



2024/KER/50604

IN THE HIGH COURT OF KERALA AT ERNAKULAM

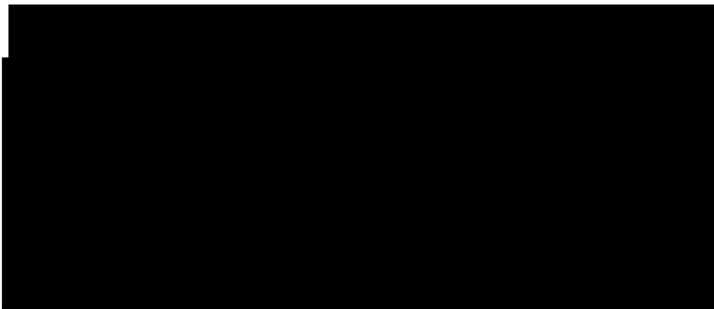
PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 8TH DAY OF JULY 2024 / 17TH ASHADHA, 1946

WP(CRL.) NO. 661 OF 2023

PETITIONER:



BY ADVS.

ADV.G.KEERTHIVAS GIRI

SRI.ANIL KAUSHIK (SR.)

SMT.LAKSHMI DAS

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001
- 2 THE STATE POLICE CHIEF
KERALA POLICE HEADQUARTERS,
VAZHUTHACAUD,
THIRUVANANTHAPURAM - 695 033
- 3 THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION
PLOT #5B, LODHI ROAD,
JAWAHARLAL NEHRU STADIUM MARG
CGO COMPLEX,
NEW DELHI - 110 003
- 4 STATION HOUSE OFFICER,
CYBER CRIME POLICE STATION,
THIRUVANANTHAPURAM CITY, PIN - 695033

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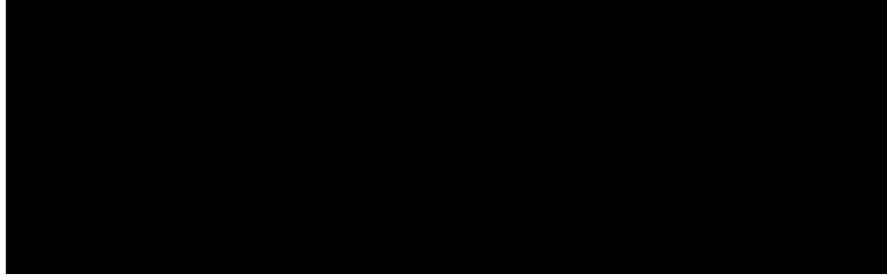




2024/KER/50604

W.P.(CrI.) No.661/23

-:2:-



BY ADVS.
SRI.M.C.ASHI, PUBLIC PROSECUTOR
DR.FARRUKH KHAN
SRI.SOHAIL MOHAMMED ANSARY
SMT.AMEENA.R
SMT.POORNIMA S.NAIR
SRI.SREELAL WARRIER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 01.07.2024, THE COURT ON 08.07.2024 DELIVERED
THE FOLLOWING:

**BECHU KURIAN THOMAS, J.****W.P.(CrI.) No.661 of 2023**Dated this the 8th day of July, 2024**JUDGMENT**

Petitioner seeks for a direction to transfer the investigation of Crime No.32/2022 of the Cyber Crime Police Station, Thiruvananthapuram to the Central Bureau of Investigation.

2. Petitioner is the de facto complainant in the aforementioned crime, which is registered alleging offences punishable under Sections 420, 468, and 471 of the Indian Penal Code, 1860, apart from Sections 66(c) and 66(d) of the Information Technology Act, 2000.

3. Petitioner alleges that he and his wife had obtained information that their minor son's photograph was used by the accused for the purpose of crowdfunding, misrepresenting themselves as parents of the minor, for a hormone replacement therapy for the minor. Immediately, after becoming aware of the aforesaid illegal actions, petitioner intimated the crowdfunding platform 'Milaap' about the illegal acts of the accused and requested them to take down his minor son's profile. On the basis of the aforesaid information, an F.I.R was registered on 28.05.2022 as Crime No.32/2022 of Cyber Crime



Police Station alleging that the accused had created a profile in the name of 'support-rosetta' and started collecting funds for an alleged treatment for the defacto complainant's son and thereby cheated the public and others.

4. Sri.Anil Kaushik, the learned Senior Counsel, instructed by Adv. Keerthivas Giri, learned counsel for the petitioner contended that pursuant to the F.I.R., the Investigating Officer has not carried out any effective investigation worth its name. It was also submitted that despite the State Government filing an affidavit before the Supreme Court, stating that a 'transnational forced gender change gang whose whereabouts are required to be ascertained', is in existence, no effective investigation has been carried out. According to the learned Senior Counsel, a thorough investigation is required to determine all aspects, including the monetary gains of the accused for which a scientific and specialized investigation is necessary and the present Investigating Officer is ill-equipped to carry out such a complex investigation. The learned Senior Counsel relied upon the decisions in **State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others** (2010) 3 SCC 571, **Mithilesh Kumar Singh v. State of Rajasthan and Others** (2015) 9 SCC 795 and **Subrata Chatteraj v. Union of India and Others** (2016) 2 SCC 1 to drive home the point that in a unique case of this



nature, the expertise of a specialized agency like the C.B.I. is highly essential.

5. Sri. M.C.Ashi, the learned Public Prosecutor on the other hand contended that the investigation is being carried out with all earnestness and that, during the course of investigation, petitioner's son, who had, even before the date of filing of the F.I.R, attained majority, gave a statement under Section 164 of the Cr.P.C stating that he is a transgender female, who wants to take female hormones before he turns 25 and since he had no money, at his request, a fundraiser 'support-rosetta' was started in the platform called 'Milaap' and an online friend had attended to his cry for help. The learned Public Prosecutor pointed out that, though the son of the petitioner had approached the accused for helping him to generate crowdfunding for his hormone therapy before he became a major, after he attained majority, he ratified all those acts. Despite the above, it was stated that the investigation is going on to find out whether there is any involvement of an international racket, which had not been revealed so far.

6. Dr. Farrukh Khan, the learned counsel appearing on behalf of the fifth respondent stated that the fifth respondent has no objection for transferring the investigation to any agency as the court deems fit, but submitted that the said respondent was swayed by the cry for



support put forth by the petitioner's son and that she had only attempted to help him. It was further pointed out that she is totally innocent of the allegations and has no criminal antecedents nor is she part of any gang and the allegations regarding an international racket indulging in forced hormone therapy are all bald allegations without any basis and that she has no knowledge about it. The learned counsel further submitted that the fifth respondent realized that the help extended by her to the petitioner's son was an immature act, without bearing in mind the consequences, nevertheless, a totally innocent one.

7. The learned Standing Counsel for the C.B.I. submitted that there are no materials to indicate the existence of any transnational racket or a gang and therefore the C.B.I. is not required to interfere.

8. I have considered the rival contentions.

9. The affidavit filed on behalf of the State in the bail application of the fifth respondent indicates that initially, the State Government had expressed through its affidavit that there is an involvement of a transnational forced gender change gang whose whereabouts are to be ascertained including the monetary benefits derived by them. It was also mentioned that the investigation conducted till then revealed that the accused had indulged in the conduct alleged, knowing that the petitioner's son was a minor and



the fundraising was organized without disclosing any information to the child's parents or the Government or any legally competent entity. The said affidavit was filed on 15.03.2023 in the bail application filed by the accused.

10. However, during the course of the investigation, a statement from the petitioner's son was recorded under Section 164 Cr.P.C, which gave a wholly different picture regarding the allegations. Though at the time of the alleged incident, petitioner's son was a minor, when the FIR was registered and the statement under section 164 Cr.P.C was recorded, he became a major. In his statement mentioned above, which is produced on behalf of the fourth respondent, the son of the petitioner has put the blame on his parents which includes the petitioner. As rightly argued by the learned Public Prosecutor, the son of the petitioner has ratified all acts of the accused after he became a major and stated that all those including the crowdfunding were done or attempted at his request and the accused had only tried to help him. Of course, in a trial, the statement under section 164 Cr.P.C can only be used to corroborate or contradict the witness and is not substantive evidence. [see the decision in **Ram Kishan Singh v. Harmit Kaur and Another** (AIR 1972 SC 468)]. Nonetheless, for the purpose of investigation, the statement can act as a guide for the investigating officer to a certain extent. As a



statement that can be used to corroborate the witness, it becomes part of the record of the case.

11. In this context, it needs to mention that the counsel for the fifth respondent had invited the court's attention to Ext.P7 document produced by the petitioner himself, which is a mail written by the wife of the petitioner to 'Milaap', the organization which initiates crowdfunding. The said mail states that her son had posted on the website of 'Milaap' that his name is xxx and he is a pure non-binary trans person from Delhi and has a goal of fundraising of Rs.1,40,000/- (Rupees one lakh forty thousand only) for hormone replacement therapy, laser hair removal and allied treatments. It was also alleged by the petitioner's wife that their son is using 'Milaap' Org platform to raise funds by misrepresenting the actual facts. The aforesaid circumstance is referred to in this judgment, to indicate that it was apparently petitioner's son himself, who had projected as a transgender. Of course initially when the petitioner's son requested for help from the platform 'Milaap', he was a minor. However, since he has allegedly ratified the acts after becoming a major and in view of the aforementioned statutes, his rights cannot be ignored.

12. Under the Transgender Persons (Protection of Rights) Act, 2019, the term "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and



includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta. Section 2(d) defines "inclusive education" as a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students. The said statute does not distinguish between a minor or a major and prohibits discrimination against a transgender even in the case of healthcare. A transgender person has also been given a right under section 4 of the Act to be recognized as a transgender person and the right to self-perceived gender identity, while section 3 prohibits discrimination of a transgender by any other person, which can include even the transgender persons parents. Of course, in the matter of issuance of a certificate of identity as a transgender person, section 5 of the Act provides that the application in the case of a minor has to be made by the parent or guardian. The Act also provides for a right of residence of the transgender person with the parents, a right not to be excluded from the household, and even a right to enjoy the facilities of such a household in a non-discriminatory



manner. Thus a transgender person, whether a minor or a major, has been protected by law from discrimination of any nature.

13. A reading of the statement given under section 164 Cr.P.C by the son of the petitioner, indicates that it was at his instance that the money was collected and that after the parents complained, the money was even refunded. He has also made certain scathing allegations against his parents as well.

14. Bearing in mind the aforesaid statement of the son of the petitioner, which can act as a guide to the investigating officer, the allegation regarding a transnational racket involved in forced gender change operations made in the affidavit filed before the Supreme Court can only be treated as a vague and bald allegation, atleast as of now. No material has been collected to justify such an averment. The learned Senior Counsel had, in fact, fairly submitted that at no point in time had the petitioner made such an allegation but it was the State Government's affidavit that had referred to the existence of such a transnational racket.

15. Be that as it may, in the decision in **State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others** (2010) 3 SCC 571, the Constitution Bench of the Supreme Court had categorically observed that the extraordinary power to order an investigation by C.B.I. must be



exercised sparingly, cautiously and in exceptional circumstances, where it becomes necessary to provide credibility and instill confidence in investigations. The power can be exercised when the incident may have national and international ramifications.

16. Though an attempt was made to portray the incidents that led to the registration of the crime as one having transnational ramifications based upon the affidavit of the State Government filed in the Supreme Court, this Court is of the view that the circumstances do not persuade this Court to rely on the said averment to direct a CBI investigation, atleast from the materials collected so far.

17. In the conspectus of the above discussion, this Court is of the view that there are no exceptional circumstances warranting an investigation by the C.B.I. The investigation so far conducted cannot be found fault with, as well.

Hence, I find no merits in this writ petition and it is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX

PETITIONER'S/S' EXHIBITS

- Exhibit P1 TRUE COPY OF THE FIR DATED 28.05.2022,
FILED AT THE CYBERCRIME POLICE STATION
THIRUVANANTHAPURAM
- Exhibit P2 TRUE COPY OF THE ORDER DATED 26.07.2022
IN CRL. M.C. NO. 1502 OF 2022 BEFORE THE
COURT OF THE ADDL. SESSIONS JUDGE - V ,
THIRUVANANTHAPURAM
- Exhibit P3 TRUE COPY OF THE ORDER DATED 27.10.2022
IN BAIL APPL. NO. 6582 OF 2022 OF THIS
HONOURABLE COURT
- Exhibit P4 TRUE COPY OF THE ENTIRE PAPER BOOK,
INCLUDING THE PETITIONS AND THE COUNTER
AFFIDAVITS, FILED BEFORE THE HONOURABLE
SUPREME COURT OF INDIA IN SLP (CRL.) NO.
10878/2022
- Exhibit P5 TRUE COPY OF THE ORDER DATED 12.04.2023
SLP (CRL.) NO. 10878/2022 BEFORE THE
HONOURABLE SUPREME COURT OF INDIA
- Exhibit P6 TRUE COPY OF THE SELECT EMAIL TRANSCRIPT
BETWEEN THE PETITIONER'S WIFE AND MILAAP
DATED 30.03.2022
- Exhibit P7 TRUE COPY OF THE SELECT EMAIL TRANSCRIPT
BETWEEN THE PETITIONER'S WIFE AND MILAAP
DATED 17.03.2022

RESPONDENT'S/S' ANNEXURES

- Annexure R5 (a) TRUE COPY OF THE RECORD OF PROCEEDINGS
OF THE HONOURABLE SUPREME COURT OF INDIA
IN SLP (CRL.) NO. 10878/2022
- Annexure R5 (b) TRUE COPY OF THE STATEMENT OF ACCOUNTS
OF RESPONDENT NO.5 FROM 01/04/2021 TO
20/06/2022