

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 13TH DAY OF DECEMBER 2023 / 22ND AGRAHAYANA, 1945

CRL.MC NO. 8258 OF 2023

CRIME NO.264/2023 OF Kuttiyadi Police Station, Kozhikode

AGAINST THE ORDER/JUDGMENT SC 841/2023 OF FAST TRACK SPECIAL

COURT, NADAPURAM

PETITIONER/S:

XXX

XXX

BY ADV M.P.PRIYESHKUMAR

RESPONDENT/S:

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

2 YYY
(MOTHER OF THE VICTIM)

SRI. NOUSHAD K.A. (SR PP)

BY ADV SMT.PARVATHI MENON.A., SC.,KWC

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
13.12.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ORDER**

The petitioner is the accused in Crime No.264/2023 of Kuttiyadi Police Station, Kozhikode District alleging commission of offences under Sections 376 (3), 376 (2) (f), 354 (1) (i) of the Indian Penal Code and Section 6, 5 (l), 5(n), 10, 9(m), 9(n) of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act). The matter is now pending as SC No.841/2023 on the file of the Fast Track Special Court, Nadapuram. This petition has been filed under Section 482 Cr.P.C seeking to quash the proceedings in SC No.841/2023 on the file of the Fast Track Special Court, Nadapuram.

2. The allegation against the petitioner is that the petitioner had sexually assaulted the victim (his daughter) by touching her on her private parts when she was eight years old and thereafter while staying with the petitioner in Bahrain in the month of March 2022, the petitioner had committed rape on the victim. It is further alleged that she was again assaulted on another day by touching her private parts.

3. The learned counsel appearing for the petitioner would submit that the allegations raised against the petitioner are totally false. It is submitted that the daughter of the petitioner (the victim) was in a relationship with one Fazil. It is submitted that on coming to know the fact that the aforesaid Fazil had sexually abused the minor daughter of the petitioner, he had insisted that a complaint be filed regarding the matter and



accordingly, a crime has been registered against the aforesaid Fazil on the basis of the statement given by the daughter of the petitioner as Crime No.165/2023 of Thottilpalam Police Station, Kozhikode District. It is submitted that after registration of the aforesaid crime, the aforesaid Fazil again continued his relationship with the victim. It is submitted that owing to the fact that the petitioner and other family members of the victim had compelled her to file a complaint against the aforesaid Fazil, the victim, under the influence of the aforesaid Fazil, had filed a complaint against the petitioner containing the allegations as above. It is submitted that the victim has now realised that her act of filing a false complaint against her father, accusing him of sexual assault and rape, was highly improper. Therefore Annexure-4 notarised affidavit has been executed by the mother of the victim regarding the actual state of affairs. It is submitted that in Annexure-4 affidavit the mother of the victim has also reiterated the fact that the victim had given a statement against the petitioner containing the allegations of sexual assault and rape only on account of the fact that the petitioner had objected to her relationship with the aforesaid Fazil.

4. Considering the intricacies of the case and considering that the victim still continues to be a minor, I requested Adv. Parvathy Menon, Project Coordinator, Victim Rights Centre, to assist this court in the matter. Adv. Parvathy Menon has placed on record her report and a report from the



Counselor attached to the Family Counseling Center under the High Court Legal Services Committee.

5. The learned Public Prosecutor submits that a further statement was recorded from the minor victim and also from her mother, and these statements indicate clearly that the victim has filed a false complaint against her father only on account of the fact that he had objected to her relationship with the aforesaid Fazil.

6. I have carefully gone through Annexure-A4 affidavit of the 2nd respondent/mother of the victim and also the report placed by the Project Co-ordinator, Victim Rights Centre. Though it would not be proper for this court to extract the contents of the report in its entirety, it must be stated that a reading of the report suggests that a false allegation had been raised against the petitioner by his daughter / minor victim only on account of the fact that he and other family members had objected the relationship of the minor victim girl with the aforesaid Fazil. The report filed by the Project Co-ordinator, Victim Rights Centre, also indicates that the interactions of the Project Co-ordinator with the close relatives of the victim, including her mother, maternal grandfather, and maternal uncles, indicate that the victim had given a false complaint against the petitioner on account of the fact that the petitioner and other family members of the victim had objected to her relationship with the aforesaid Fazil. The report of the Project Co-ordinator,



Victim Rights Centre, also encloses the counselling report of the Councillor attached to the Family Counseling Centre, Kerala High Court Legal Services Authority. The Project Coordinator, Victim Rights Centre, has also interacted with the mother of the victim, as well as with the victim. The Project Coordinator has also spoken to the victim's maternal grandfather and maternal uncles. It is stated that the family seems to be a genuinely close-knit family, and they uniformly maintain a very high opinion about the petitioner/accused. Taking into consideration Annexure-A4 affidavit of the mother of the victim as also the report of the Project Co-ordinator, the Victim Rights Centre, I am of the view that proceedings against the petitioner/accused can be quashed as it cannot be said that the petitioner had committed any of the offences alleged against him. That serious offences such as rape cannot be quashed on the ground of settlement is longer *res integra*¹. However, this case cannot be treated as a case where the proceedings are being quashed on the basis of any settlement. The proceedings are being quashed after being convinced that false allegations were raised against the petitioner in the peculiar facts noticed above. Though the victim is still a minor, the decision of this Court in **Vishnu**² is authority for the proposition that in certain circumstances, the affidavit of the guardian of the victim can be accepted. The report of the Project Co-ordinator, Victim Rights Centre also

1. (2012) 10 SCC 303, (2019) 5 SCC 688.

2. 2023 (4) KHC 1



indicates that the allegations raised against the petitioner appear to be false. Accordingly, this Crl.M.C. is allowed and all further proceedings in S.C.No.841/2023 on the file of the Fast Track Special Court, Nadapuram will stand quashed as against the petitioner.

The report placed by the Project Co-ordinator, Victim Rights Centre and the report of the Counsellor, Family Counseling Centre, Kerala High Court Legal Services Authority, will form part of the record in this case. The Registry shall ensure its confidentiality while placing them on record. I record my sincere appreciation for the efforts put in by Adv. Parvathi Menon, Project Co-ordinator, Victim Rights Centre, without whose invaluable help it would not have been possible to conclude this case as above.

Sd/-
GOPINATH P.
JUDGE

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HIGH COURT OF KERALA
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