala (2004 (2) KLT SN 35 (C.No.40) SC = (2004) 11 SCC 576) to mean an awareness on the part of the person concerned indicating his state of mind. Further, a person can be supposed to know only where there is a direct appeal to his senses. We have gone through the medical records of the victim which were referred by Mr. Basant R., Senior Advocate for the appellants. The medical records, which are relied upon by the prosecution, only show that the victim was admitted in the hospital at 9.15 a.m. and she immediately went into labour and at 9.25 a.m. she gave birth to a baby. Therefore, appellant No. 1 attended to the victim for the first time between 9.15 a.m. and 9.25 a.m. on 7th February, 2017. The medical records of the victim state that she was 18 years' old as on 7th February, 2017. Appellant No. 1 did not know that the victim was a minor when she had sexual intercourse.

9. Finally, in view of the above discussion, the Apex Court quashed the proceedings against the doctor in the said case.

10. In the case at hand, as I have already pointed out,



on noticing the pregnancy of the minor victim, CW10 informed the Police and accordingly on the next day the Police reached Bhat's Nursing Home and registered crime. Therefore, the time gap between the arrival of the victim at Bhat's Hospital with the scan report and the arrival of the Police on 22.04.2022 is in between 11.45 am and 7.00 pm. In such a case, it could not be held that the petitioner herein willfully failed to report the matter, since the Police reached the hospital within 7.15 hours, while the victim was still at the hospital.

11. Thus, going through the statutory wording under Section 19(1) of the POCSO Act, it is emphatically clear that a duty is cast upon a person, who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, to provide such information to the Police. But, when a person notices that an offence under the POCSO Act has been committed and failed to inform the same within a reasonable time, definitely he said to have committed offence punishable under Section 19(1) of the POCSO Act.

12. Failure to inform the matter within a period of 7.15



hours alone is not sufficient to hold that there was failure to report the same to the Police. In my view, in order to fasten criminal culpability upon a person for failure to report to the Police regarding commission of offence under the POCSO Act and to make omission to report the same, as an offence punishable under Section 19(1) of the POCSO Act, there must be a deliberate omission to be gathered from the records. It is to be born in mind that, doctors are persons engaged in treating patients of multiple numbers, including patients who would require urgent attention, to save their lives. Say for instance, if a Gynecologist is at the out patient department, a minor girl (a victim of of POCSO Act crime) meets him with medical reports showing that she is pregnant, naturally a duty is cast upon the doctor to inform the same to the Police in terms of Section 19(1) of the POCSO Act. Suppose, at the time when the doctor notices the pregnancy of a minor girl, he gets a call from the ward that a pregnant lady would require urgent cesarean, it is his primary duty to attend the said surgery, so as to save the lives of the pregnant lady as well as the child in the womb. So, the doctor could return back only after the surgery, which may sometimes take hours. If the doctor could have to



attend another urgent cesarean thereafter, then also he could not get much time to inform about the pregnancy of a minor girl, soon after getting knowledge regarding the same. Therefore, reasonable time should be given to the doctors to inform such incidents to the Police. Viewing the duties of a doctor in this plank, in the instant case, the doctor failed to inform about pregnancy of a minor girl, within a period of 7.15 hours from the time of his knowledge, by the time, Police reached the hospital and soon crime was registered. In such a case, can criminal culpability to be imposed upon the doctor is the relevant question? The answer to the said question is; definitely 'no', because he did not get a reasonable time to inform the matter to the Police, since the matter already informed by another doctor and on the said information, Police reached the hospital and registered crime.

13. In my view, if there is omission even after getting information to report the same to the Police after 24.00 hours atleast, the offence punishable under Section 19(1) of the POCSO Act would get attracted. If the omission 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.

14. 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.

15. Thus, the impugned order dismissing discharge plea at the instance of the 2nd accused/revision petitioner herein is found to be erroneous and the same stands set aside.

Accordingly, this revision petition stands allowed and the revision petitioner is discharged from this crime.

Sd/ -

**A. BADHARUDEEN
JUDGE**



2024/KER/53255

CrL.R.P No. 1064 of 2023

12

APPENDIX OF CRL.RP NO.1064/2023

PETITIONER'S ANNEXURES :

**Annexure A1 THE TRUE COPY OF THE FINAL REPORT IN CRIME
NO.528/2022 OF HOSDURG POLICE STATION**

RESPONDENTS' ANNEXURES : NIL