

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 22ND DAY OF DECEMBER 2021 / 1ST POU SHA, 1943

WP(C) NO. 25850 OF 2021

PETITIONER:

DEVIPRIYA (MINOR), AGED 8 YEARS, D/O. JAYACHANDRAN G., AGED 38, RESIDING AT KOTTARA HOUSE, NEAR SAIGRAMAM, MANGATTU MOOLA, OORUPOYKA (P.O.), PUNNAIKUNNAMMURI, TRIVANDRUM-695014, REPRESENTED IN THESE PROCEEDINGS BY HER FATHER AND LEGAL GUARDIAN JAYACHANDRAN G., AGED 38, RESIDING AT KOTTARA HOUSE, NEAR SAIGRAMAM, MANGATTU MOOLA, OORUPOYKA (P.O.), PUNNAIKUNNAMMURI, TRIVANDRUM-695014.

BY ADV A.K.PREETHA

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, HOME DEPARTMENT, ROOM NO.357(A) & 358, MAIN BLOCK, SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 DIRECTOR GENERAL OF POLICE, POLICE HEADQUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM-695010.
- 3 DEPUTY SUPERINTENDENT OF POLICE, DYSP OFFICE, ATTINGAL, THIRUVANANTHAPURAM-695101.
- 4 REJITHA, POLICE CONSTABLE ATTACHED TO PINK POLICE, ATTINGAL POLICE STATION, ATTINGAL-695101.
- 5 KERALA STATE SCHEDULED CASTE SCHEDULED TRIBE COMMISSION, AYYANKALI BHAVAN, KANAKA NAGAR, VELLAYAMBALAM, THIRUVANANTHAPURAM-695003, REPRESENTED BY ITS CHAIRMAN.

BY ADVS.
S.RAJEEV
P.NARAYANAN
K.K.DHEERENDRAKRISHNAN
V.VINAY
M.S.ANEER
SARATH K.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.12.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

JUDGMENT

Devipriya - the petitioner - is a radiant, cherubic little girl of 8 years, with dreams of magical things, like stardust glistening on fairies wings, as any girl of her age.

2. She must have heard of the huge leviathan machine that started from Maharashtra a year ago to the Vikram Sarabhai Space Centre (VSSC) at Thiruvananthapuram, riding on a truck with 74 tyres, travelling a mere 5 kilometres a day, through four States, with the help of 32 dedicated personnel to guide its travel.

3. It certainly is a sight to see, with the machine - called "Aerospace Autoclave," weighing 70 tonnes, having a height of about 7.5 metres and width of 6.65 metres - trudging along with the speed of less than a tortoise; the power lines and tree branches across the road being disconnected and chopped to enable the truck to pass.

4. The little girl reached Attingal along with her father, Sri.Jayachandran G., to see the truck passed by, but in a few

minutes thereafter, she found the fourth respondent, who is a Police officer in uniform, confront her father to ask him if he had stolen her mobile phone from the “Pink Patrol” police car parked nearby. The pleadings show that the father immediately said “no”, but that the police officer persisted and demanded from the petitioner whether her father had given the “stolen” phone to her.

5. Little Devipriya was caught unawares by the abrupt turn of events and indubitably terrified by the accusation, began to cry in helpless despair and fear – the pleadings say. The scenario transpires to have continued with gusto and the petitioner and her father apparently being stopped from leaving and threatened to be taken to the police station by the fourth respondent unless her “stolen” phone is returned; when, fortunately, another police officer called into the phone number of the said respondent, to hear its faint ring from inside the patrol car itself.

6. This changed everything.

7. Citizens and onlookers gathered and began to question the fourth respondent, who, it appears, continued to

justify herself saying that the petitioner's father must have thrown the “stolen phone” into the car when he became sure to be caught.

8. As if by the hand of destiny, someone videographed the whole incident in his mobile phone and this became projected into the public attention and consciousness, through social and mainstream media, which then spurred the jurisdictional statutory Authorities to act almost immediately.

9. The materials on record would indicate that, finding the fourth respondent to have acted not in conformity with the requirements of a police officer, she was transferred from the “Pink Patrol” Unit to the District Crime Records Bureau, Kollam, based on an enquiry report dated 28.08.2021, settled by a Deputy Superintendent of Police (Dy.S.P).

10. However, being extremely shaken and under rage of being humiliated, the petitioner's father approached various Authorities, including the Kerala State Commission for Scheduled Castes and Scheduled Tribes; the Kerala State Child Rights Commission and the Police Complaints Authority. It transpires that the first among the afore two

Commissions made specific recommendations against the fourth respondent, including to remove her from active police duty and to initiate action against her under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'JJ Act'), through Exts.P5 and P6 reports.

11. The petitioner alleges that, however, no further action has been taken against the fourth respondent and that the pattern noticed would demonstrate that said respondent is being supported by the Police Department and the other official respondents.

12. It is in such scenario that Devipriya has approached this Court seeking a direction to respondents 1 and 2, who are State of Kerala and the State Police Chief respectively, to take “exemplary action” against the fourth respondent for violating her fundamental rights; and for a further direction to the first respondent to pay an amount of Rs.50 lakhs under the doctrine of “Public Law remedy”, for the tortious acts of the said respondent. The petitioner, of course, also seeks that this Court direct the second respondent - State Police Chief, to take further action on the recommendations made

by the Kerala State Child Rights Commission in Ext.P5.

13. I have heard Smt.A.K.Preetha, learned counsel for the petitioner; Sri.S.Rajeev, learned counsel appearing for the fourth respondent and Sri.P.Narayanan, learned Additional Public Prosecutor appearing for respondents 1 to 3.

14. This matter was considered by the Court on 19.11.2021 at the first instance, when Sri.P.Narayanan, learned Additional Public Prosecutor, submitted that necessary action had already been taken against the fourth respondent and offered to place the details of the same by the next date. I recorded this in the order of the said date as under:

“The allegations in this writ petition - without meaning to say that it is correct or otherwise at this stage - would certainly bring angst to any right thinking person.

2. The learned Senior Government Pleader and Additional Public Prosecutor - Sri.P.Narayanan, submitted that necessary action has already been taken against the 4th respondent and that he will place on record the details of the same by the next posting date. He, however, added that the 4th respondent is presently not serving in the address shown in the writ petition, but that she is working in DCRB, Kollam City. He submitted that if this Court is so inclined, summons to her can be served through the 2nd respondent - State Police Chief.

3. Smt.A.K.Preetha - learned counsel for the petitioner, vividly narrated certain incidents which she says that her client, who is a little child of 8 years, had to endure in full public gaze.

She added that the incident has left an indelible Psychiatric imprint on her young mind and that she is now scared of “khaki uniform”.

4. As I have said above, it is too early a stage for this Court to conclude whether the allegations made in this writ petition are right or wrong; but certainly, these are ones which should engage the personal attention of the 2nd respondent - State Police Chief, with all the seriousness it deserves. I, therefore, permit the petitioner to take out notice to the 4th respondent through the 2nd respondent - State Police Chief; and adjourn this matter to be called on 29.11.2021, within which time, the 2nd respondent will file an affidavit before this Court explaining and detailing the action taken against the 4th respondent.”

15. The petitioner's allegations and her requests afore recorded were initially opposed by the second respondent - Director General of Police by filing an affidavit dated 25.11.2021 - sworn to on his behalf by the Inspector General of Police, South Zone - producing therewith Exts.R2(a) and R2(b) report and statement respectively of the fourth respondent; averring that her conduct was a “normal reaction”, though she acted not in conformity with her obligations as a police officer, because she had no deliberate intention of intimidating or harassing the petitioner or her father. The State Police Chief has gone on to aver in the said affidavit that “*the allegation that the petitioner started crying after the intimidation of the fourth respondent is incorrect and baseless*” (*sic.*) and further that “*crowd had gathered*

only after the phone was found from the car. Then the public began to ridicule the fourth respondent and in that noisy situation the petitioner started crying” (sic).

16. Presumably being alerted by the affidavit of the State Police Chief, Smt.A.K.Preetha, learned counsel for the petitioner, made available a Compact Disk (CD), containing the visuals of the incident recorded by an onlooker, across the Bar; and with the consent of Sri.P.Narayanan, learned Additional Public Prosecutor and Sri.S.Rajeev, learned counsel for the fourth respondent, it was played back in open Court and examined by me closely. After watching the visuals, Smt.A.K.Preetha submitted that her client had been subjected to psychiatric treatment at the Government Mental Centre, Thiruvananthapuram, to overcome her deep fear psychosis triggered by the harrowing experience and humiliation and I, therefore, issued the following order:

“Sri.S.Rajeev - learned counsel appearing for respondent No.4 seeks time to file counter pleadings.

2. Smt.A.K. Preetha - learned counsel for the petitioner handed over a Compact Disk (CD) containing the visuals of the alleged incident and same was shared in the Virtual Platform.

3. Though I do not propose to say anything on the visuals, *prima facie*, I am of the view that the 2nd respondent - Director General of Police, who is also the State Police Chief, will have to devote his attention to the issue and file a report before this Court.

4. This is also because the learned counsel - Smt.A.K.Preetha, submitted that until this time the police have not taken the statement of the petitioner or that of her father.

5. As I indicted in the earlier order dated 19/11/2021; the petitioner is stated to be going through emotional and psychiatric stress on account of the alleged incident. The second respondent must also keep this in mind while filing the report before this Court. I request the learned counsel for the petitioner to place on record the details of the treatment her client is undergoing in a sealed cover so as to enable this Court to understand the scenario better.

6. Since Sri.P.Narayanan - learned Additional Public Prosecutor, says that 4th respondent has been transferred on account of the alleged incidents, I am certain that the orders with respect to the said transfer, as also the reasons which impelled the Authority to do so - including any report and such other - must also be placed on record by the next posting date. For the afore purpose, I adjourn this matter to be called on 06/12/2021."

17. As luculent from the afore extracted order, I thought it better to call for a further report from the State Police Chief because some of the averments in his affidavit did not ring true to me.

18. In obedience to the order dated 29.11.2021, the State Police Chief, thereafter, filed a Report before this

Court, along with a memo of the learned Additional Public Prosecutor dated 03.12.2021, producing therewith the statements of the fourth respondent, the petitioner, independent witnesses, as also the person who recorded the video in question. The report, however, reiteratingly avers that *“crowd had gathered only after the phone was found from the car. Then the public began to ridicule the fourth respondent and in that noisy situation the petitioner started crying.”* The State Police Chief then went on to say that *“there was no intention or attempt on the part of the fourth respondent to implicate, humiliate or intimidate the petitioner and her father in public view or to use disparaging - coloured remarks” (sic)*. Pertinently, thereafter, he admits that *“the enquiry report (meaning the one prepared by the Dy.S.P) reveals that the fourth respondent had wrongly suspected the person (referring to the petitioner's father) for taking her mobile phone. It says that it was a genuine mistake that would have happened to anyone” (sic)*; and that *“she had also apologized to the petitioner's father”*. The report concludes saying that no action is necessary on

Exts.P5 and P6 recommendations of the statutory Commissions because, even going by the incident and the versions of the independent witnesses, as also that of the fourth respondent, she cannot be seen to have made any utterances against the petitioner or her father with reference to their caste and that the concept of “cruelty” as available in the umbra of Section 75 of the “JJ Act”, cannot apply because the said respondent did not act with the intention to cause any vexation to the petitioner or her father.

19. This Court evaluated the afore Report on 06.12.2021, on which day, very pertinently, the fourth respondent brought on record an affidavit sworn to by her on the same day, unconditionally taking full responsibility for the incident and tendering her unqualified apologies to the petitioner and her family, unambiguously averring as below:

“2. I most humbly submit before this Hon'ble Court that I had never known peace of mind since 27.08.2021. I am a housewife and also a mother of three school going children. My husband is working abroad as a driver. My mother in law was bed ridden and I was constantly communicating with her regarding her health on that fateful day. So, at that moment without any proper application of mind or thinking, anxious of not finding the phone, in an utter confusion, I acted and I never in my dreams thought that it will turn out to be such a

traumatic event for the beloved child.

3. Unfortunately, fearing a repercussion and adverse response from the crowd, I could not console the child and I feel extremely remorseful for the events happened on that day. I am targeted by the public on every occasion because of the widespread of the alleged video in the social media. I am undergoing media and moral trial by public on each and every single day.

4. I am also a mother and have a daughter aged 6 years and have no reason to harass a child. I am not able to do my duty properly due to the extreme mental pressure and sleepless nights. I am not able to take proper care of my 3 minor children and this has caused substantial disruption in my family life as well as my career.

5. I have been transferred to an office almost 100 kilometers from my residential house at Neyyattinkara, Thiruvananthapuram, causing much disruption in my family and for my school going children.

6. I deeply regret my behavior on that particular day and not a single day goes by without repenting my behavior on that day. I tender my unconditional apology to the petitioner and her father and crave to this Hon'ble Court to pardon me for my behavior towards the minor petitioner on that day. I deeply repent for not able to have the presence of mind to caress and console the child when she started crying. Unfortunately I could not act in a way befitting that of a mother, than a public servant

7. I realize that my unintentional act has caused much pain and agony to the minor petitioner and her father. I also repent my actions wholeheartedly and deeply apologize to the minor petitioner and her family. I assure the petitioner and this Hon'ble Court that I will do my duty hereinafter with much care and devotion in a more responsible manner."

20. Since I did not find full favour with the Report of the State Police Chief and because I thought it fit to allow some

time to the petitioner and her family to reflect upon the apology of the fourth respondent, I indited the following order on 06.12.2021:

“Read order dated 29.11.2021.

2. The report of the State Police Chief is on record, produced by the learned Additional Public Prosecutor - Sri.P.Narayanan, along with his memo dated 03.12.2021.

3. I have read the whole report, which has been produced in a sealed cover - but to which, even the learned Additional Public Prosecutor did not attach confidentiality - and must say that many of the averments therein are extremely generalized and made with a subjective tenor. I do not intend to speak in greater detail on the report but, after noticing the details of the entire incident, the State Police Chief says that no criminal action is required against the officer concerned, specifically referring to Section 75 of the Juvenile Justice (Care and protection of Children) Act (“JJ Act’ for short).

4. Apart from the question whether Section 75 of the JJ Act would apply, and even if the State Police Chief has found otherwise, then an axiomatic question would arise whether any other provisions of law, including under the Indian Penal Code, would be attracted.

5. However, this is completely silent in the report.

6. The State Police Chief then says that the 4th respondent - *officer, has been transferred to Kollam and that she is now asked to serve in a “non-uniformed” post.*

7. However, the report does not say that this was done by way of punishment nor does it state which provision of law was followed for doing this, except that she was also asked to submit herself to a “behavioral training”.

8. That said, the statements of various persons, including the witnesses involved in this case, have been produced along with the report.

9. The one deposition that has caught my singular attention is that of the petitioner herself, wherein, in the most innocent manner as one would ascribe to a child of her age, she says that the officer - whom she refers to as 'aunty' - asked her whether she had taken the phone from her father. She says that she told her she did not do so, but that the said Officer still accused openly that she saw her father taking the phone from the car.

10. Smt.A.K.Preetha, learned counsel for the petitioner, has made available the records of the psychological evaluation of the petitioner, conducted by the Government Mental Health Centre. She informed me that this was done under the aegis of the Child Rights Commission.

11. I have examined the afore documents and it certainly contains endorsements that the child was 'fearful' and it was reported that this was on account of 'stressful event' involved in this case.

12. It must, however, borne in mind that the incident in question happened on 27.08.2021, while the petitioner's child was subjected to evaluation only on 04.09.2021 - which was nearly a week after it. No doubt, by then, her condition may have improved, but the report still indicates the level of impact that was caused in her young impressionable mind.

13. Since the report of the Mental Health Centre is not very legible, I am of the view that, when this case is next called, Dr.Sreelal. A, clinical psychologist, who saw the girl must be present online through videoconferencing, so that this Court can obtain necessary inputs from him. The competent officer of the 1st respondent will arrange for this and ensure his presence.

14. Pertinently, Sri.S.Rajeev, learned counsel appearing for the 4th respondent, has presented an

affidavit shown to by his client, wherein, she has profoundly and profusely tendered an apology to the child and to this Court for the 'incident' that happened on the fateful day. He explained that the said officer is also one who is coming from a rather disadvantaged section and that she has three minor children of her own. He added that her husband has lost his job in a country outside India and is unable to return and that she is also in charge of her aged mother-in-law. He submitted that, his client is now a changed person, who would never even dream of doing anything as has been alleged against her, and that "she whole heartedly and deeply apologize to the minor petitioner and her family" (sic).

15. The first impressions of this case, when I had considered it last time, certainly was one that evoked extreme empathy for the petitioner, who is a young innocent and angelic child. I am concerned about her care and her wellbeing more than anything else and it is this resolve which is reflected in the earlier orders.

16. Indubitably, a conduct akin to the one exhibited by the 4th respondent cannot be allowed in future and this Court is aware that, but for the accidental recording of the same, none of this would have come to the public gaze, as has been done now.

17. The State Police Chief, instead of trying to support or justify the conduct of the 4th respondent, must ensure, as has constantly been said by this Court, that every Officer acts in the manner as is expected of them, with empathy and responsibility to their fellow citizens, who are in fact, their protectors, as per the Constitutional imperatives of our Nation.

18. It is not when an incident is brought to light that action should be taken, but every officer should be sensitized, particularly in their dealings with women and children.

19. I am therefore, of the undoubted view that the 1st respondent - State of kerala must now inform this Court what they propose to do for the child to assuage her scarred feelings and to restore her trust and belief

in humanity and the Police Force.

20. As I have said above, she is a very young girl with an impressionable mind and the scars at this age will be carried by her throughout her life.

21. I, therefore, asked Sri.P.Narayanan, learned Additional Public Prosecutor, as to what the State proposes to do for the petitioner; to which he submitted that a counter affidavit will be filed by the 1st respondent, detailing the measures for the afore purpose. This is recorded.

22. The afore being indited, the apology now offered by the 4th respondent to the child certainly is welcome, but it is for her and her parents to decide whether it would be sufficient. Smt.A.K.Preetha seeks time to confer with her clients on this.

23. At this time, Sri.P.Narayanan - Additional Public Prosecutor brought to my notice that the District Police Chief, Thiruvananthapuram (Rural) has called for a report from the jurisdictional Child Protection Officer, after conducting apposite counseling for the petitioner. If this be so, the said report shall also be made available to this Court by the next posting date.”

21. Even though the afore order speaks for itself, I deem it necessary to emphasis that this Court found it rather strange that none of the official respondents had even touched upon the mental trauma suffered by little Devipriya and hence to summon Dr.Sreelal, the Psychologist attached to the Mental Health Centre, for an online interaction regarding her condition and also directed the State of Kerala to inform this Court what they propose, as reparative

measures, for the petitioner.

22. When I thereafter called this case on 15.12.2021, the learned Additional Public Prosecutor invited my attention to the memo dated 14.12.2021 filed by him, producing with it the report of the Psychologist attached to the District Child Protection Officer, Thiruvananthapuram, which has unreservedly recorded that Devipriya suffered lack of sleep, fear and incapacity to study, when she was examined 31.08.2021 (wrongly shown therein as 31.09.2021) and that she was given assistance to reduce her “mental stress”. The relevant portion of the said report is extracted below to enable a full appreciation:

കൗൺസിലിങ് റിപ്പോർട്ട്

ബഹു.ബാലവകാശ സംരക്ഷണ കമ്മീഷനിൽ നിന്നും ലഭിച്ച നിർദ്ദേശാനുസരണം കേസിന് ആസ്പദമായ സംഭവം നടന്നതിന്റെ അടുത്ത ദിവസം ശ്രീ ജയചന്ദ്രനെയും കുടുംബത്തെയും ബന്ധപ്പെടുകയും അവർക്ക് മാനസിക പിന്തുണ നൽകുകയും തൊട്ടടുത്ത പ്രവൃത്തി ദിനമായ 31- 09 - 2021 ന് ടി കാര്യലയത്തിലെ ജില്ലാ റിസോർസ് സെന്ററിൽ ശിശു സൗഹാർദ അന്തരീക്ഷത്തിൽ വെച്ചു കുട്ടിക്ക് സൈക്കോളജിസ്റ്റ് കൗൺസിലിംഗ് ലഭ്യമാക്കുകയും ചെയ്തു. ടി കുട്ടിയുടെ ഉറക്ക കുറവ്, ഭയം, പഠിക്കാൻ താൽപര്യം ഇല്ലായ്മ

തുടങ്ങിയ പരാതികൾക്ക് കൗൺസിലിംഗ് മുഖേന പരിഹാരങ്ങൾ നിർദ്ദേശിക്കുകയും മാനസിക സമ്മർദ്ദം കുറക്കാനുള്ള സാഹചര്യം ഒരുക്കണമെന്നും തുടർന്നുള്ള എല്ലാ സേവനങ്ങൾക്കും ടി കാര്യലയവുമായി ബന്ധപ്പെടണമെന്ന് അറിയിക്കുകയും ചെയ്തു.

തുടർന്ന് 27-11-2021 ന് ടി കുട്ടിയുടെ പിതാവായ ശ്രീ ജയചന്ദ്രനെ ഫോണിൽ ബന്ധപ്പെടുകയും ഇപ്പോഴത്തെ അവസ്ഥ ചോദിച്ചറിയുകയും തുടർ കൗൺസിലിങ്ങിനായി കുട്ടിയെ ഈ കാര്യാലയത്തിൽ എത്തിക്കുവാൻ അറിയിക്കുകയും ഉണ്ടായി. ശേഷം 03-12-2021 ന് ടി കുട്ടി പിതാവുമായി ജില്ല്യാ റിസോർസ് സെന്ററിൽ എത്തുകയും സൈക്കോളജിസ്റ്റിന്റെ സേവനം ലഭ്യമാക്കുകയും ചെയ്തിട്ടുണ്ട്. നിലവിൽ കുട്ടിക്ക് മാനസിക പര്യാസങ്ങൾ കുറഞ്ഞെന്നും കുട്ടി സാധാരണ ജീവിതത്തിലേക്ക് മടങ്ങിയതായും കൗൺസിലിങ്ങിൽ നിന്ന് അറിയാൻ സാധിച്ചിട്ടുണ്ട്.

23. In the afore background, I also interacted with the afore named Dr.Sreelal - who had seen Devipriya a week or so later and whose impressions were produced by Smt.A.K.Preetha, along with the memo dated 06.12.2021 - as mentioned above - through video conferencing. He reported that little Devipriya is a highly intelligent girl, with an impressionable mind and deep intellectual capacity and that

mercifully, she is not carrying any hatred against the 4th respondent, in spite of the intense trauma suffered by her. Certainly, this pleased this Court and made my heart lighter, because the visuals I saw was of a young hapless girl crying consolably.

24. During the hearing that went on after this, Smt.A.K.Preetha insisted that State of Kerala be directed to compensate her client under Public Law; and I, therefore, thought it apposite to allow some time to Sri.P.Narayanan, at his request, to inform this Court whether the State is willing to accede to any figure, taking note of the unconditional apology tendered by the 4th respondent. This was recorded in my order dated 15.12.2021, which is to the following effect:

“I have heard the learned counsels on all sides today, in great detail.

At the Bar, request is made by Smt.A.K.Preetha - learned counsel for the petitioner, that her client's plea for a Public Law reparation sought for by her be granted, but I am of the view that I will require the specific response of the Government in this matter, including as to whether they are accede to willing any figure.

I therefore, adjourn this matter to be called at 1:45 PM on 20.12.2021.”

25. There was an adscititious reason for this Court to make the order dated 15.12.2021, which is that the State of Kerala had placed their affidavit dated 14.12.2021 on record without touching upon the prayer of the petitioner for compensation but merely averring that the 4th respondent had been transferred out of “Pink Petrol” and that *“they will seek support from the Women and Child Welfare Department to assess the status of the child through their approved Child Psychologist/ Counselor. After assessing the present situation of the child through an expert, necessary counselling, or other appropriate support system for improving the self-confidence and self-esteem of the child will be provided in a time bound manner”* (sic).

26. The matter was thus listed on 20.12.2021, when Sri.P.Narayanan, however, submitted that the facts, as stated by the petitioner, are severely disputed and therefore, that State of Kerala is not willing to compensate her in any manner, under the Public Law Remedy Doctrine. He also referred to the Government Order dated 18.12.2021, enclosing a statement of the Additional Chief Secretary of the

State of Kerala, along with memo dated 20.12.2021, wherein the averments *ut intra* have been made:

“The Hon'ble High Court has specifically directed the State to have a say in the matter of paying compensation to the child. There is no denying that the child was put into immeasurable agony following the incident. And the Government have assured any further steps to provide mental support through counseling, if needed. The particular incident of harassment by the Police as alleged, was happened on account of the Pink Police Officer, not showing due diligence in handling the situation. Government deeply regrets the improper behavior shown by the Officer who is duty bound to protect the rights of the common man. However, the State Police Chief has ruled out the chance of invoking provisions of SC/ST (PoA) Act and the Juvenile Justice Act in the instant matter. There is no willful or malafide intention on the part of the Officer to defame or harass the child or her father. The entire incident happened on account of a misunderstanding by suspecting that her mobile phone was stolen. Thereby the provisions of SC/ST (PoA) Act which requires adequate compensation to the victims cannot be invoked in the case. There is no chance that the Police Officer would come to know the caste of the petitioner she met by chance. Hence she can only be held responsible for improper behavior.

In the circumstance, Government proposes to direct the officer concerned in particular and the entire Police Force in general to show utmost diligence while discharging their official duties and dealing with the General Public. Therefore, Government may not be held liable for paying compensation to the petitioner as such practice will only put the entire Force in poor light and the General Public may further take Law and Order into their hands. Government may be put into further unnecessary or fabricated litigations on extraneous reasons raised by people, if the State accede to such demands. Hence Government will take all necessary measures to prevent the occurrence of such incidents and the State Police Chief will be

directed to give a strict warning accordingly to the entire Police Force dealing with Law and Order issues.

It may further be submitted that there occurred no violation of fundamental rights of the citizens, and there is no specific findings on the violation of Public Laws. Hence this case warrants no monetary compensation to the petitioner. **If at all any jurisdictional Court would find that there is any violation of any of the laws has been committed by the Pink Police Officer, the petitioner has every right to avail the remedies available under the Public Law.” (emphasis supplied)**

27. Frankly, this amazed this Court to a great extent because, Sri.P.Narayanan went on to further say that, without the visuals being part of the record, this Court cannot take cognizance of the same and consequently, I was left without any other option but to order as below on that date:

“Though I wanted to dictate judgment today, the learned Additional Public Prosecutor - Sri.P.Narayanan, submitted that many of the facts as stated by the petitioner are severely disputed. I then asked him about the visuals of the incident shared by the counsel for the petitioner online during the earlier posting, to which he responded by saying that it cannot be taken cognizance of since the same has not been produced on record by her. He argued that in the absence of the same, this Court is obligated to go by the affidavits of the Police Officers and the Statements of the witnesses recorded in the internal enquiry alone - which will demonstrate that the facts, as stated by the petitioner, are disputed, she is thus not deserving of being granted any compensation under the doctrine of Constitutional Tort.

2. However, I notice that in the affidavit sworn to by the Inspector General of Police, dated 25.11.2021, she

makes a reference to a 'video' which she had seen. The specific averment of the said Police Authority is available in paragraph 7 of the said affidavit to the effect: 'he voluntarily raised his shirt to prove his innocence which is clear from the video that has been circulated in the media' (sic).

3. Any person will thus infer that the Inspector General or some other Officer in charge of the internal enquiry had seen this video and that it is part of the said enquiry conducted by the Police Department. However, for some reason, the same has not been produced before this Court, though every other statement of witnesses and such other, have been made available. 4. Since the State now says that this Court cannot take cognizance of the facts as stated by the petitioner, in the absence of any material to prove it, I am certain that the video which is referred to by the Inspector General of Police in her affidavit afore, must be placed before this Court, so that judgment can be delivered after examining it.

I, therefore, adjourn this matter to be called on 22.12.2021 with a direction to the official respondents to produce the 'video' referred to by the Inspector General of Police in her affidavit dated 25.11.2021."

28. It is in such factual scenario that this writ petition has been now placed before me today and I record that a Compact Disk (CD) has been produced on record by Sri.P.Narayanan, along with his memo dated 22.12.2021, containing the visuals of the incident dated 27.08.2021, which has been seen by me in open Court, in the presence of all learned counsel; and I must say that it is exactly the same as was shown to this Court by Smt.A.K.Preetha as mentioned

above.

29. However, in spite of all the above inputs, Sri.P.Narayanan argued in defence of the 4th respondent, justifying her conduct as being “*natural*” and “*without malice or deliberate intent to cause any vexation to the petitioner or her father*”. He made his submissions relying upon the Notes of Arguments dated 20.12.2021 and 22.12.2021 filed by him and pleaded that this writ petition be dismissed.

30. It is thus perspicuous that this Court is now called upon by the official respondents and is thus enjoined to consider every contentions of theirs on its merits; but I must say prefatorily that when the 4th respondent unhesitatingly admits the incident, though saying that what happened on that day was not intentional and in the heat of the moment, I would have normally expected the State of Kerala to feel for Devipriya and to compensate her appositely, because it is indubitable that the events of that day - be that intentional or otherwise - has left an indelible psychiatric scar on her, which is inescapable from the afore seen report of the “ORC Psychologist” attached to the District Child Protection Unit,

who has reported that she suffered lack of sleep, fear and inability to study at least for a few days.

31. This Court justifiably expected the State to stand with little Devipriya, under the celebrated *Parens Patriae* Principles, but the arguments and subsequent pleadings before this Court reflect to the contrary.

32. In fact, the entire line of defence put up by the official respondents in all their affidavits, statements and reports, is to the effect that little Devipriya never faced any intimidation on account of the action of the 4th respondent and therefore, **that none of her fundamental rights have been violated**; though they, without hesitation, concede that she went through **“Psychological trauma on account of the incident”** (sic) (see paragraph 12 of Report dated 02.12.2021 of the State Police Chief).

33. Very pertinently, thereafter, in the statement of the Additional Chief Secretary dated 20.12.2021, he says unequivocally that, however, *“if at all any jurisdictional Court would find that there is any violation of any of the laws has*

been committed by the Pink Police Officer, the petitioner has every right to avail the remedies available under the Public Law” (sic). This, therefore, can only mean that State is willing to compensate her if her constitutional or legal rights are proved to be violated.

34. Therefore, the real question now is, in the background of all the materials and visuals available, whether this Court can affirmatively find that any of the fundamental rights of little Devipriya has been violated on account of the action of the 4th respondent; and if so, whether the State would be vicariously liable on her behalf to compensate adequately, under the Public Law Remedy Doctrine.

35. For this purpose, I will certainly have to go through the materials on record, but I must also be greatly circumspect because anything that I say here certainly can be used against the 4th respondent.

36. I, therefore, record that every observation of this Court to be presently made is only from the frame of reference of the violation of any fundamental right of Devipriya, on account of the conduct of the 4th respondent,

thus leading to the assessment and grant of appropriate relief to her.

37. As I have already indicated above, the germane relevant materials on record, *inter alia*, are the report of the enquiry conducted by the DYSP on 28.08.2021; the affidavit of the State Police Chief before this Court - which is in fact sworn to on his behalf by the Inspector General of Police - dated 26.11.2021; the report of the State Police Chief dated 02.12.2021 and Exts.P5 and P6 recommendations made by two Statutory Commissions.

38. The incident in question happened on 27.08.2021. An enquiry was initiated - which the petitioner says was consequent to the requisition by the Commission for Child Rights, and which the official respondents say was at the instance of the District Police Chief - in which the statements of several witnesses have been recorded. These statements are available on the files of this case, marked as Exts.R2(vii) (a) to R2(vii)(i).

39. A close inspection of the afore statements of the 4th respondent and the witnesses discloses certain very vital

details, which are crucial to this case. I will, therefore, deal with them in essential detail in the following few paragraphs.

(a) Ext.R2(vii)(a) is the statement of the 4th respondent, who admits that when she confronted the petitioner's father to return her phone, she began to cry a "little". She then says that when the phone was located and crowds gathered, Devipriya began to cry "more". She, however, justified her conduct saying that she acted as any other "normal person", when she found her phone to be missing and because the petitioner's father was "acting suspiciously". Of course, she has also said therein that she had tendered her apology to the petitioner's father immediately thereafter.

(b) As far as Ext.R2(vii)(b) is concerned, it is the statement of the petitioner, wherein, she has narrated the incident from her perspective and has very sweetly referred to the 4th respondent, without any malice or spite, as "aunty". She, however, has stated that the 4th respondent accosted her father

and demanded phone from him and then turned to her, asking whether she had been given the same, thus making it clear - from her perspective - that she and her father had been detained by the said respondent and that there was an unfair accusation of theft made against both of them.

(c) Ext.R2(vii)(c) is the statement of the father of the petitioner, with which I do not want to deal with at the moment because it is not his perspective which is relevant here.

(d) Coming to Exts.R2(vii)(d) and R2 (vii)(e), they are the statements of the police officers who were with the 4th respondent at the time of the incident. The first among them - Smt.Preetha, affirmed that there was an incident and that an unfortunate accusation was made, but it is clear from her further statement that she was not aware of the details of the same, perhaps because she was slightly away at that time. However, Ext.R2(vii)(e), which is the statement of Smt.Reena - who is the

police officer called to the number of the 4th respondent to finally locate the phone - establishes beyond any doubt that even at the time when the 4th respondent asked the father of the petitioner for the first time about her phone, she had begun to cry. She, in fact, says that, thereafter, a crowd gathered and therefore, that she called into the phone to locate it, which led to the onlookers to accuse the 4th respondent for having harassed the petitioner and her father. Pertinently, she says that she and Smt.Preetha tried to console the petitioner - who had by then been reduced to inconsolable tears - and her father, but there is no reference to any such attempt having been made by the 4th respondent therein.

(e) Three independent witnesses were also thereafter examined, whose statements are on record as Exts.R2(vii)(f), R2(vii)(g) and R2(vii)(h). All the three witnesses, namely Rajan, Asokan and Suni,

spoke in unison with respect to the manner in which the incident unfolded; and in fact, Sri.Rajan added that the 4th respondent had even threatened to search the petitioner for the phone and that she then started crying. He also confirmed that the 4th respondent said that if her phone is not returned, both Devipriya and her father will be searched and taken to the police station. Sri.Suni, in his Ext.R2(vii) (g) statement spoke on the same lines as Sri.Rajan, supplemented it saying that the moment little Devipriya was confronted by the 4th respondent, she began to cry, which she continued for the entirety of the incident, which was more than nearly 10 minutes.

(f) The final statement was taken from the person who recorded the video clip, whose name is Ziyad Rahman, and which has been marked as Ext.R2(vii)(i). His version is also in tandem with that of other witnesses and he has explained why and in what manner, he recorded the visuals and handed it

over to the Investigating Team when asked.

40. The above being so recorded, one important additional input which this Court will need to advert to is Ext.R2(a) - produced along with the affidavit of the State Police Chief dated 25.11.2021 - which is the report submitted by the 4th respondent immediately after the incident happened. **She unreservedly affirmed that she stopped and detained the petitioner and her father under the impression that they had stolen her phone and that when they tried to leave, they were again stopped so as to locate the phone or to be taken to the police station for further action.** She has justified her conduct in the said report, saying that she believes that on the theft being discovered, the petitioner's father threw the phone back into the patrol car and that it was thus found in the rear foot well of the said vehicle. Pertinently, she has not even whisperingly mentioned therein that she had apologized to the petitioner or to her father immediately after the incident.

41. It is perspicuous - as is admitted - that the above

are the statements noticed by the DYSP, while he prepared the report dated 28.08.2021 and placed it before the Inspector General of Police. When I go through this report, which is available on record as Ext.R2(ii), I must say that one can only be perturbed in the manner in which he has interpreted the whole incident to say that the 4th respondent has acted under a “justified impression” that her phone had been stolen by the father of the petitioner and that her reaction was only “natural”, but that no serious misconduct can be attributed against her. This report appears to have been accepted by the Inspector General of Police - as is also conceded to by the State Police Chief in his affidavit and Report - leading to an order, transferring the 4th respondent to Kollam, recording that, it was sufficient punishment for her.

42. In fact, Ext.R2(iv) proceedings of the Deputy Inspector General of Police has also been placed on record, along with the report of the State Police Chief dated 02.12.2021, wherein, it is recorded that “*The enquiry report submitted by the D.C.P, Thiruvananthapuram rural in*

connection with the incident that Moonnumukku Junction, Attingal, on 27.08.2021 has revealed that Smt.Rajitha WSCPO was found short of standard of behavior expected of a police personnel deployed in Pink Patrol” (sic).

43. The consequential proceedings of the Inspector General of Police, a copy of which is Ext.R2(v), then records as under :

“There was allegation that while one Sri.Jayachandran along with his 8 year old girl child, Devu was standing near the pink vehicle at Moonnumukku, the driver of the pink vehicle, WSCPO Rejitha questioned him in public and insulted him suspecting him of stealing her mobile phone from the pink vehicle.

I have carefully verified the report received from the Dist.Police Chief,Thiruvananthapuram Rural. It is clear that from the words of independent witnesses, that Ms.Rajitha had wrongly suspected the person of taking her mobile phone. This was a genuine mistake that could have happened to anyone. However, she has not used any derogatory language either to the child or the father. In fact, there was no way that she would know if the persons belonged to the SC/ST community at all. The DIG, Tvpm range has already transferred her out of the district.”

44. Therefore, it is apodictic that the stand of the official respondents is that little Devipriya did not cry because of the pressure brought up on her or her father by the 4th respondent in her quest to find her own phone, but

that she broke into tears when people gathered subsequently thereafter.

45. It is also their unequivocal stand, **after expressly admitting that the petitioner was subjected to psychological trauma**, that nothing can be attributed against the 4th respondent for having created the incident and that her reaction was only 'natural', being under the impression that her phone had been stolen by the petitioner's father.

46. In contradistinction to this are the averments of the 4th respondent in her counter affidavit extracted in paragraph 19 (supra), wherein she does not offer any justification, but says that she had acted without discretion, in the heat of the moment, when she saw that her phone was missing.

47. Incredulously, however, the attempt of the official respondents, crystally clear from their pleadings filed much later, is to somehow support the 4th respondent and deny the petitioner her legitimate rights under the Public Law Doctrine, asserting that the facts relating to the incident on 27.08.2021 are disputed, particularly as to the time when

little Devipriya started crying.

48. However, I must remind the official respondents that even if what they say is taken to be true, it is irrelevant at what point of time the child started crying, but that she did - which is unreservedly admitted - was solely because she was terrorized on being confronted and detained by an Officer in full Uniform and being accused of theft and of surreptitiously hiding a mobile phone. The abject helplessness and despondency that little Devipriya must have gone through at that point of time can never be properly described; but it is limpid - as is without contest - that she suffered extreme upheaval and fear, being frightened and humiliated in full public gaze, ironically, in the presence of a team of Police Officers who were expected to offer her solace and to protect her, being the 'Pink Patrol Unit'.

49. Though the Additional Public Prosecutor - Sri.P.Narayanan, says that the visuals now placed on record by him cannot be looked into by this Court or trusted, I am certainly of the view that the said contention deserves only to be wholly repelled because it is expressly conceded by him

that every enquiry done in the past by the Police and which has been referred above, proceeded after seeing these visuals; and this is absolutely vital because, in spite of noticing little Devipriya being pushed to a corner in the said visuals, the various Police Officers concluded that she was not crying at the time when the 4th respondent accosted her and her father, but only much later when the crowds gathered.

50. Since this Court has seen the visuals, which was not objected to by any counsel, I have no doubt that, *prima facie*, little Devipriya was crying at the beginning of the incident and her fear was palpable, with she sobbing uncontrollably and clinging to her dear father, when they were being illegally detained and subjected to an unsubstantiated allegation of theft, which would gnaw at the soul of any self-respecting and right thinking citizen of this nation.

51. The visuals further show that, throughout the incident, until the phone was located, the 4th respondent was trying to cover the petitioner and her father with her arms, thus making them unable to leave and that even at the time

when the petitioner's father pulled up his shirt to show that he was not hiding anything, little Devipriya was sobbing. Throughout this time also - as the visuals would show - the 4th respondent had her arms in front of the petitioner, so as to indicate to her that she cannot leave until the phone was located, or it was handed over to her, either by her or her father.

52. The scenes of the incident certainly would bring anguish and agony to any right thinking person and rightfully, therefore, the 4th respondent has, though belatedly, apologized to little Devipriya, which I think is a step in the right direction, because **we cannot let our daughters grow up in anger or harbouring spite for another.**

53. Little Devipriya is a wonderful child, who resides no hatred for the 4th respondent, which is evident from the fact that she calls her 'aunty' in all her statements and narrates, with a childlike innocence - as is true of any child of her age - the incident, but without accusing her in any manner, whatsoever.

54. Alas, this has never been noticed by the official respondents, who have unfortunately tried to justify the entire incident as being a 'natural reaction' from the 4th respondent, on account of the circumstantial situation; but without, even for a moment, even peripherally being concerned about the admitted trauma and terror caused to the little girl, which would last perhaps for her life time, unless immediate remedial steps are taken.

55. The incident being crystally clear and uncontested even by the 4th respondent - she, in fact, admitting it in its entirety and apologising for her conduct - the position of law involved does not really have to be restated, because from what little Devipriya went through, no one can dispute that her fundamental rights under Article 21 of the Constitution of India - to lead a dignified and full life - had been flagrantly violated on account of this one unfortunate incident.

56. As I have already said above, I had expected the State to rise in her defence because she is their daughter, as much as she is ours; and to offer her some amount of reparation, which certainly, this Court would have accepted -

however small or large it was - but the stern refusal from the part of the State to even recognize the child's mental trauma and terror that she went through - which is luculently reflected in the report of the Psychologist attached to the District Child Rights Protection Unit and which is admitted to by the State Police Chief in his report dated 02.12.2021 - would certainly require this Court to sit up and take notice.

57. In **Nilabati Behera v. State of Orissa** [AIR 1993 SC 960], the Honourable Supreme Court held unequivocally that '*a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right*'.

58. This salutary principle has stood the march of time and in **Rudul Sah v. State of Bihar** [(1983) 4 SCC 141],

their Lordships further fortified it saying thus:

“Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner’s rights. It may have recourse against those officers.”

59. The Public Law Remedy Doctrine has evolved over the years and in **Mehmood Nayyar Azam v. State of Chhattisgarh and others** [(2012) 8 SCC (1)], the Honourable Supreme Court made the following affirmations without leaving any room for doubt:

“32. In *Selvi v. State of Karnataka*, while dealing with the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the brain electrical activation profile test for the purpose of improving investigation efforts in criminal cases, a three-Judge Bench opined that the compulsory administration of the impugned techniques constitutes ‘cruel, inhuman or degrading treatment’ in

the context of Article 21. Thereafter, the Bench adverted to what is the popular perception of torture and proceeded to state as follows: (SCC p.376, para 244).

‘244. The popular perceptions of terms such as ‘torture’ and ‘cruel, inhuman or degrading treatment’ are associated with gory images of blood-letting and broken bones. However, we must recognize that a forcible intrusion into a person’s mental processes is also an affront to human dignity and liberty, often with grave and long-lasting consequences. [A similar conclusion has been made in the following paper: Marcy Strauss, ‘Criminal Defence in the Age of Terrorism - Torture.]’

60. As is now well-known, the Honourable Supreme Court granted benefit to Sri.S.Nambi Narayanan in the celebrated judgment in his name, reported as **S.Nambi Narayanan v. Sibiy Mathews and Others** [(2018) 10 SCC 804], on the very same principles, granting a compensation as large as Rs.1 Crore.

61. The afore precedents ring doubly true in the facts of this case because it is uncontested that, under a wrong impression, the fourth respondent detained the petitioner along with her father, initially accused the latter of having stolen her phone and then turning towards the girl to ask whether it was in her custody and further threatening both of

them that if the phone is not located, then they would be taken to the police station and even searched. It is here that the afore extracted view of the Hon'ble Supreme Court in **Mehmood Nayyar Azam** (supra) becomes acme because the majesty of law must protect the dignity of a citizen and when such are '*dashed against and pushed back*' by those in power, '*there has to be rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector*'. When dignity is lost, the breath of life gets into oblivion.

62. Little Devipriya - as is unhesitatingly conceded by the Government and the State Police Chief - suffered extreme psychological stress on being illegally detained by the fourth respondent and being subjected to humiliation, on an untrue allegation of theft and this certainly eroded her dignity and attacked her reputation, which, as profoundly stated by the Hon'ble Supreme Court in **Vishwanath Agrawal v. Sarla Vishwanath Agrawal** ((2012) 7 SCC 288), '*is not only the salt of life but also of the purest treasure and the most precious perfume of life*. When the trauma suffered by little

Devipriya is so admitted, this Court can never fathom how the official respondents maintain that her fundamental rights had not been violated. I can only see this to be in an brinkmanship to avoid the inevitable liability to honour a monetary compensation, which, in my strongest view, little Devipriya deserves without question.

63. As I have said above, it is not in contest - and in fact, admitted to even by Sri.P.Narayanan - that the events unfolded on 27.08.2021 have severely traumatized little Devipriya. Therefore, it does not matter whether the 4th respondent acted vindictively or viciously or deliberately. The fact that little Devipriya went through the harrowing experience, which certainly has the potential to leave a scar in her psychological development in future, would *ipso facto* be sufficient for this Court to grant her reparatory relief under Public Law, without having to push her to a Civil Court for such purpose, though she certainly can seek civil remedies in addition to this.

64. In fact, Smt.A.K.Preetha submitted that a Public Law remedy in this case is inevitable because the reckless action

of the 4th respondent, which can only be seen outrageous in the circumstances, has caused an actual injury on little Devipriya, which has led to a measurable psychological distress in her, which continued for several days thereafter, as is evident from the report of the Psychologist attached to the District Child Welfare Protection Unit.

65. This Court is in complete affirmation with the afore argument of Smt.A.K.Preetha and as I have already said above, I am firm in my mind that the petitioner is entitled to sufficient compensation for the purpose of remedying the violation of her fundamental right to live with dignity under our great Constitution, at the hands of the 4th respondent and which has been unfortunately tried to be trivialized and even justified by the official respondents through their pleadings in this case, even when the 4th respondent has no such case, while expressly admitting her 'indiscretion'.

66. However, before I can do so, I must answer one other assertion of Sri.P.Narayanan, who argued that even if every allegation against the 4th respondent is found to be true, she will be entitled to protection under Section 113 of

the Kerala Police Act, 2011. Apart from recording that I am completely taken aback to hear this from Sri.P.Narayanan, since this is an argument which should have been impelled by Sri.S.Rajeev more than anyone else, when one examines the afore provision, it is ineluctable that only the action of a Police Officer in his/her official duties will ever come under its protectional umbra, which then keeps him/her insulated from legal proceedings. However, in this case, it is conceded even by Sri.P.Narayanan, that the 4th respondent was not really acting as a Police Officer, though she was in uniform, but that she was trying to locate her own phone and acting virtually as *'judge, jury and executioner'* in her own cause. I, therefore, fail to understand how the official respondents can even whisperingly assert that the 4th respondent is entitled to protection under Section 113 of the afore Act. This can only be seen to be in furtherance of their effort to shield her from legal proceedings - be that Civil or Criminal - in future, to be initiated by the petitioner or her father; and this Court can only find the same to be without bonafides and being actuated by reasons which are not discernible.

67. *Quad Hoc* the reliefs in this case, I notice that the only action taken against the 4th respondent is that she has been transferred to Kollam, under the guise of 'keeping her away from active law and order duties', which is explained by Sri.P.Narayanan at the Bar to mean that she will be kept away from interaction with the public.

68. The crucial question is whether this is sufficient, particularly in view of the afore observations of this Court and the binding precedents of the Honourable Supreme Court.

69. I am of the considered view that, it is not so and that a proper disciplinary action will have to be taken against the 4th respondent - of course, with full liberty being given to her to defend the same in terms of law - because this is the least the Supervisory Officers should have done, after having found, without doubt, that she has acted contrary to the essential requirements of her duties as a Police Officer, so as to maintain the high standards and discipline required of the Force.

70. Before I part, I must certainly say that, had the 4th

respondent exercised some discretion and understood her position as a member of the 'Pink Patrol Unit', she would have never detained or allowed little Devipriya to cry, after being terrified on account of her own accusation. She is stated to be a mother with three children, who are two or more years younger than little Devipriya, and one slightly older. She is also stated to be in charge of her mother-in-law, who is not keeping well and that her husband lost employment abroad, thus plunging the family to great financial crisis. I, therefore, cannot, as a routine norm, direct any action to remove her from employment or such other, since what is now necessary for the petitioner is not be unwittingly or otherwise drawn into 'eye for an eye' or 'teeth for teeth' *lex talionis* revenge or retribution; but that she obtains a closure to her trauma, which she unfortunately had to go through.

71. The apology placed on record by the 4th respondent certainly goes some way in the afore direction, though I am aware that the petitioner and her father has decided not to accept it, but to continue with legal remedies against the said

Officer.

72. "Pink Police" is certainly a revolutionary concept, intended for the support and protection of women and children, particularly of the weaker strata; and had the 4th respondent been aware of this, as also the great responsibility which she carried of being a member of such Force, she would certainly have not acted in the manner she had, at least with little Devipriya. I can only rue that she did not weigh the consequences of her conduct on little Devipriya, which could have been certainly avoided, had she consoled her, putting an arm around her shoulder at that time, saying a word as simple as 'sorry'!

73. In the conspectus of what this Court has seen and recorded above, the award of monetary compensation as exemplary damages, becomes inviolably requisite, since in the face of the uncontested infringement of the inalienable fundamental right of little Devipriya guaranteed under Article 21 of the Constitution, such remedy - which is a well recognised one in public law and edified on the strict liability of the State to guarantee the basic and fundamental

rights of a citizen.

74. As succinctly stated by Justice Dr.A.S.Anand in **Nalabati Behera** (supra), *'the purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Articles 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages'*

awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.'

75. In fact, as also seen above, the singular manner in which the State has attempted to avoid their afore responsibility is by maintaining that none of the fundamental rights of little Devipriya has been violated on account of the admitted incident. Apart from the fact that fourth respondent has no such case and that she takes full responsibility, through her affidavit dated 06.12.2021 (which has been extracted in paragraph 19 of this judgment), it defies logic how this could be ever said, especially when the factum of the petitioner being detained; she being accosted by the fourth respondent in full public view of being in possession of the 'stolen phone'; and being terrorized and humiliated in full public view and guise, thus leading to severe psychological scar on her impressionable mind - which is indubitable from

the report of the Psychologist – is conceded.

76. Therefore, when that assertion of the State is discounted as being nothing but a desperate defence, the further averments in the affidavit dated 20.12.2021 filed by them, sworn to by the Chief Secretary and which has been extracted in paragraph 26 of the judgment – would render it perspicuous that they also concede that little Devipriya has every right to avail the remedies available under public law *'if any jurisdictional court would find that there is any violation of any of the laws has been committed by the Pink Police Officer'* (sic). When the State makes such unreserved asseverations, it can only mean that they are willing to abide by their constitutional and Public Law obligations, should this Court find the fundamental right of the petitioner to have been violated. It is needless to say any further that the incident unfolded on 27.09.2021 has not only violated the dignity of little Devipriya, but also challenged her reputation and exposed her to public ridicule and fear of being arrested and removed to the police station, all because the Police Officer in question acted without discretion and without any

thought or concern for her inalienable fundamental right to live a life of dignity, thus being psychologically scared, as admitted by the Psychologist, whose report has been extracted in paragraph 22 of this judgment.

Resultantly, I order this Writ Petition with the following directions:

a) I direct the competent Supervisory Authority, be that the District Police Chief or such other, to consider initiation of necessary disciplinary action against the 4th respondent, after following due procedure and affording her all necessary opportunity of being heard, as per the applicable Statutes, Rules and Regulations.

b) Until such time as a decision on the afore is taken, and if consequently, disciplinary action is initiated, then until it is concluded, the 4th respondent will be kept away from active law and order duties which will bring her in contact with general public as part of her official functions and she will also be given necessary training on interpersonal relationship with public at large, keeping in mind the imperative behavioral requirements of Police Officers dealing

with public in a civilized manner, as has been reaffirmed by this Court in several judgments in the past.

c) I leave full liberty to the petitioner and her father to invoke and pursue any remedy which may be available to them, against the 4th respondent, including under the aegis of Exts.P5 and P6 recommendations of the Statutory Corporations; for which purpose, all their contentions with respect to the same are left open.

d) I direct the 1st respondent - State of Kerala to compensate little Devipriya in the sum of Rs.1,50,000/-, along with Rs.25,000/- as costs for these proceedings, within a period of one month from the date of receipt of a copy of this judgment.

That being so ordered, I am aware that the petitioner has sought for Rs.50 lakhs in compensation, but I am of the certain opinion that, taking the totality of the circumstances, the afore sum would be commensurate because, the petitioner is legally entitled to seek a larger compensation under the Civil Law remedies, through a competent Court/Forum.

At this time, Smt.A.K.Preetha reiteratingly requested that a larger amount be ordered in compensation. I am afraid that this Court cannot accede to this, even while recognising that the trauma suffered by little Devipriya is immeasurable; because when it is to be estimated in pecuniary terms, this Court will have to keep in mind certain basic parameters. I am, therefore, of the view that the afore amount as compensation under the Public Law Doctrine would subserve justice substantially, if not fully.

Finally, it goes without saying that none of my observations in this judgment will have any reflection on the rights and remedies of the 4th respondent, either when she defends the disciplinary action to be initiated against her or any other proceeding that she may have to face in future, thus leaving her liberty to pursue all of them in terms of law.

STU/SAS/RR

Sd/-
DEVAN RAMACHANDRAN
JUDGE

APPENDIX OF WP(C) 25850/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE CASTE CERTIFICATE OF THE PETITIONER ISSUED BY THE THIRUVANANTHAPURAM TALUK OFFICE DATED 1.6.2019.
- Exhibit P2 TRUE COPY OF THE NEWSPAPER REPORT REGARDING POLICE HARASSMENT PUBLISHED IN MALAYALA MANORAMA DAILY 29.8.2021.
- Exhibit P3 TRUE COPY OF THE FRONT PAGE OF THE MEDICAL RECORD.
- Exhibit P4 TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER'S FATHER BEFORE THE 3RD RESPONDENT.
- Exhibit P5 TRUE COPY OF THE ORDER DATED 29.9.2021 PASSED BY THE KERALA STATE COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES.
- Exhibit P6 TRUE COPY OF THE ORDER DATED 12.10.2021 PASSED BY THE KERALA STATE CHILD RIGHTS COMMISSION.

RESPONDENT EXHIBITS

- Exhibit R2(A) TRUE COPY OF THE REPORT DATED 27/08/2021 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT.
- Exhibit R2(B) TRUE COPY OF THE STATEMENT GIVEN BY THE 4TH RESPONDENT.
- Exhibit R2(C) TRUE COPY OF THE ORDER NO. A2(A)10052/2021/TR DATED 29/08/2021 OF THE DEPUTY INSPECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM RANGE.
- Exhibit R2(I) TRUE COPY OF THE REPORT DATED 27/08/2021 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT.
- Exhibit R2(II) TRUE COPY OF THE ENQUIRY REPORT NO.2616/GL/2021/BSD DATED 28/08/2021 SUBMITTED BY DYSP, ATTINGAL TO THE DISTRICT POLICE CHIEF, THIRUVANANTHAPURAM RURAL.
- Exhibit R2(III)(A) TRUE COPY OF THE LETTER NO. 80/CONFDL/2021/T. DATED 29/08/2021 OF DISTRICT POLICE CHIEF, THIRUVANANTHAPURAM

- RURAL IN ENGLISH.
- Exhibit R2(III)(B) TRUE COPY OF THE LETTER NO. 80/CONF DL/2021/T DATED 29/08/2021 OF DISTRICT POLICE CHIEF, THIRUVANANTHAPURAM RURAL IN MALAYALAM.
- Exhibit R2(IV) TRUE COPY OF THE ORDER NO. A2(A)-10052/2021/TR DATED 29/08/201 OF THE DEPUTY INSPECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM RANGE.
- Exhibit R2(V) TRUE COPY OF THE REPORT NO. D2-6727/2021/SZ DATED 16/09/2021 OF THE INSPECTOR GENERAL OF POLICE SOUTH ZONE.
- Exhibit R2(Vi) TRUE COPY OF THE LETTER NO. B2-11831/2021/TR DATED 26/10/2021 OF THE DEPUTY INSPECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM RANGE.
- Exhibit R2(VII)(A) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF THE 4TH RESPONDENT.
- Exhibit R2(VII)(B) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF THE PETITIONER.
- Exhibit R2(VII)(C) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF THE PETITIONER'S FATHER.
- Exhibit R2(VII)(D) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF INDEPENDENT WITNESS.
- Exhibit R2(VII)(E) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF INDEPENDENT WITNESS.
- Exhibit R2(VII)(F) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF INDEPENDENT WITNESS.
- Exhibit R2(VII)(G) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF INDEPENDENT WITNESS.
- Exhibit R2(VII)(H) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF INDEPENDENT WITNESS.
- Exhibit R2(VII)(I) TRUE COPY OF THE STATEMENT DATED 28/08/2021 OF INDEPENDENT WITNESS.
- Exhibit R2(VIII) TRUE COPY OF THE LETTER NO.102/CAMP/2021-T DATED FROM THE DISTRICT POLICE CHIEF, THIRUVANANTHAPURAM RURAL TO THE CHILD PROTECTION OFFICER.