

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 27TH DAY OF JULY 2022 / 5TH SRAVANA, 1944

CRL.MC NO. 5056 OF 2022

Crime No.1148/2020 of Anthikad Police Station
S.C.No.411/2021 on the file of the Fast Track Special Court (PoCSO),
Thrissur

PETITIONER/ACCUSED:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX
BY ADVS.
RENJITH B.MARAR
LAKSHMI.N.KAIMAL
ARUN POOMULLI
M.J.SANTHOSH
AISWARYA THANKACHAN
MEERA JOPPAN
PREETHA S CHANDRAN

RESPONDENT/COMPLAINANT:

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

OTHER PRESENT:

SRI P G MANU-SR Public Prosecutor

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 27.07.2022, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

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ORDER

The petitioner is the accused in S.C.No.411/2021 on the file of the Fast Track Special Court (PoCSO), Thrissur (for short 'the court below'). He faces trial for the offences punishable under Sections 354, 341, 323 of the IPC and Section 7 r/w 8, 9 r/w 10 of PoCSO Act.

2. The prosecution allegation is that, on 18.8.2018 to 21.8.2018 at about 10 pm., the accused kissed on the lips of the victim girl aged 11 years and inserted his tongue into her mouth. The victim girl is none other than the stepdaughter of the accused.

3. The trial commenced. The victim was examined as PW1 and mother was examined as PW2. The examination of the victim is over. While PW2 was examined, the counsel for the petitioner/accused wanted to confront the contradictory statement in her earlier divorce petition. According to the petitioner, when the document was put to the witness, the court below denied the opportunity stating that the document

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has to be produced in the office of the court. It is further alleged that, thereafter, the court below did not permit to put questions with regard to the statement given by her in her earlier divorce petition. It is in these circumstances, the petitioner has approached this Court to give a direction to the court below to permit him to cross-examine PW2 with regard to her previous statement in her divorce petition by confronting contradictory portions in the statement in her divorce petition without insisting to produce the same in advance.

4. I have heard Sri.Renjith B.Marar, the learned counsel for the petitioner and Sri.P.G.Manu, the learned Senior Public Prosecutor.

5. The relationship between the petitioner and PW2 is strained. The matrimonial disputes are pending between them. While PW2 was examined, the petitioner wanted to contradict a statement given by her in an earlier divorce petition. For the said purpose, the certified copy of the divorce petition was confronted to PW2. It appears that, at that time,

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the court below directed the petitioner to produce the said document at the office as per the Rules. According to the petitioner, thereafter, the court below in open court stated that the document has to be produced three days prior in advance. The accused has every right to confront a document to the witness during the examination of the witness. If the accused is directed to produce the document in advance, the surprising element will be lost. It is settled that a document confronted to a witness during the cross examination, especially relating to a previous statement given by the witness, need not be produced in court in advance. In these circumstances, I am of the view that the stand taken by the court below is not in accordance with law. However, it is submitted by the learned counsel for the petitioner that, the document has already been produced at the court below.

6. In these circumstances, this Crl.M.C. is disposed of as follows:-

- (i) The court below shall recall PW2 and permit the petitioner/accused to further

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cross-examine her by confronting the contradictory portions in the statement in her divorce petition already produced before the court.

- (ii) The court below shall examine CW3 only after the examination of PW2 is over.

Sd/-

**DR.KAUSER EDAPPAGATH,
JUDGE**

skj

Crl.M.C.No.5056 of 2022

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APPENDIX

PETITIONER'S ANNEXURES:-

ANNEXURE 1 CERTIFIED COPY OF DEPOSITION OF PW2

ANNEXURE 2 READABLE COPY OF DEPOSITION OF PW2

ANNEXURE 3 CERTIFIED COPY OF THE LIST OF THE
DOCUMENT.

ANNEXURE 4 PROCEEDING ADOPTED BY THE COURT.

ANNEXURE 5 CERTIFIED COPY OF ANOTHER LIST OF
DOCUMENTS.