



2025:KER:42238

Crl.M.C.No.3538/2025

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 17TH DAY OF JUNE 2025 / 27TH JYAISHTA, 1947CRL.MC NO. 3538 OF 2025AGAINST THE ORDER IN SC NO.735 OF 2023 OF SPECIAL COURT UNDER
POCSO ACT, KOZHIKODEPETITIONER/ACCUSED:

DR.C.M.ABOOBACKER,
AGED 79 YEARS
S/O. ABDURAHIMAN HAJI,
MEGHA MALHAR, GOLF LINK ROAD,
CHEVARAMBALAM, KOZHIKODE, PIN - 673001

BY ADVS. SHRI.NIRMAL.S
SMT.VEENA HARI
SMT.KEERTHY JOHNSON
SMT.MINTU JOSE
SMT.GINI GEORGE
SMT.AISHWARYA SHIVAKUMAR

RESPONDENTS/STATE & DE FACTO COMPLAINANT:

- 1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-.682 031.
(STATION HOUSE OFFICER, CUSBA POLICE STATION, KOZHIKODE).
- 2 XXXXXXXXXXXXXXXX
XX, PIN - 673001

SMT PUSHPALATHA M.K., SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
11.06.2025, THE COURT ON 17.06.2025 PASSED THE FOLLOWING:

**ORDER**

The petitioner is the accused in S.C.No.735/2023 on the files of the Fast Track Special Court (POCSO Act), Kozhikode. The offences alleged against him are under Section 354A(1)(i) of the Indian Penal Code, 1860 (*in short, 'IPC'*), and Sections 9 (e), 9(l) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012, (*in short, 'POCSO Act'*). The allegation is that the petitioner, a pediatrician aged 80 years, committed the offence of aggravated sexual assault upon a girl studying in 10th standard. It is alleged that on 11.04.2023 and 17.04.2023, when the victim girl came to the dispensary of the petitioner for treatment of abdominal pain and chest pain, he put his hands inside her garments and resorted to sexual assault by pressing her breasts and also in naval portion. The offence is said to have been committed in the examination room of the petitioner. On 11.04.2023, the mother of the victim was said to be sitting by the side of the victim when the petitioner allegedly resorted to the aforesaid sexual assault. So also, on 17.04.2023, when the petitioner allegedly resorted to the sexual assault, the elder sister of the victim was said to be sitting by the side of her in that examination room. The case was registered by the Kozhikode Kasaba Police on



17.04.2023 on the basis of the statement given by the victim. After the completion of the investigation, the Sub Inspector of Police, Kasaba Police Station, Kozhikode, filed the final report before the Additional District and Sessions Court (For The Trial of Cases Relating to Atrocities and Sexual Violence towards Women and Children), Kozhikode.

2. In the present petition, the petitioner would contend that he is totally innocent, and that he has been falsely implicated in this case. According to the petitioner, what all done by him were perfectly within the parameters of clinical examination of the patient. It is further stated that the petitioner had examined the minor girl in the presence of the near relatives in both the occasions. According to the petitioner, he is a Doctor who started his practice in the year 1970, and he has been following clinical methods for examination which is the foundational stone for any medical practitioner. Thus, it is contended that the proceedings initiated against him would amount to abuse of process of law, and hence it is highly necessary to quash the same.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.



4. The statement given by the victim to the Investigating Officer, and also to the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (*in short*, 'Cr.PC'), would go to show that she had clinical complaints of chest pain and abdominal pain. So also, it could be seen from the aforesaid statements that the victim complained about the pain upon her collar bone and also about growth deficiency. According to the prosecution, it was on 08.04.2023 that the victim met the petitioner for the first time for the purpose of treatment. On that day after examining the victim, the petitioner is said to have advised her to undergo scanning and to come with the scan report. It is thereafter that the victim visited the petitioner for the second time on 11.04.2023 along with her mother. Admittedly, when the petitioner physically examined the victim at the treatment room, her mother was sitting by the side of her. It is at that time that the petitioner allegedly put his hands inside her innerwear and pressed her breasts and naval portion pretending it to be part of the medical examination of that patient. The victim has stated in her First Information Statement [FIS] that at first, the petitioner had pressed her breasts with the stethoscope, and it is only later on that he inserted his hands inside her innerwear and pressed her breasts. The



victim is said to have complained about the above said objectionable acts of the petitioner only a few days before her second visit to the petitioner on 17.04.2023. When told about the above incident to her elder sister, she is said to have told the victim that it might be due to some misunderstanding that she thought that there had been objectionable touches from the part of the petitioner. It is thereafter that the victim, along with her elder sister, met the petitioner on 17.04.2023 for the purpose of further treatment. At that time also, the petitioner is alleged to have followed the same procedure which he had done on 11.04.2023 in the presence of the elder sister of the victim. However, the elder sister of the victim is said to have noticed it only a little bit later, when she found the victim shivering. Thereupon, the elder sister of the victim is said to have raised her voice against the above act of the petitioner, which eventually resulted in preferring the complaint before the Police.

5. In order to attract Section 354A(1)(i) IPC, it has to be shown that the petitioner has resorted to physical contact and advances involving unwelcome and explicit sexual overtures. Thus, it is of prime importance to show that the offender had committed the act with sexual intention. Likewise, to establish the offence of sexual assault as



envisaged under Section 7 of the POCSO Act, it has to be shown that the offender had done the act with sexual intent. Therefore, it has to be looked into whether the alleged act committed by the petitioner was with sexual intent. In this context, it is worth to note that the medical examination of the victim was conducted by the petitioner in the presence of the mother of the victim on the first occasion, and in the presence of the elder sister of the victim on the second occasion. There is no case for the mother of the victim, or for the elder sister of the victim, that the physical examination of the victim was conducted by the petitioner beyond the visibility of the above persons. It is too hard to believe that the petitioner would have resorted to sexual advances upon the victim in the close presence of the victim's mother and elder sister. That apart, it is not possible to ignore the fact that the victim complained about chest pain and abdominal pain. Even as per the version of the victim in her FIS, the petitioner had applied stethoscope upon her breasts at the first time, and it is only thereafter that he pressed her breasts with hands. Neither the statement given by the victim to the Police, nor her statements to the learned Magistrate under Section 164 Cr.PC, contained any indication that the alleged act committed by the



petitioner was with sexual intent. It is true that the statement given by the victim to the Magistrate under Section 164 Cr.PC, contained a casual indication that she felt the move on the part of the petitioner as a bad touch. But, it would be highly unsafe and improper to act upon the above isolated casual remark of the victim, to come to a conclusion that the petitioner had acted with sexual intention. The chances of that adolescent girl getting misunderstood about the act of the petitioner, cannot be ignored. At any rate, the act of the petitioner cannot be termed to be an outrageous sexual act since it is clear from the statement of the victim itself that she had complaints of chest pain and abdominal pain, and that it is for the treatment of the above ailments that she had approached the petitioner.

6. In this context, Section 41 of the POCSO Act assumes much relevancy. As per Section 41 of the POCSO Act, the provisions of Sections 3 to 13 shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian. As far as the present case is concerned, the medical examination of the victim was conducted with the consent of her mother as well as her



elder sister. So also, it is to be noted that the victim was medically examined by the petitioner in the vicinity of her mother and elder sister. That being so, it is not possible to say that the prosecution records would disclose that the petitioner had resorted to the alleged acts with sexual intent. In that view of the matter, the prayer of the petitioner to quash the proceedings against him, is perfectly justifiable.

In the result, the petition stands allowed. The proceedings against the petitioner/accused in S.C.No.735/2023 on the files of the Special Court under the POCSO Act, Kozhikode, which arose out of Crime No.290/2023 of Kozhikode Kasaba Police Station, are hereby quashed.

Sd/-
G. GIRISH, JUDGE

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