

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 2ND DAY OF MAY 2023 / 12TH VAISAKHA, 1945

WP(CRL.) NO. 275 OF 2023

(S.C.No.463/2021 OF ADDITIONAL SESSIONS COURT-I(POCSO
SPECIAL COURT), PATHANAMTHITTA

PETITIONER:

MUHAMMED SHIRAZ @ SHIRAZ
AGED 38 YEARS
S/O MUHAMMED HANEEFA, SHEMI MANZIL, GANDHIMUKKU,
VAKKOM P.O, VAKKAM VILLAGE, CHIRAYINKEEZHU TALUK,
THIRUVANANTHAPURAM DISTRICT - 695308.

BY ADVS.SRI.MANU RAMACHANDRAN
M.KIRANLAL
R.RAJESH (VARKALA)
SAMEER M NAIR
GEETHU KRISHNAN
SAILAKSHMI MENON

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.
- 2 THE STATION HOUSE OFFICER
POLICE STATION OF ARANMULA,
PATHANAMTHITTA DISTRICT, PIN - 689533.
- 3 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX

R1 & R2 BY P.P.SMT.BINDU O V

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 02.05.2023, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

"C.R."

JUDGMENT

The petitioner in this Writ Petition (Crl.), filed under Article 226 of the Constitution of India, essentially seeks to quash Ext.P1 FIR No.775/2021 of Aranmula Police Station, ExtP2 final report and all further proceedings in S.C.No.463 of 2021 on the file of the Additional Sessions Court-I (POCSO Special Court), Pathanamthitta. The petitioner is accused No.3 in the Sessions Case. He, along with the other accused, faces charges under Sections 376, 376(2)(n), 450, 376(3), 366A r/w Section 34 of the Indian Penal Code, Section 4(2) r/w Section 3(a), Section 5(l) r/w Section 6, Section 8 r/w Section 7, Section 9(l) r/w Section 10, Section 11(iv) r/w Section 12, Section 16 r/w Section 17 of the POCSO Act and Section 75 of the Juvenile Justice (Care and Protection of Children) Act.

FACTS:-

2. The victim, a 14-year-old girl, was found missing on 28.7.2021. She was residing with her mother and stepfather. The stepfather, on 29.7.2021, reported the missing of child before the Police. In the information before the Police, the stepfather of the victim

reported that when he came back from his place of work and enquired about the victim, his wife told him that she fell in love with a young man and she had gone with him on a scooter to introduce herself to his parents. Based on this information, the Police registered FIR No.772/2021 under Section 57 of the Kerala Police Act (for short, "the K.P.Act"). The Police conducted an inquiry as provided in Section 57 of the K.P.Act. The Police later found the child at her residence. The child was taken to the Women's Cell at Pathanamthitta and brought to the Counselling Centre. The Counsellor attached to the Centre recorded her statement revealing that she was taken to a residence where the petitioner herein sexually assaulted her.

2.1. Based on the statement of the victim, the Police registered FIR No.775/2021 on 29.7.2021 itself, alleging offences under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 7, 8, 9(l) & 10 of the POCSO Act. The Police also submitted a closure report in Crime No.772/2021, registered under Section 57 of the K.P.Act, before the jurisdictional Magistrate which accepted the same.

2.2. After completing the investigation in FIR No.775/2021, the Police submitted final report alleging offences punishable under Sections 376, 376(2)(n), 450, 376, 376(3), 366-A r/w Section 34 of the

Indian Penal Code, Section 4(2) r/w Section 3(a), Section 5(l) r/w Section 6, Section 8 r/w Section 7, Section 9(l) r/w Section 10, Section 11(iv) & (vi) r/w Section 12, Section 16 r/w Section 17 of the POCSO Act,2012 and Section 75 of the Juvenile Justice (Care and Protection of Children) Act.

3. Heard Sri.Manu Ramachandran, the learned counsel for the petitioner and the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted that registration of FIR No.775/2021 after the closure of FIR No.772/2021 violates the principles declared by the Apex Court in **T.T.Antony v. State of Kerala [(2001) 6 SCC 181]** and **Krishna Lal Chawla and Others v. State of U.P. and Another [(2021) 5 SCC435]**. The learned counsel for the petitioner contends that after having registered FIR No.772/2021 based on the information given by the stepfather of the victim, there could not be a second FIR. The learned counsel submitted that a second FIR in respect of an offence or different offences committed in the course of the same transaction is impermissible and violates Article 21 of the Constitution of India.

5. The learned Public Prosecutor, per contra, contended that registration of FIR under Section 57 of the K.P.Act was only to locate the missing person, and the same cannot be treated as an FIR under

Section 154 Cr.P.C.

6. As per Section 154 Cr.P.C., every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. As per Section 156 Cr.P.C., the Police Officer has the power to investigate a cognizable offence. As per Section 157 Cr.P.C. if, from the information received, an officer in charge of a police station has reason to suspect commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence and shall proceed in person to investigate into the offence. After the registration of the FIR, during the course of the investigation, all the subsequent information relating to the crime shall be recorded under Section 161(3) Cr.P.C. as contemplated under Section 162 Cr.P.C. The investigation will culminate in the filing of the final report as provided under

Section 173 Cr.P.C.

7. After taking note of the scheme of the Code of Criminal Procedure, the Supreme Court in **T.T.Antony** (supra) held that when the earliest or the first information satisfies the requirements of Section 154 Cr.P.C., there can be no second FIR. The principles declared in **T.T.Antony** was followed by the Apex Court in the latter decisions. In **Babubhai v. State of Gujarat and Others [(2010) 12 SCC 254]**, the Supreme Court, after referring to *Ram Lal Narang v. State (Delhi Admn.)* [(1979) 2 SCC 322], *T.T.Antony v. State of Kerala* [(2001) 6 SCC 181], *Upkar Singh v. Ved Prakash* [(2004) 13 SCC 292], *Rameshchandra Nandlal Parikh v. State of Gujarat* [(2006) 1 SCC 732] and *Nirmal Singh Kahlon v. State of Punjab* [(2009) 1 SCC 441], held that it is quite possible that more than one piece of information may be given to the Police Officer-in-charge of the police station in respect of the same incident involving one or more cognizable offences and in such cases, he need not enter each piece of information in the Diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the First Information Report will be statements falling under S.162 Cr.P.C. The concern of the Court is about the misuse of successive complaints by the same party, where the second

complaint is clearly propped up to improve on the earlier one materially. The law declared in **T.T.Antony** (supra) still holds the field.

8. Now, I shall consider the petitioner's challenge on the touchstone of the principles discussed above in the context of the facts considered here. FIR No.772/2021 was registered under Section 57 of the Kerala Police Act. Section 57 reads thus:-

"57. Police to attempt to locate missing persons.- (1) Whenever a Station House officer receives any information from which he reasonably suspects that any person is missing and there are circumstances to believe that, -

- (a) Such person is in danger or not under the protection of lawful guardianship, or
- (b) Such person may be subjected to some dangerous offence, or
- (c) Such person is absconding himself to prevent someone from implementing a lawful right declared by any court,

Such officer shall register the information in a manner similar to the procedure prescribed for a cognizable offence and take immediate action to locate the missing person.

(2) During such enquiries such officer or any officer deputed by him may examine and record the statement of any witness and search any place.

(3) All persons shall answer truthfully to any question by a Police Officer enquiring this matter and a copy of such statement recorded by that officer shall be given to the witness and after getting such copy, the witness shall sign and acknowledge that such copy has been received.

(4) All searches under this section shall be done in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)

(5) The missing person if found on enquiry shall forthwith be handed over to the responsible guardian or produced before the Magistrate having jurisdiction.

(6) Where the person so produced is a woman or a child the Magistrate shall take such steps as are needed to safeguard the privacy and interest of that person.”

(emphasis supplied)

The question is whether the FIR registered under Section 57 of the Kerala Police Act satisfies the requirements of Section 154 Cr.P.C. or is there any investigation on the registration of the FIR under Section 57 of K.P. Act as provided in Section 156 Cr.P.C. and the subsequent provisions in the Code ?

9. As per Section 57 of the K.P. Act, when a Station House Officer receives information reasonably sufficient to suspect that any person is missing and there are circumstances to believe that such person is in danger or not under the lawful protection of guardianship or such person may be subjected to danger or absconding to prevent someone from implementing a lawful right declared by any court, the information shall be entered in a register in a manner similar to the procedure prescribed for a cognizable offence. The Station House Officer shall then take immediate action to locate the missing person. The officer concerned is only expected to conduct an inquiry during his action to locate the missing person. Section 57 doesn't contemplate any investigation as provided in the Code. The essential responsibility of the SHO after registering the FIR under Section 57 of the K.P. Act is

to locate the missing person.

10. During the inquiry as contemplated under Section 57 of the K.P. Act, it is also his responsibility to register an FIR satisfying the requirements of Section 154 Cr.P.C. if he receives any information relating to the commission of any cognizable offence.

11. It is the submission of the learned counsel for the petitioner that the Investigating Officer was not entitled to register a subsequent FIR after the registration of the FIR under Section 57 of the K.P. Act. It is further submitted that he should have converted the FIR under Section 57 of the K.P. Act, adding the penal provisions, and proceeded with the investigation.

11. I am not in agreement with the submission of the learned counsel for the petitioner for the following reasons:-

- (1) Registration of FIR under Section 57 of the K.P. Act is only for the purpose of locating the missing person.
- (2) The information received in the given case did not reveal any cognizable offence.
- (3) During the inquiry under Section 57 of K.P. Act, the Station House Officer received information regarding cognizable offences based on the statement given by the victim herself, leading to the

registration of FIR No.775/2021.

12. The Station House Officer was perfectly right in not treating FIR No.722/2021, registered under Section 57 of the K.P.Act, as an FIR under Section 154 Cr.P.C. and the further registration of FIR No.775/2021 based on the statement given by the victim. The scheme of the Code and Section 57 of the K.P.Act suggest the course adopted by the Investigating Officer.

13. I am of the considered view that the principle declared in **T.T.Antony** and the subsequent cases have no application in the present facts. There is no second FIR within the meaning of Section 154 Cr.P.C. relating to the transaction which resulted in the registration of FIR No.775/2021.

The W.P.(Crl.) lacks merit. It stands dismissed in limine.

Sd/-
K.BABU
Judge

TKS

APPENDIX OF WP(CRL.) 275/2023

PETITIONER EXHIBITS

- Exhibit P1** THE TRUE COPY OF THE FIR IN CRIME NO.775/2021 OF ARANMULA POLICE STATION, PATHANAMTHITTA DISTRICT.
- Exhibit P2** THE TRUE COPY OF THE FINAL REPORT FILED IN CRIME NO.775/2021 OF ARANMULA POLICE STATION, PATHANAMTHITTA DISTRICT WHICH IS PENDING AS S.C NO.463/2021 ON THE FILES OF ADDL. SESSIONS COURT-I (POCSO SPECIAL COURT), PATHANAMTHITTA.
- Exhibit P3** THE FIS GIVEN BY THE INFORMANT SPECIFICALLY POINTS TO THE FACT THAT THE ACCUSED NO.1 TOOK THE MINOR VICTIM ON THE PREMISE OF LOVE AFFAIR AND MARRIAGE. THE TRUE COPY OF THE FIR NO.772/2021 OF ARANMULA POLICE STATION, PATHANAMTHITTA.
- Exhibit P4** THE TRUE COPY OF THE REFER FINAL REPORT FILED IN FIR NO.772/2021 OF ARANMULA POLICE STATION, PATHANAMTHITTA.