



Crl.Appeal No.1638/2023 : 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 23<sup>RD</sup> DAY OF JUNE 2026 / 2ND ASHADHA, 1948

CRL.A NO. 1638 OF 2023

CRIME NO.391/2004 OF Kunnamkulam Police Station, Thrissur

AGAINST THE JUDGMENT DATED 31.10.2023 IN SC NO.145 OF 2014 OF  
FAST TRACK SPECIAL COURT, (POCSO) KUNNAMKULAM

APPELLANT/2ND ACCUSED:

ASHRAF,  
AGED 52 YEARS,  
S/O SALAMU, KUNDUKULANGARA HOUSE ANANGODE DESOM PONANI  
TALUK, MALAPURAM DISTRICT, PIN - 679577.

BY ADVS.  
SRI.ARUN.B.VARGHESE  
SMT.RAKHI RAJ

RESPONDENT/STATE:

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

SENIOR PUBLIC PROSECUTOR SRI VIPIN NARAYAN.A

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON  
03.06.2026, THE COURT ON 23.06.2026 DELIVERED THE FOLLOWING:



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: 2 :

**“C.R”*****A. BADHARUDEEN, J.***

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*Crl.Appeal No.1638 of 2023*

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*Dated this the 23<sup>rd</sup> day of June, 2026****J U D G M E N T***

The 2<sup>nd</sup> accused in S.C.No.145/2014 on the files of the Special Court under the Protection of Children from Sexual Offences Act ('POCSO Act' for short hereafter) has filed his appeal challenging the verdict in the above case dated 31.10.2023.

2. Heard the learned counsel for the accused as well as the learned Public Prosecutor appearing for the State. Gone through the verdict impugned and the evidence available.

3. Originally, during investigation 3 accused were arrayed in this crime alleging commission of offences punishable under Sections 376 and 506(ii) read with 34 of the Indian Penal Code ('IPC' for short) as well as Section 4(1)(2), 5(1)(a)(b)(c)(d), 6(1) (b) of Immoral Traffic (Prevention) Act, 1956 ('ITP Act' for short), by them. The allegation is that accused No.1 promised to arrange a job visa to the defacto



complainant (PW2) for a job in a supermarket in Sharjah and on the said promise, on 03.01.2004, after getting money from PW2 for the said purpose, accused No.1 sent PW2 to accused No.2 in Sharjah. Accused No.2 had taken PW2 from the Sharjah Airport and took her to his flat. Thereafter she was detained in his flat and committed rape on her for 2-3 days in his flat on saying, that was the super market. Thereafter he supplied her to several other persons on getting money from them for sexual molestation.

4. Since accused Nos.1 and 3 absconded, the learned Special Court framed the charge for the said offences against the appellant/accused and thereafter recorded evidence. PW1 to PW8 were examined and Exts.P1 to P17 were marked on the side of the prosecution. No defence evidence was adduced. On analysis of the evidence, the learned Special Judge found that the appellant committed offences punishable under Section 376 and 506(ii) of IPC as well as under Sections 5 and 6 of the ITP Act and sentenced him as under:

*“In the result,*

*1. The accused is sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.50,000/- (Rupees Fifty*



*thousand only) for the offence punishable under section 376 of the Indian Penal Code, and in default of payment of fine, he shall undergo rigorous imprisonment for a further period of 10 months.*

*2. The accused is also sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- (Rupees Ten thousand only) for the offence punishable under section 506(ii) of the Indian Penal Code, and in default of payment of fine, he shall undergo rigorous imprisonment for a further period of 2 months.*

*3.The accused is further sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.50,000/- (Rupees Fifty thousand only) for the offence punishable under section 5 of the Immoral Traffic (Prevention) Act, 1956 and in default of payment of fine, he shall undergo rigorous imprisonment for a further period of 10 months.*

*4.The accused is also sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.50,000/- (Rupees Fifty thousand only) for the offence punishable under section 6 of the Immoral Traffic (Prevention) Act, 1956 and in default of payment of fine, he shall undergo rigorous imprisonment for a further period of 10 months.*

*5. If the fine amount is realized, an amount of Rs. 1,00,000/- (Rupees One lakh only) shall be released to PW2, as compensation U/S.357 (1) (b) of Cr.P.C.*



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*6. The substantive sentences shall run concurrently”*

5. The learned counsel for the appellant raised multiple contentions to unsustain the verdict. The main contention raised by the learned counsel for the appellant is that, as far as the allegation of rape levelled against the appellant is concerned, the same, in its entirety, occurred in Sharjah and, therefore, even though sanction under Section 188 Cr.P.C. is not necessary for conducting the investigation of the crime and filing the charge sheet, sanction is necessary to proceed with the trial and in the instant case no such sanction is obtained. Therefore, the entire prosecution is vitiated. He has placed a decision of this Court reported in [2018 KHC 350 : 2018(2) KLJ 925 : 2018 (3) KLT SN8], ***Shajan Theruvath v. State of Kerala and Another*** holding the said view. Apart from that, he has placed a decision of the Apex court reported in [2011 KHC 4798 : AIR 2011 SC 2900 : 2011 (9) SCC 527 : 2011 CriLJ 4925 : 2011 (3) SCC (Cri) 772], ***Thota Venkateswarlu v. State of A.P and Another***, where the Apex Court held as under:

*“The language of S.188 CrPC is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso,*



*however, Indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal's case (supra), it was held that sanction under S.188 CrPC is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to S. 188 CrPC. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required. It may also be indicated that the provisions of the Indian Penal Code have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of S.4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the Indian Penal Code, subject to the limitation imposed under the proviso to S.188 CrPC.”*

6. The learned Public Prosecutor opposed this contention and submitted that sanction under Section 188 Cr.P.C. is not necessary. In this connection, reliance has been placed in the decision of this Court reported in [2024 KHC 482 : 2024 KHC OnLine 482 : 2024 KER 41294 : 2024 LiveLaw (Ker) 358 : 2024 KLT OnLine 1899], **Darvin Dominic v. State of Kerala**, wherein this Court considered paragraph 14 of the



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decision of the Apex Court reported in [2022 (2) KHC 846 : 2022 KHC OnLine 6335 : 2023 CriLJ 411 : 2022 LiveLaw (SC) 321], ***Sartaj Khan v. State of Uttarakhand***.

7. According to the learned Public Prosecutor in this case after sharing common intention between accused Nos.1 to 3, to take PW2 for the purpose of prostitution, the 1<sup>st</sup> accused offered job to PW2 in a supermarket in Sharjah and PW2 was deported to Sharjah by the 1<sup>st</sup> accused. Thus she was given under the control of the 2<sup>nd</sup> accused. Then the 2<sup>nd</sup> accused detained her and subjected her to rape for 3 days and also provided her to others for sexual molestation, ie., prostitution. Hence the 2<sup>nd</sup> accused facilitated prostitution, apart from committing rape on her. Therefore, the initial part of the offences occurred in India and the prominent part of the offences occurred in Sharjah and in such view of the matter, following the ratio in ***Darvin Dominic***'s case (*supra*), in the instant case sanction under Section 188 Cr.P.C is not necessary to prosecute the appellant/2<sup>nd</sup> accused and other accused persons.

8. Another point argued by the learned counsel for the appellant is that this crime was registered after a delay of 22 days



subsequent to the arrival of PW2 in home country. It is also argued that in such a case the entire prosecution case is in the midst of doubts because of this delay and therefore the evidence of PW2 could not be believed and thus the appellant is entitled to get benefit of doubt.

9. Opposing this contention, the learned Public Prosecutor vehemently argued that the evidence of PW2 is wholly reliable and the learned Special Judge is right in holding that the appellant/2<sup>nd</sup> accused committed the offences punishable under Sections 376 and 506(ii) of IPC as well as under Sections 5 and 6 of the ITP Act. Therefore, the verdict doesn't require any interference.

10. Here the questions arise for consideration are:

(i) Whether the Special Court is right in holding that the appellant committed the offence punishable under Section 376 of IPC?

(ii) Whether the Special Court is right in holding that the appellant committed the offence punishable under Section 506(ii) of IPC?

(iii) Whether the Special Court is right in holding that the appellant committed the offence punishable under Section 5 of the ITP Act?



(iv) Whether the Special Court is right in holding that the appellant committed the offence punishable under Section 6 of the ITP Act?

v) Whether it is necessary to interfere with the verdict under challenge?

(vi) The order to be passed?

Points (i) to (vi)

11. In this case when Ext.P2 complaint was lodged by PW2 before PW4 Circle Inspector, Kunnankulam, Ext.P4 FIR was registered and the allegations were investigated. PW4, PW5, PW7 and PW8 investigated the crime and PW8 filed final report in this matter. As already stated, PW2 examined in this case is the victim. According to her, she was familiar with the 2<sup>nd</sup> accused (Ashraf) at the dock and she had resided in Kunnankulam during 2003-04. Latheef(A1) was the friend of Ashraf(A2) and she had lodged Ext.P2 complaint against them. Her version is that offering job in a supermarket as stated by Ashraf, Latheef had sent her to Airport on 03.01.2004 and she was taken from there by the appellant. Then he brought her to his flat and one of his friends also



accompanied him. Her husband's sister Usha(A3) and another lady by name Jasmine were also at the flat. On the date of arrival at about 7 p.m after giving food, she was asked to take rest in a room. Her husband's sister Usha slept at the hall. At 10 a.m, Ashraf reached the room and stated that it was the supermarket and he forcefully removed her dress. When she slapped him, he tied her with a shawl in the cot. When she requested the accused to help her and when asked whether she was brought for this purpose, he replied that she was brought for this purpose with knowledge of her mother in law and the husband's sister after giving Rs.20,000/-. Thereafter she was detained at the flat for 3 days and subjected her to cruelty, abuse and sexual intercourse without her consent. According to her, the accused done so after removing her underwear and putting his penis into her vagina. Then he continued the same for a period of 3 days and she was only permitted to look outside through a hole at the room. Later she was brought to the flat of a person named Majeed and she was subjected to forceful sexual intercourse by persons named Musthafa, Majeed, Shibin along with 2 others and Ashraf forced her for prostitution and obtained money from them. She understood that the appellant was



engaged in prostitution and for the said purpose she was brought and her name was stated as 'Athira' and her sister in law's name was stated as 'Arya'. Later again she was brought to another flat and then she became ill and she was produced before a doctor hailing from Tamil Nadu and she informed these events to the doctor in Tamil and given her brother's number to the doctor. The doctor called her brother and in turn her brother called Ashraf at 5 p.m and demanded him to send back her at the earliest. Soon her brother along with others reached the house of Ashraf and Latheef and thereafter she was given 5 minutes' time to talk in telephone and she was threatened from disclosing the events by Ashraf by standing nearby and later she was sent back and she had lodged the complaint. During cross examination, PW2 stated that Usha died and she did not go to Sharjah at the intervention of Usha and it was Latheef who offered the employment. Her other relationship and the difference of opinion between herself and her husband were asked during cross examination to shake her veracity, but nothing brought out. Apart from that, she stated that the occurrence was 19 years before the date of her examination (i.e on 22.08.2023). The defense case suggested during cross examination of



PW2 is that when Latheef demanded money for the visa and threatened her, in order to avoid the payment of money, a false case was foisted, but the said suggestion was specifically denied by PW2. She added that Usha was also detained in similar way and Usha faced the situation as she had no opportunity to escape.

12. Coming to the question as to whether sanction under Section 188 of Cr.P.C is necessary in the present case the law is well settled. In the instant case prosecution allegation is that after sharing common intention between accused 1 to 3, the 1<sup>st</sup> accused in connivance with the 2<sup>nd</sup> and 3<sup>rd</sup> accused with intention of taking PW2 for sexual molestation and prostitution, they offered an employment visa to PW2 in a supermarket in Sharjah and accordingly she was sent by the 1<sup>st</sup> accused to Sharjah. The appellant/2<sup>nd</sup> accused taken her to his flat from Sharjah airport and subjected her to rape repeatedly for 3 days and thereafter also she was taken to some other places for the purpose of prostitution and the money thereof was received by accused Nos.2 and the 3<sup>rd</sup> accused abetted these overt acts. As per the judgment impugned, the learned Special Judge found that accused Nos.1 and 3 had been absconding. In the instant case,



at the very inception, it could be gathered that the appellant had no supermarket and he had subjected PW2 to sexual overtures and rape on the first day of her arrival and continued the same for three days. Therefore, she was subjected to prostitution by several of the persons, as already mentioned. This vital aspect would show that the 1<sup>st</sup> and 2<sup>nd</sup> accused jointly taken her for prostitution. Thus the decision to take her for prostitution was taken jointly by the 1<sup>st</sup> and 2<sup>nd</sup> accused with the connivance of the 3<sup>rd</sup> accused, while PW2 and the 1<sup>st</sup> accused were in India and in continuation of the same, subsequent acts of sexual harassment and prostitution were carried out in Sharjah. Thus the facts of the case would reveal that the alleged offences not fully occurred in Sharjah and part of the offences occurred in India. In this context the entire offences were not committed in foreign country so as to obtain sanction under Section 188 Cr.P.C, and the initial part of the occurrence was in India and latter part was in Sharjah. In ***Darvin Dominic***'s case (*supra*) it is held by this Court relying on the Apex Court judgment that it was perceivable that the entire allegations, which would attract offences under Section 498A of IPC alleged to be committed by the 1<sup>st</sup> accused is outside India, and the matter



definitely would come within the ambit of Section 188 of Cr.P.C. In view of the above discussion, Section 188 sanction is not necessary to prosecute the appeal.

13. The learned Special Judge addressed this issue and in paragraphs 31 to 33 the Special Court found that as per Section 5 of the ITP an offence under this section should be tried in a place where such a person is procured, induced to go, taken or caused to be taken and in such scenario it was found by the learned Special Judge that since offences under the ITP Act could be tried even without 188 sanction, the other offences also could be tried and for which 188 sanction is not necessary.

14. According to the learned counsel for the appellant, none of the offences under the ITP Act would attract in the present case and therefore the learned Special Judge went wrong in finding shelter in sub section 3(a) of Section 5 of ITP and in this connection it is relevant to refer Sections 5 & 6 of the ITP Act which read as under:

***"5. Procuring, inducing or taking 4 [person] for the sake of prostitution.—(1) any person who—***

*(a) procures or attempts to procure a [person], whether with or without his consent, for the purpose of prostitution; or*

*(b) induces a [person] to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or*



*(c) takes or attempts to take a [person], or causes a 4 [person] to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or*

*(d) causes or induces a [person] to carry on prostitution;*

*[shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:*

*Provided that if the person in respect of whom an offence committed under this sub-section,—*

- (i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and*
- (ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;]*

*(3) An offence under this section shall be triable—*

*(a) in the place from which a [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [person] is made; or*

*(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.”*

*6. Detaining a woman or girl in premises where prostitution is carried on.*

*(1)Any person who detains any woman or girl, whether with or without her consent,-*

*(a)in any brothel, or(b)in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband,shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees.*

*(2)On a second or subsequent conviction for an offence under this section a person shall be punishable with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.(3)A person shall be presumed to detain a woman or girl in a brothel or in or*

*upon any premises for the purpose of sexual inter-course with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,-*



*(a)withholds from her any jewellery, wearing apparel, money or other property belonging to her, or(b)threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.(4)Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.*

15. Here the learned Special Judge found that the appellant committed offences punishable under Sections 5 and 6 of ITP and he was acquitted for the offence punishable under Section 4(2)(b) of the said Act. Section 5(a) of ITP Act deals with procures or attempts to procure a [person], whether with or without his consent, for the purpose of prostitution. Similarly, Section 6 of the ITP Act deals with detention of a person in prison when prostitution is carried out. Similarly Section 6(1)(b) provides that (1)Any person who detains any woman or girl, whether with or without her consent,-(b) in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees. In



the instant case going by the evidence tendered by PW2, the ingredients for the offences punishable under Sections 4 and 5 to be found and Section 5(3)(a) provides that, an offence under this section shall be triable— (a) in the place from which a [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [person] is made. In view of the matter, even otherwise 188 sanction is not necessary as found by the Special Judge.

16. Apart from the evidence of PW2, Ext.P1 seizure mahazar prepared for the seizure of passport of accused was proved through PW1. Ext.P3 medical certificate was tendered in evidence through PW3.

17. PW4 is the Circle Inspector, Kunnankulam and according to him, he had received Ext.P2 complaint from PW2. On the basis of the same, CW14 registered Ext.P4 FIR. PW4 conducted the investigation and seized the passport, entry permit, hospital card, passenger ticket, photo and economy card produced by PW2, as per Ext.P5 seizure mahazar. Ext.P6 is the document list prepared for producing said documents before court. Ext.P7 to P12 are the documents produced by PW2. He conducted search at the house of the accused.

18. PW5 is the Sub Inspector of Police Kunnankulam Police



Station. According to him, he filed Ext.P13 report for adding the offences under the Immoral Traffic (Prevention) Act. PW6 is the doctor who attested Ext.P3 medical certificate. PW7 is the Circle Inspector who conducted a part of investigation. PW8 is the Circle Inspector and according to him, on 09.07.2009, he had arrested accused No.1. Accused No.2 could not be arrested. He completed the investigation and filed final report showing that the accused No.2 (the appellant herein) had been absconding.

19. As regards the delay of 22 days in lodging the FIR canvassed by the learned counsel for the appellant to shake the prosecution case is concerned, the same is of no serious consequence since a reasonable delay in sexual assault cases would occur because of the thinking time taken by the victim or her relatives after the trauma and consequential dilemma. Therefore, this contention cannot be appreciated. On re-appreciating evidence, it could be found that the learned Special Judge is right in finding commission of offences punishable under Sections 376 and 506(ii) of IPC as well as under Sections 5 and 6 of the ITP Act and therefore the conviction doesn't require any interference.

20. Coming to the sentence, having considered the nature and



gravity of the offences alleged to be committed by the appellant/2<sup>nd</sup> accused, the same also found to be reasonable and accordingly the same is confirmed.

21. In the result, this Appeal fails and is accordingly dismissed. The conviction and sentence imposed by the Special Court are confirmed. As a sequel thereof, the order suspending sentence and granting bail to the accused stands cancelled and the bail bond also stands cancelled.

22. The appellant/2<sup>nd</sup> accused is directed to surrender before the Special Court to undergo the sentence forthwith, failing which the Special Court shall execute the sentence forthwith.

Registry is directed to forward a copy of this judgment to the Special Court for compliance and further steps.

*Sd/-*

***A. BADHARUDEEN, JUDGE***

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