

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 12TH DAY OF MARCH 2024 / 22ND PHALGUNA, 1945

CRL.M.C.NO. 5185 OF 2020
(CRIME NO.238 OF 2020 OF KADAMPUZHA POLICE STATION,
MALAPPURAM)

PETITIONER/ACCUSED:

SUHAIB @ KULLAPPI KAKKA



BY ADV K.RAKESH

RESPONDENTS/STATE & VICTIM:

- 1 THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM - 682031.
- 2 THE STATION HOUSE OFFICER,
KADAMPUZHA POLICE STATION, MALAPPURAM DISTRICT,
PIN - 676553.
- 3 XXX

R1 & R2 BY SRI.VIPIN NARAYANAN, PUBLIC PROSECUTOR
R3 BY SRI.K.S.PRAVEEN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR FINAL
HEARING ON 12.03.2024, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

P.G. AJITHKUMAR, J.**"C.R."**

Crl.M.C.No.5185 of 2020

Dated this the 12th day of March, 2024**ORDER**

This petition under Section 482 of the Code of Criminal Procedure, 1973 (Code) is filed on behalf of a child aged 13 years, who is in conflict with law, having accused of offences punishable under Sections 342 and 377 of the Indian Penal Code, 1860 and under Section 3(c) read with Sections 4, 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (PoCSO Act) in Crime No.238 of 2020 of Kadampuzha Police Station. The petitioner seeks to quash the F.I.R. and further proceedings in the crime.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. The accusation against the petitioner is that he has subjected the victim boy aged 5 years to penetrative sexual assault. The learned counsel for the petitioner would submit that no prosecution of a child for an offence punishable under

the PoCSO Act or sexual offence punishable under the IPC is possible inasmuch as the offender being a child, he cannot be attributed with the criminal intent to commit such an offence. Hence, what he did would not amount to an offence. It is accordingly contended that the investigation against the petitioner in the aforementioned crime is illegal and liable to be quashed.

4. The learned Public Prosecutor opposes the said plea by contending that a child is not excluded from the term 'offender' under the provisions of PoCSO Act, and therefore such a contention cannot be entertained.

5. 'Penetrative sexual assault' and 'sexual assault' and its aggravated forms are defined in Sections 3, 5, 7 and 9 of the PoCSO Act. A reading of those definitions and the corresponding penal provisions indicate that any person irrespective of gender and age can be a person accused of such offences, of course, subject to the general exceptions in the IPC. 'Child' is not defined in the PoCSO Act; whereas it is defined in the Juvenile Justice (Care and Protection of Children)

Act, 2015 (JJ Act). Section 2(12) defines a child to be a person, who has not completed 18 years of age. Section 2(13) of the JJ Act defines a child in conflict with law, which reads,-

(13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

6. The aforementioned definitions would enure an inference that a child can be an offender of sexual offences as defined in the PoCSO Act. Needless to say, when a child is the offender, he cannot be tried in the ordinary criminal court, but can be dealt with only as provided under the provisions of the JJ Act. That does not, however, mean that no proceedings against a child in conflict with law concerning an offence under the PoCSO Act, which was enacted essentially for the protection of children from sexual offences is possible. In such circumstances, the contention of the learned counsel for the petitioner that the petitioner being a child of 13 years is not liable to be proceeded against on the allegation of commission of a sexual assault/offence is untenable.

7. As stated, if the offender is a child in conflict with law, whether for the offences under the PoCSO Act or under any other statute, shall be inquired into only by a Juvenile Justice Board. If the child is above the age of 16 years and the offence is one classified as heinous, the position may be different. The apprehension of the petitioner that he would be tried as in the case of an adult offender, who committed an offence under the POCSO Act, is misplaced. Hence, I am of the view that in the event of filing of final report by the investigating agency, after due investigation with a finding that the petitioner has committed the offence, the Juvenile Justice Board is obliged to inquire into as provided under the JJ Act. In that event, the interest of the child in conflict with law shall certainly be protected inasmuch as the process of inquiry is not to convict a child, but to reform and reintegrate it to the main stream of the society. In such circumstances, I am of the view that the plea of the petitioner to quash the F.I.R. and further proceedings cannot be allowed.

The petition is therefore disposed of with the following directions:

- (i) the 2nd respondent shall complete the investigation within a period of two months; and
- (ii) the 2nd respondent shall not harass the petitioner, in any manner, under the guise of the investigation.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr

APPENDIX OF CRL.MC 5185/2020

PETITIONER ANNEXURES

ANNEXURE A TRUE COPY OF THE F.I.R AND F.I.S IN CRIME NO.238/2020 OF THE KADAMPUZHA POLICE STATION.

ANNEXURE B TRUE COPY OF THE AADHAR CARD OF THE PETITIONER.

ANNEXURE C AFFIDAVIT SWORN TO BY THE 3RD RESPONDENT DATED 8.11.2020.