

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

CRL.MC NO. 9875 OF 2024

CRIME NO.1013/2018 OF Kallambalam Police Station,

Thiruvananthapuram

PETITIONER/DEFACTO COMPLAINANT:

XXXXXXXXXX

XXXXXXXXXX

BY ADVS.

BINI KRISHNA

SUBHAJA P.

RESPONDENTS/STATE:

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

2 ABDUL SHUKOOR
S/O MUHAMMED HANEEFA SHAMEEM LAND NEAR JAGGI
AUDITORIUM KALLAMABALAM, KADAVOOR VILLAGE
THIRUVANANTHAPURAM, PIN - 695605.

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
25.11.2024, THE COURT ON 06.01.2025 PASSED THE FOLLOWING:



Crl.M.C.No.9875/2024

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“C.R”

A. BADHARUDEEN, J.

Crl.M.C No.9875 of 2024

Dated this the 6th day of January, 2025

O R D E R

This Criminal Miscellaneous Case has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short), by the defacto complainant in Crime No.1013/2018 of Kallambalam Police Station, Thiruvananthapuram, seeking the following reliefs:

(i) *quash the charge sheet in S.C.No.1235/2018, marked as Annexure A2, based on the petitioner's decision to not proceed with the prosecution.*

(ii) *stay the further proceedings in S.C.No.1235/2018 pending the disposal of this Criminal Miscellaneous Case.*

(iii) *Pass such other and further orders as this Hon'ble Court may deem fit and proper in the interest of justice."*

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor on admission. Perused the records.



3. Here the prosecution alleges commission of offences punishable under Section 341 and 354A as well as Sections 7, 8, 11(1), 12 and 18 of the Protection of Children from Sexual Offence Act, 2012 ('POCSO Act' for short), by the accused. The prosecution allegation is that the accused with intention to subject the minor girl to sexual intercourse, an year before, while she was learning bicycle peddling through the public road, caught hold on her hand with sexual intent and thereby molested her. Again at 7.45 a.m on 21.07.2018, when the victim reached the place of occurrence near an auditorium, the accused wrongfully restrained her and commented that her breasts have become big (മുലയൊക്കെ വലുതായല്ലോ?) and also attempted to caught hold on her with sexual intent.

4. While seeking the quashment sought for, the learned counsel for the petitioner argued that none of the ingredients to attract the offences is made out, *prima facie*, and therefore the quashment is liable to succeed. He also submitted that now the matter has been settled and the petitioner/defacto complainant filed Annexure A5 affidavit in this regard.

5. The learned Public Prosecutor strongly opposed the



quashment and pointed out Annexure A4 order.

6. In this matter, earlier as per Annexure A4 order, this Court considered challenge against discharge plea raised by the accused before the trial court, which was dismissed by Annexure-A3 order dated 21.12.2020, after meticulously analysing the facts of the case and held as under:

“The petitioner is discharged of the offences punishable under Section 341 of the IPC and Sections 7 r/w 8 and 18 of the POCSO Act. The trial court shall frame a charge for the offences punishable under Section 354A(iv) of the IPC and Section 11(i) r/w 12 of the POCSO Act and try him in accordance with law.”

7. Thus this is a case wherein the discharge plea raised by the petitioner was dismissed by the trial court as per Annexure-A3 and this Court while reconsidering the plea of discharge, categorically found that offence under Section 354A(iv) of Cr.P.C as well as Section 11(i) read with 12 of the POCSO Act are made out and the accused is liable to be prosecuted for the same.

8. Now the defacto complainant seeks quashment of the proceedings on the ground of settlement on asserting that the case was registered while she was aged 15 years and the same is based on a



misunderstanding of facts. The legal question poses for consideration is when cases under the POCSO are sought to be settled, whether any predominance is available to the defacto complainant/victim than the accused?

9. In the decision reported in [2024 INSC 846], ***Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.*** the Apex Court considered a case where prosecution alleged commission of offences punishable under Sections 354A, 342, 509 and 504 of IPC and Sections 7 and 8 of the POCSO Act as well as Sections 3(1)(r), 3(1)(s), 3(1)(b) and 3(2)(vii) of the Schedule Cast and Schedule Tribe (Prevention of Atrocities) Act, 1989 ('SC/ST Act' for short), where a minor child victim was patted on her cheeks by the accused and he put his hand inside the bodice and rubbed her breast, where the High Court of Rajasthan quashed the proceedings despite the opposition of the learned Public Prosecutor where the dispute had been settled in between the victim and the accused. After discussing the matter at length, the Apex Court held in paragraphs 32 and 33 as under:

“32. In the decision relied on by the High Curt to quash the proceedings viz., Gian Singh's case (supra) and the decision in



Laxmi Narayan's case (supra) in unambiguous terms this Court held that the power under Section 482 Cr.P.C could not be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society. When an incident of the aforesaid nature and gravity allegedly occurred in a higher secondary school, that too from a teacher, it cannot be simply described as an offence which is purely private in nature and have no serious impact on the society.

33. *In view of the reasons as aforesaid and in the light of the decisions referred supra, the impugned order dated 04.02.2022 of the High Court in S.B.C.R.M.P No.1348/2022, quashing the FIR No.6/2022 dated 08.01.2022 and all further proceedings pursuant thereto solely on the ground that the accused and the complainant had settled the matter, invites interference. We have no hesitation to hold that in cases of this nature, the fact that in view of compromise entered into between the parties, the chance of a conviction is remote and bleak also cannot be a ground to abruptly terminate the investigation, by quashing FIR and all further proceedings pursuant thereto, by invoking the power under Section 482, Cr.P.C. In the said circumstances, this appeal is allowed. The impugned order dated 04.02.2022 of the High Court in S.B.C.R.M.P.No.1348/2022 is hereby quashed and set aside. Consequently, the FIR No.6/2022, investigation and criminal proceedings pursuant thereto subject to the nature of the report to be filed under Section 173(2), Cr.P.C., be proceeded with against the accused, in accordance with law."*

10. No doubt, serious offences under the POCSO Act could not be settled and the same is a crime against the public at large and



against the interest of the children, who were intended to be protected by the enactment. Therefore, quashment sought for on the ground of settlement when moved by the defacto complainant or the accused, the prime consideration is whether there were materials to see commission of offences. If the prosecution evidence would show, *prima facie*, materials to hold that the offences are made out, quashment on the ground of settlement moved by the accused or the defacto complainant could not be allowed.

11. Applying the same ratio in the present case, where very serious allegations of sexual assault and other offences are alleged, quashment of the proceedings at the instance of the defacto complainant, could not be allowed. In such cases the status of the victim also is not different from the accused. In such view of the matter, the present petition filed by the defacto complainant is liable to fail.

12. Accordingly, this petition stands dismissed.

Registry is directed to forward a copy of this order to the jurisdictional court for information and further steps.

Sd/- **A.BADHARUDEEN, JUDGE**

rtr/



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APPENDIX OF CRL.MC 9875/2024

PETITIONER' S ANNEXURES

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| ANNEXURE A1 | CERTIFIED COPY OF THE FIR NO.1013/2018 OF KALLAMBALAM POLICE STATION DATED 21.07.2018 WITH FIS. |
| ANNEXURE A2 | A TRUE COPY OF THE CHARGE SHEET IN SC.NO.1235/2018 ON THE FILE OF THE HON'BLE SPECIAL FAST TRACK COURT JUDGE, VARKALA DATED 29.08.2018. |
| ANNEXURE A3 | A TRUE COPY OF THE ORDER IN CMP NO 3/2020 IN SC NO 1235/2018 ON THE FILE OF THE HON'BLE SPECIAL FAST TRACK COURT JUDGE, VARKALA DATED 21/12/2020. |
| ANNEXURE A4 | A TRUE COPY OF THE ORDER IN CRL RP NO 59/2021 ON THE FILE OF THE HON'BLE HIGH COURT DATED 18/07/2024. |
| ANNEXURE A5 | A TRUE ATTESTED COPY OF THE AFFIDAVIT OF THE PETITIONER DATED 13.11.2024. |