



2025:KER:7822

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 4TH DAY OF FEBRUARY 2025 / 15TH MAGHA, 1946

CRL.MC NO. 2310 OF 2022

CRIME NO.884/2021 OF OLLUR POLICE STATION, THRISSUR

IN S.C. NO.929 OF 2021 ON THE FILES OF THE 1ST ADDITIONAL SESSIONS COURT,

THRISSUR

PETITIONER/ACCUSED NO.3:

DR. V.K. SULOCHANA
AGED 75 YEARS
W/O. DR. K.C. VISWANATHAN, NAVYA, NAIKANAL, THRISSUR P.O.,
THRISSUR, KERALA, PIN - 680001

BY ADVS.
K.T.BOSCO
P.DARLY JOHN

RESPONDENT/COMPLAINANT:

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

PP - JIBU T S

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
04.02.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 4th day of February, 2025**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings pursuant to Annexure.A1 Final Report in Crime No.884/2021 of Ollur Police Station, Thrissur, now pending as S.C. No.929/2021 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] (1st Additional District and Sessions Court), Thrissur. The petitioner herein is the 3rd accused in the above case.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor, in detail. Perused the Final Report and the decisions placed by the learned counsel for the petitioner as well as the learned Public Prosecutor.

3. In this matter, the prosecution allegation is that,



at about 13.30 hours on a day in the last week of January, 2021, the 1st accused trespassed upon the residence of the minor victim, aged 17 years and subjected her to sexual intercourse and as a result of the same, the minor victim became pregnant. On this premise, the prosecution alleges commission of offences punishable under Sections 450 and 376 of the Indian Penal Code and under Sections 4(1) read with 3(a), 6(ii) read with 5(j)(ii) of the POCSO Act, as against the 1st accused.

4. The prosecution allegation against the petitioner, who is the 3rd accused and the mother of the victim, who the 2nd accused is that, they failed to report the crime to the Police as provided under Section 19 of the POCSO Act and thereby they committed the offence punishable under Section 21 read with 19(1) of the POCSO Act.

5. The learned counsel for the petitioner vehemently argued to substantiate that the petitioner/3rd accused is absolutely innocent of the allegations and there was no deliberate omission on the part of the doctor to inform the crime to the Police. In this connection it is submitted that, as per the statement given by the victim, it



was stated that, she met Dr.Indu M.R. of Aswini Hospital, Thrissur, when there was no menstruation for a period of five months and the doctor advised to do scan examination. On scan examination, it was found that the victim was four months pregnant and accordingly, she was directed to go to Government Medical College Hospital and treat accordingly. In tune with the statement given by the victim, the learned counsel read out the statement given by Dr.Indu M.R., Aswini Hospital, Thrissur. In the statement of Dr.Indu M.R., she stated that she attended the minor victim and found that the she was pregnant and accordingly, she was sent to Government Medical College Hospital, Thrissur, for further treatment. The doctor's statement would show further that, since she found the same as MLC, it was reported on 03.06.2021 and the CMO of the hospital forwarded the same on 04.06.2021 to the Police. According to the learned counsel for the petitioner, in this matter, the FIR was registered on 04.06.2021 and the same would reveal that the First Information Statement of the victim was recorded while she was undergoing treatment at GEM Hospital, Thrissur, where the petitioner herein treated her. According



to the learned counsel for the petitioner, the pregnancy of the victim was first noticed by Dr.Indu M.R. on 31.05.2021 and on noticing the pregnancy of the minor victim, the doctor reported the same as MLC on 03.06.2021 and the CMO of the hospital forwarded the same on 04.06.2021 to the Police and the FIR was registered on 04.06.2021 itself. It is submitted by the learned counsel for the petitioner further that, though Dr.Indu M.R. advised the minor victim to have further treatment at Government Medical College, Thrissur, the victim opted her treatment at GEM Hospital, Thrissur, when there occurred bleeding and for the first time the petitioner had occasion to meet the victim was only on 02.06.2021 and accordingly she was given treatment and the pregnancy got aborted, to save the life of the victim. Since the crime was registered on 04.06.2021, while the victim was undergoing treatment at GEM Hospital, there is no deliberate omission on the part of the petitioner to report the matter to the Police. Therefore, the prosecution against the petitioner is unwarranted and the same would require quashment.

6. The learned counsel for the petitioner placed



decision in ***Dr.Radhakrishna S Naik v. State of Kerala*** reported in ***[2024 KLT OnLine 2268]***, where this Court, after referring the decision of the Apex Court in ***Dr.Sr. Tessy Jose v. State of Kerala*** reported in ***[2018 (3) KLT 934 (SC)]***, wherein the Apex Court discharged a doctor on the finding that there was no deliberate omission on the part of the doctor in the said case to report the crime under the POCSO Act. In paragraph Nos.11 and 12 of ***Dr. Radhakrishna S Naik's*** case (supra) this Court held as under:

"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."

7. The learned Public Prosecutor would submit that a duty is cast upon the doctor, when there is apprehension that an offence under the POCSO Act is likely to be committed or has knowledge that such an offence has been committed, to provide such information to the Special Juvenile Police Unit or the local Police for investigation and when there is omission in reporting the same, as provided under Section 19(1) of the POCSO Act, the same warrants penal consequences provided under Section 21 of the



POCSO Act. In the instant case, no records available to see that, even though the petitioner treated the victim on 02.06.2021 and continued the same thereafter, she had taken any steps to inform the same to the Police. Therefore, the petitioner is liable to be proceeded for the offence punishable under Section 21 read with 19(1) of the POCSO Act and the quashment sought for is liable to fail.

8. The learned Public Prosecutor placed decision of the Apex Court in ***The state of Maharashtra and Another v. Dr.Maroti S/o Kashinath Pimpalkar*** reported in ***[(2022) 0 AIR (SC) 5595 : (2022) 6 KLT (OnLine) 1002]***, to contend that, in cases of sexual abuse of minor girls, prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance. Therefore, such omissions would come within the teeth of Section 21 read with 19(1) of the POCSO Act. Paragraph Nos. 13 to 15 of the above decision are relevant and the same are extracted as under:

“13. In the decision in Shankar Kisanrao Khade’s case (supra), a two Judge Bench of this Court in paragraph 77.5 and 77.6 issued certain directions for due compliance and they read thus: -



“77.5. If hospitals, whether government or privately-owned or medical institutions where children are being treated come to know that children admitted are subjected to sexual abuse, the same will immediately be reported to the nearest Juvenile Justice Board/SJPU and the Juvenile Justice Board, in consultation with SJPU, should take appropriate steps in accordance with the law safeguarding the interest of the child.

77.6. The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening the offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law.”

14. In Vijay Madanlal Choudhary’s case (supra), this Court observed that the length of punishment is not only the indicator of the gravity of offence and it is to be judged by a totality of factors, especially keeping in mind the background in which the offence came to be recognized by the Legislature in the specific international context. In this context, it is



also relevant to note that the United Nations Convention on Rights of Children, which was ratified by India on 11.12.1992, requires the State parties to undertake all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices etc. Articles 3 (2) and 34 of the Convention have placed a specific duty on the State to protect the child from all forms of sexual exploitation and abuse.

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 164 A 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 53 A 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.”

9. Going by the decisions placed by the learned counsel for the petitioner as well as the learned Public Prosecutor, it is not in dispute that prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and its failure on coming to know about the commission of any offence under the Act would defeat the very purpose and object of the Act. No doubt, medical examination of the victim as also the



accused would give many important clues in a case that falls under the POCSO Act. Therefore, timely reporting is inevitable to start the investigation without much delay, including medical examination of the victim, in time. At the same time, when evaluating the materials of the prosecution in order to see whether there was willful or deliberate omission on the part of the doctor, the facts of each case should be evaluated to see whether there was deliberate or intentional omission, so as to fasten criminal culpability upon the doctor.

10. In the instant case, the minor victim was first treated by Dr.Indu M.R., Aswini Hospital, on 31.05.2021 and as per her statement she reported the same as MLC on 03.06.2021 and accordingly the CMO of the hospital reported the same to the Police. On 04.06.2021, while the victim was undergoing treatment at GEM Hospital, under the management of the petitioner herein, her statement was recorded and crime was registered. It is true that, the prosecution records no way suggest that, though the petitioner started treating the victim from 02.06.2021 and continued the same till 04.06.2021, she had taken any



steps to report the same to the Police. But, on 04.06.2021, the Police reached the hospital, while the victim was under the treatment of the petitioner and the crime was registered.

11. Technically speaking, the petitioner got knowledge regarding the commission of POCSO Act offences on 02.06.2021 and she did not inform the same to the Police. But, according to the learned counsel for the petitioner, it was already informed by Dr.Indu M.R. and crime was registered on 04.06.2021. Now, the question poses for consideration is, whether there is any deliberate or willful omission on the part of the petitioner in the matter of reporting the crime to the Police, in the facts of the given case, as discussed? and the other question arises for consideration is; on getting information regarding commission of offence under the POCSO Act, once the doctor who initially attended the victim already informed the matter to the Police, whether non furnishing of information again by another doctor, who treated the victim subsequently, by itself would attract an offence punishable under Section 21 read with 19(1) of the POCSO Act?



12. In this matter, initially the victim was treated by Dr.Indu M.R. on 31.05.2021 and on noticing pregnancy of the minor victim, she reported the same as MLC on 03.06.2021 and the CMO of the hospital reported the same to the Police on 04.06.2021. Accordingly, crime also got registered on 04.06.2021. The petitioner herein treated the victim from 02.06.2021 onwards and the crime was registered on 04.06.2021, acting on the earlier information given by Dr.Indu M.R, who treated the victim for the first time. In fact, when a doctor, who had occasion to treat or attend a victim of the POCSO Act offence, gets knowledge regarding commission of the offence under the POCSO Act, he is duty bound to report the same to the Police, in view of the mandate of Section 19(1) of the POCSO Act. But the statute does not provide an outer time limit for the same. Therefore, the intent behind the legislature is to report commission of the offence under the POCSO Act, without much delay.

13. In the instant case, Dr.Indu M.R, who initially treated the victim on 31.05.2021, on noticing the pregnancy of minor girl, reported the same as MLC on



03.06.2021 and the CMO of the hospital reported the same to the Police on 04.06.2021 and crime was registered on 04.06.2021. In the meantime, the petitioner also had occasion to treat the victim on 02.06.2021 onwards and on 04.06.2021 the Police, acting on the request given by Dr.Indu M.R., who attended the victim for the first time, registered the crime. In such a case, it is held that, when the initial doctor, who treated or had occasion to attend the victim, on getting knowledge regarding commission of the offence under the POCSO Act, reports the same without much delay and on the basis of the same crime also registered, criminal prosecution against the doctor or doctors, who subsequently treated the same victim for the offence under Section 21 read with 19(1) of the POCSO Act, is an abuse of process of court, since the doctor who initially treated the victim already informed the same to the Police and crime was also registered. No doubt, such prosecution shall be avoided.

14. Viewing so, there is no deliberate omission on the part of the petitioner in reporting the crime, in the facts discussed. Holding so, I am of the view that the criminal



prosecution as against the petitioner in this crime, alleging commission of offence punishable under Section 21 read with 19(1) of the POCSO Act is unwarranted and without any justification, *prima facie*. Therefore, I am inclined to allow the prayer for quashment at the instance of the petitioner.

15. Accordingly, this petition stands allowed and all further proceedings pursuant to Annexure.A1 Final Report in Crime No.884/2021 of Ollur Police Station, Thrissur, now pending as S.C. No.929/2021 on the files of the Special Court for the trial of cases under the POCSO Act (1st Additional District and Sessions Court), Thrissur, stand quashed as against the petitioner/3rd accused.

Registry is directed to forward a copy of this order to the trial court, within seven days, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE