

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

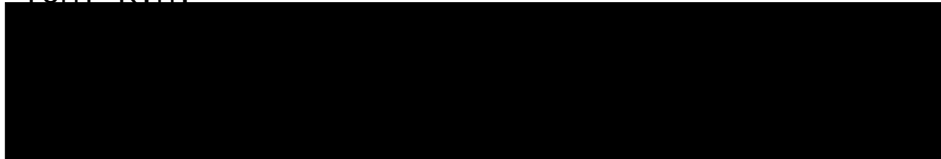
FRIDAY, THE 20TH DAY OF OCTOBER 2023 / 28TH ASWINA, 1945

CRL.MC NO. 3003 OF 2023

SC 555/2022 OF DISTRICT COURT & SESSIONS COURT, KOTTAYAM
Crime No.1529 of 2022 of Palai Police Station

PETITIONER/ACCUSED :

TOMY K.M.



BY ADV NIHARIKA HEMA RAJ

RESPONDENT/STATE :

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI, PIN - 682031
- 2 XXXXXXXXXXXX
XXXXXXXXXXXX

OTHER PRESENT:

SRI VIPIN NARAYAN (SR PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
20.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This Crl.M.C has been filed seeking joint trial of S.C.No.555 of 2022 pending before the District & Sessions Court, Kottayam and S.C.No.564 of 2022 pending before the Fast Track Special Court (POCSO), Erattupetta.

2. S.C.No.555 of 2022 as well as S.C.No.564 of 2022 arise from Crime No.1529 of 2022 of Palai Police Station. The aforesaid crime was registered on the allegation that the accused had on 30.05.2022 at around 2 p.m., trespassed into the house wherein the defacto complainant resides with her family and proceeded to grab her thereby outraging her modesty. It is also alleged that the accused ran away when the defacto complainant and her sister raised hue and cry and that when the father of the defacto complainant came to know about the same he followed the accused after which the accused struck and injured him with an axe carried by him. It is further alleged that he returned to the house of the defacto complainant and threatened them with an iron rod by walking around the house.

3. Following investigation into the crime, split charges were filed and the cases were numbered separately. In S.C.No.564 of 2022 pending before the Fast Track Special Court (POCSO), Erattupetta, the allegation is that the accused who is a member of RCSC community following Christianity knowing that his minor neighbour is a member of the SC Velan Community trespassed into the house where she resides with her family members on 30.05.2022 at 02:30 hours with an intention to sexually assault her and thereafter grabbed her thereby outraging her modesty and thereafter returned to the house to threaten the life of the defacto complainant and her family members. The offences alleged are under **Sections 354, 354A, 451, 506(ii) of the IPC and Section 3(2)(va) of the SC/ST (POA) Act.**

4. The allegation in S.C.No.555 of 2022 pending before the Hon'ble District & Sessions Court, Kottayam is that the accused who is a member of RCSC community following Christianity knowing that the neighbour is a member of the SC Velan Community and with an intention to cause hurt to him, and knowing that if used death could be caused struck him with

an axe carried by him on 30.05.2022 at 3 p.m. thereby injuring him. The said incident is alleged to have occurred about 25 meters away from the residential house of the defacto complainant. It is also alleged that he returned to the residential house of the defacto complainant and threatened their lives while carrying an iron rod. **The offences alleged are under Sections 308, 324, 506(ii) of the IPC and Section 3(2)(va) of the SC/ST (POA) Act.**

5. The learned counsel for the petitioner would submit that the transactions are so inextricably connected with each other, that both cases should be tried together. She places reliances on the judgment of the Supreme Court in ***MS.P xxx Vs. State of Uttarakhand & Anr.***; [2022 LiveLaw (SC) 554]. It is submitted that the criteria for determining as to whether two or more acts constitute the same transaction in a given case must be proximity of time, unity or proximity of place, continuity of action and community of purpose or design. It is submitted that whether a series of acts are so connected together so as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria. It is submitted that, in the facts and circumstances

of the present case, the allegation is that the accused had sexually abused the minor victim at her house, when she was alone and when her father had rushed to the spot, he was also attacked. It is submitted that, in such circumstances and applying the criteria laid down by the Supreme Court in **MS.P xxx's** case (supra), the acts can be stated to constitute the same transaction and therefore, it must be tried together.

6. The learned Public Prosecutor submits that, while the offences under the POCSO Act can be tried only by the Special Court, S.C.No.555 of 2022 can also be also tried by the POCSO Court in the light of Section 28(2) of the POCSO Act.

7. It is clear from a reading of the final report in S.C.No.555 of 2022 that the incident which led to filing of the charges occurred within a gap of half an hour and at the same place. It is also seen that the mahazar etc. are the same. It is seen that only the Investigating Officer is different and the several of the witnesses cited are common. Having regard to the law laid down in **MS.P xxx's** case (supra) and also having regard to the provisions of Section 28(2) of the POCSO Act, I am of the view that S.C.No.555 of 2022 on the file of the

Crl.M.C.No.3003 of 2023

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District and Sessions Court, Kottayam should be transferred and tried before the Fast Track Special Court (POCSO), Erattupetta.

Accordingly, this Crl.M.C. is allowed. It is directed that S.C.No.555 of 2022 now pending before the District & Sessions Court, Kottayam shall be transferred and shall be disposed of by the Fast Track Special Court (POCSO), Erattupetta. That Court shall also consider whether the cases can be tried jointly or one after the other, in accordance with the law.

Sd/-

GOPINATH P., JUDGE

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