

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 5<sup>TH</sup> DAY OF JULY 2022 / 14TH ASHADHA, 1944

WP(C) NO. 22276 OF 2021

PETITIONER:

XXX

BY ADVS.C.DHEERAJ RAJAN  
ANAND KALYANAKRISHNAN

RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY ADDITIONAL CHIEF SECRETARY,  
HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
- 2 COMMISSIONER OF POLICE,  
OFFICE OF THE COMMISSIONER OF POLICE, ABDUL KALAM MARG,  
MARINE DRIVE, ERNAKULAM - 682011.
- 3 ASSISTANT COMMISSIONER OF POLICE,  
ASSISTANT COMMISSIONER POLICE OFFICE, THRIKKAKARA,  
KAKKANAD, ERNAKULAM - 682021.
- 4 STATION HOUSE OFFICER, THRIKKAKARA POLICE STATION,  
THRIKKAKARA, EDAPPALLY, ERNAKULAM - 682030.
- 5 GIREESH, AGE NOT KNOWN TO THE PETITIONER, FATHER'S NAME  
NOT KNOWN TO THE PETITIONER, CIVIL POLICE OFFICER,  
THRIKKAKKARA POLICE STATION, THRIKKAKKARA, EDAPPALLY,  
ERNAKULAM - 682030.
- 6 YYY

BY ADVS.SMT AMBIKA DEVI-SPL. GP  
R.RENJITH  
M.T.SURESHKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
05.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

**JUDGMENT**

It was Atticus who said: *"she was powerful not because she was not scared; but she went on strongly despite the fear"*.

2. Hands down, sexual assault is the most traumatic of criminal victimization. While most crime victims find it difficult to discuss their ordeal, sexual assault victims find it particularly painful - because they are intensely traumatized not only by the humiliation of their physical violation, but also the fear of stigmatization, derision and ridicule from the community and society.

3. The depth and complexity of the distress of a sexual assault victim is impossible to be defined.

4. *"I felt as though everything inside me has been obliterated - which was just an empty husk of*

*my former self" - the words of a victim.*

5. A broken victim is so lost in despondency and if she does not find her way out of the labyrinth in hell, she will never touch life the same way.

6. When sexual assault occurs, it creates a whirlwind of mixed emotions and cornucopia of mental health issues like feeling of shame or guilt; flashbacks and nightmares; anxiety disorder; post traumatic stress disorder; depression/suicidal thoughts, to just name a few.

7. The aftermath of a sexual offence involves a cluster of acute and chronic physical and physiological effects and it is crucially important that the victim receives comprehensive care and support.

8. As said above, the pain of the victim is continuous, because she has to go through the motions of being alive; and sometimes the shame is

not the beating nor the assault, but to stand judgment.

9. Most often, the terror and shame takes the victim; the cage is locked; the curtains down and memories carve into flesh, that will leave scars long past being healed.

10. In the past few years, there has been a significant and paradigm shift in our understanding about victim reaction to sexual assault and impact on memory; particularly because trauma has a neurological effect - it affects the brain and nervous system.

11. Indubitably, survivors have to be treated sensitively, respectfully and ought to be told that they will be believed. The process of recovery is slow and painful.

12. An exordium as afore and long has been necessitated because, in this case, the victim of a sexual assault approached this Court with

various allegations against the Police and Law Enforcement agencies, including that she was forced to settle and compromise with the perpetrator.

13. I do not propose to go into the details of this case any further because, through the various interim orders already issued, the petitioner has obtained relief - including DNA analysis of the foetus she was carrying, under the provisions of the Code of Criminal Procedure (Cr.PC). In fact, the learned counsel for the petitioner - Sri.Dheeraj Rajan, affirmed that no specific orders are now required and that a Final Report has also been filed by the Police.

14. However, the trauma, which the petitioner has experienced and which may be forced upon victims in future, makes this Court to think in terms of having a Protocol for the purpose of empowerment of the victim - being gender neutral -

to approach the law enforcement agencies and obtain succor and support in the initial stages of extreme fear, terror and despondency faced.

15. With the afore intent, I threw open discussions in this matter to the Bar, calling for suggestions from anyone who is interested in addressing this Court; and am glad that I did so because, I have had the benefit of the views and inputs from very eminent lawyers, both senior and junior.

16. The principles and imperative requirements of 'Victim Protection Protocols' are inexorably attracted whenever a sexual assault occurs; and I, therefore, requested the learned counsel appearing for the parties and who are assisting this Court upon the aforementioned invitation, as also the learned Special Government Pleader - Smt.Ambika Devi, to offer their suggestions.

17. Smt.V.P.Seemanthini - learned Senior

Counsel and Smt.Parvathy Menon - learned counsel, representing the Victim Rights Centre (VRC), operating under the aegis of the Kerala State Legal Services Authority (KELSA), offered very decisive and incisive informations and suggestions with respect to the manner in which any victim in future will have to be provided for and protected.

18. Smt.Sandhya Raju, representing an organization working in the area of victim care, spoke on the need for empowering a victim from the initial stage of attack, until she/he obtains a closure till the end of the trial.

19. Sri.Ajit Joy - learned counsel of this Court, made available a few suggestions through his written Notes, impressing upon me the international protocols that cover the field in other countries, with emphasis on steps to be followed while dealing with the complaint of a victim, until completion of the trial. His

submissions were hinged on the unexpendable requirement of Police Officers being sensitized and trained, so that the victims will have courage to approach them in the event of an attack.

20. Smt.Ambika Devi - learned Special Government Pleader, offered full support to this Court in the initiative to declare Protocols for the purpose of empowerment of sexual assault victims and for their continuous protection, particularly of their privacy. She added that Government will not merely support such intent, but will enforce it to the fullest warrant of law.

21. After this matter was thus deliberated at the Bar for a fairly long period of time, I passed an order on 20.05.2022, recording therein the sum total of the various suggestions obtained, including effective implementation of a Toll Free Number, namely 112, along with the Police Control Room Number of 100.

22. However, skeptical suspicion was expressed at the Bar as to if a victim, especially a woman, would normally approach the Police in such cases at the first instance because of the well-known 'lack of trust' towards the policing system.

23. Smt.Parvathy Menon - learned counsel, therefore, suggested that the conventional policing system can be coalesced with the initiative of the Central Government called the 'One Stop Centre', as also with the VRC under the aegis of the KELSA, so that a victim would have the confidence to approach the system without fear of being manipulated, exploited or shamed; and added that this would be very effective, at least as a first step in the right direction, because both the afore initiatives are controlled by professionals, lawyers and psycho-analysts.

24. Therefore, on 20.05.2022, I asked the Government to respond to the afore suggestions,

chronicling them in the order of the same day; and today, the learned Special Government Pleader responded positively, saying that a Memo has been filed by her on 08.06.2022, explaining the steps taken by the State in furtherance of the mind and views of this Court. She added that the State Police Chief has issued an order dated 02.06.2022, faithfully reproducing the various suggestions and rendering them as imperative instructions to all the Police Officers under his command in the State of Kerala. She further submitted that if this Court is to issue any further instructions, the State will accept them with an open mind, so that the victims of sexual assault can obtain release from the trauma they experienced, with full confidence of protection of their privacy, reputation and social status.

25. As I have already said above, the fundamental desideratum in empowering a sexual

assault victim is by making her/him feel respected and for someone to believe her/his version, at least *prima facie*. They require to be treated sensitively, keeping in mind the neurological effect of the trauma they went through, particularly because it is now scientifically established that it has an indelible effect on the brain and the nervous system.

26. The reaction of a victim, therefore, varies from person to person, without any formula being able to be accommodated as a general rule - some of them reacting immediately and some living in fear, guilt and self torture for several days, weeks or months thereafter, if no support system is obtained.

27. It is keeping in mind the afore that various suggestions of this Court had been postulated; and since the State has now accepted all of them, I am certain that this Court will be

justified in disposing of this Writ Petition, making them judicial directions.

28. The long and detailed deliberations at the Bar offered to this Court compelling and pivotal inputs, as also the details regarding the available platforms, which are independent and distinct from the Law enforcement agencies. Such being outside the officialese associated with the criminal and justicing mechanisms, certainly would be more acceptable to the victims or their families and would make them more approachable, when the components of fear, suspicion, skepticism and mistrust - which, unfortunately, have been rooted in response to the official systems.

29. Among the various suggestions offered, this Court found at least three of them to be worthy of consideration, particularly if they are effectively and seamlessly infused into the official law enforcement mechanisms, so that the

victims will find it easier to invoke their remedies, being comforted by the thought that they are not alone.

30. I will detail them in a compendious manner.

**(a) One Stop Centre**

The Ministry of Women and Child Development, Government of India, propounded the 'One Stop Centres' to support women affected by violence in private and public places, within the family, community and the work place. The scheme provides integrated support and assistance to women affected by violence, both in private and public places and facilitates immediate, emergency and non-emergency access to a range of services, including medical, legal, psychological and counselling support, irrespective of their social status. It also provides services with the aid of existing mechanisms, such as the National Health

Missions, 108 service, police (PCR Van), to rescue all affected women to the nearest medical facility or shelter home, thus obtaining them requisite medical assistance at the earliest.

'One Stop Centres' have already been established in each district in Kerala, with its service delivery framework consisting of a Centre Administrator, Case Worker, Police Facilitation Officer, Para Legal Personnel/Lawyer, Para Medical Personnel and Psychological Counsellor.

The Centre, in addition to medical assistance, offers succor to women in lodging an FIR/Statement, along with psychological and social support; legal aid and counselling - both psychological and legal. A victim can access the Centre either by herself or through any person, including a public spirited citizen, public servant, relative, friend, volunteer or Non-Governmental Organisation, or through the Women

Helpline integrated with the emergency response helplines.

When a victim approaches the Centre in the afore manner, the details will be fed into a system and a Unique Identification Number generated. The Centre Administrator, upon receiving such information, will make a quick assessment and formulate the crisis response, edified on the Core values of maintenance of confidentiality; ensuring independent decision making and informed consent from the victim.

The Centre has also an embedded Supervision and Monitoring Committee at the National, State and District Levels and its ultimate aim is to support the victim from the peripheral to the deepest level, empowering them to stand on their own, despite the harsh experiences they might have been subjected to.

**(b) Victim Rights Centre (VRC)**

The VRC is a service platform conceptualized by the Kerala High Court Legal Services Committee and brought to fruition under the aegis of the Kerala Legal Services Authority (KeLSA), to ensure access to justice and fair treatment of victims. It aims at an integrated action with the cooperation of Government, Inter-governmental and Non-governmental organisations, to provide assistance and support in the nature of sociological, psychological and legal aid to the victims to guide them to their available remedies.

Any women, child or transwoman, who suffered a loss on injury - be it physical, emotional or economic - by reason of an act or omission which is in violation of the Laws of the Land, will come under the protective umbra of the Centre, if so accessed.

The Centre has an Advisory Committee,

consisting of six members, five of them being lawyers and a social worker. This Committee acts in consultation with KeLSA.

The Centre has presently 48 Women Counsel, including two designated Senior Counsel and the President of the Kerala Federation of Women Lawyers. The KeLSA has authorised 10 Non-governmental Organisations to work for the Centre, which is also assisted by 60 student volunteers, 50 of them law students and rest psychology students.

The e-mail ID of the 'VRC' is [vrckhclsc@gmail.com](mailto:vrckhclsc@gmail.com); while they can be contacted at 83300 35547.

**(c) Victim Liaison Officer**

With the aim of strengthening the concept of a Victim Liaison Officer, as part of providing comprehensive justice to the victims of crimes and protection of witnesses, the State Police Chief

issued a Circular, bearing No.36/2012 dated 15.11.2012, introducing the concept of VLO in the State Police. The primary role of the VLO was conceptualized to maintain regular communication with the family of the victim/deceased and to establish meaningful link between them and the Investigating Officer. The circular ordered deployment of a VLO in the rank of a Senior Police Officer/police officer in homicide cases and Women Senior Police Officer/Police Officer in rape cases/molestation of minor children or when minor girls were missing. The circular further stipulated that VLO will be designated within 48 hours of commencement of investigation, who shall possess basic communication skills and who would meet the victim/family of the deceased at least once in every week to inform them the progress of investigation. The VLO would also require to maintain a separate Diary, showing the details of

the visits to the victim/family of the deceased and to report all relevant information to the Investigating Officer.

While so, this Court delivered the judgment in **T.V.Thomas v. State of Kerala** (2017 (3) KLJ 1), making certain further observations on victims' rights, which led the State Police Chief to issue a Circular, bearing No.25/2017 dated 21.10.2017, also advertng to the recommendations of 'Hon'ble Justice V.S.Malimath Committee' extending the assistance of VLO to all crimes against women and children, especially under the POCSO and Juvenile Justice Acts; and to offences relating to Maintenance and Welfare of Parents and Senior Citizens; Motor Vehicle accidental deaths and medical negligence death cases; and in matters of atrocities by police officers like custodial tortures and deaths. It was stipulated in this circular that the VLOs will be sensitised and that

any misbehaviour on their part should be dealt with seriously by the District Police Chief.

31. With the afore platforms/services being available; but which is, unfortunately, very seldom accessed - either on account of lack of knowledge or incapability of access, this Court is certain that a victim of sexual offence or a child abuse would obtain if the existing policing systems and investigating mechanisms are synergised with them.

32. It is merely a first step which requires to be taken at least now.

Consequently, I order this writ petition, directing that protocols below are scrupulously followed in the case of a complaint regarding sexual attack or child abuse without exception:

a) The Government will, in addition to the steps taken earlier by it, continually publicize the Toll Free Number '112' as an Emergency Support

System to be known to every citizen, so that the victim of a child abuse or sexual assault can access it whenever required.

b) Every victim of sexual assault and child abuse must be encouraged to access the afore Toll Free Number or the Police Control Room Number '100'; and on such intimation being received, it will be fed into a digital system, to be then brought to the notice of the jurisdictional Police Station, for necessary steps under Section 154 of the Cr.P.C. In this regard, I record the undertaking of the State that a system as afore has already been put in place under the Emergency Response Support System (ERSS) Project.

c) This Court records the further undertaking of the State that calls made to the aforementioned Toll Free Numbers of '112' and '100' will only be attended and responded to by well sensitized and trained personnel, who will make sure that the

victim is given sufficient support from the inception, until the time she/he requires it thereafter.

d) On intimation of a sexual assault or child abuse being received by the afore Toll Free Numbers, the Police Control Room or the jurisdictional Police Station, will take immediate steps to contact the victim either personally or through phone without, however, summoning him/her to the Police Station.

e) While taking the statement of the victim, mandatory provisions of Section 157(1) of the Cr.P.C., namely, that same be recorded at his/her residence or in the place of his/her choice and as far as practical, by a Police Officer in the presence of his/her parents/guardian/near relatives or social worker, shall be scrupulously complied with.

f) On the FIR being so registered, the

investigating officer will forthwith assign a 'Victim Liaison Officer' in terms of the applicable circulars issued by the State Police Chief, who shall then contact the victim immediately so that he/she will feel safe and protected, being sure of such support.

(g) Simultaneous to the registration of the FIR or at the time when the Victim Liaison Officer is so assigned, the investigating Officer will disclose to the victim the numbers of the 'One Stop Crisis Centre' and that of the 'VRC', so that they can involve themselves and ensure that the victim suffers no further traumatisation and obtains the best psychological support and succor which, indubitably, is the *sine qua non* for the reparatory process of the victim's psychological trauma.

(h) The Authorities concerned will ensure that the victim has constant access to the Victim

Liaison Officer and to the 'One Stop Crisis Centre/VRC', as the case may be; and that this is made available 24 hours a day, at any time the victim requires it during his/her most difficult times.

(i) The 'One Stop Crisis Centre'/'VRC' is directed to offer not merely psychological assistance to the victim, but also legal support as may be required and will actively promote his/her return to normal life, through every possible facilitation as may be warranted. This shall continue as long as the victim requires, or until such time as the trial is completed.

(j) It is further ordered that the victim Liaison Officer (VLO), as also the 'One Stop Crisis Centre'/'VRC', shall make available every assistance necessary to the victim for the processes under Section 164A of the Cr.PC, and must actively guide and instruct, advising her/him

of her/his rights under it, thus being able to exercise it diligently and with confidence.

The afore are, of course, not exhaustive; and I, therefore, leave liberty to any person, including the learned counsel for the parties or the members of the Bar, to seek any clarification from this Court, if so found necessary; in which event, more effective protocols for victim protection can certainly be thought of and incorporated.

I must also clarify that the endeavour of this Court in this judgment is only to support the victim of a sexual assault or a child abuse from the point of inception of the trauma until whatever time he/she may require and does not cover the areas which are already governed by the judgments and orders of the Hon'ble Supreme Court, particularly in relation to the manner of Trial and its modalities. These certainly will be

followed by the Authorities and the Courts concerned, without being under the impression that the directions in this judgment are, in any manner intended, to influence such.

With the liberty afore being reserved to any member of the Bar or person, I dispose of this writ petition in the afore manner.

I direct the Registry to forward a copy of this judgment to the State Police Chief, who shall immediately incorporate the directions herein in an apposite Circular/instructions to all the Station House Officers under his command for necessary compliance.

**sd/-**  
**DEVAN RAMACHANDRAN**  
**JUDGE**

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APPENDIX OF WP(C) 22276/2021

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE FIRST INFORMATION REPORT ALONG WITH THE STATEMENT IN CRIME NO. 1244 OF 2021 OF THRIKKAKARA POLICE STATION, ERNAKULAM DISTRICT.
- EXHIBIT P2 THE TRUE COPY OF THE COMPLAINT FILED BEFORE THE 3RD RESPONDENT HEREIN DATED 04.10.2021.
- EXHIBIT P3 THE TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER TO THE HON'BLE CHIEF MINISTER OF KERALA.
- EXHIBIT P4 THE TRUE COPY OF THE CIRCULAR NO. 41/2020/PHQ DATED 13.11.2020 ISSUED BY THE STATE POLICE CHIEF.

RESPONDENT'S/S EXHIBITS

- EXHIBIT R6 (c) TRUE PHOTOSTAT COPY OF THE RELEVANT PAGES OF EMERGENCY DEPARTMENT REGISTRATION CARD DATED 23.9.2021 ISSUED FROM THE GENERAL HOSPITAL ERNAKULAM.
- EXHIBIT R6 (d) TRUE PHOTOSTAT COPY OF THE ULTRA SOUND SCAN REPORT DATED 24.9.2021 ISSUED FROM THE GENERAL HOSPITAL ERNAKULAM.
- EXHIBIT R6 (e) TRUE PHOTOSTAT COPY OF THE MEDICO-LEGAL EXAMINATION REPORT OF SURVIVOR OF SEXUAL OFFENCE DATED 24.9.2021 ISSUED FROM THE GENERAL HOSPITAL ERNAKULAM.
- EXHIBIT R6 (f) TRUE PHOTOSTAT COPY OF THE BETA HCG REPORT DATED 24.9.2021 ISSUED FROM THE GENERAL HOSPITAL ERNAKULAM.
- EXHIBIT R6 (a) TRUE PHOTOSTAT COPY OF THE FIR ALONG

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WITH FIS IN CRIME NO.1244/2021 DATED  
23.09.2021 OF THRIKKAKARA POLICE  
STATION.

EXHIBIT R6 (b) TRUE PHOTOSTAT COPY OF THE ORDER PASSED  
BY THE HON'BLE SESSIONS COURT,  
ERNAKULAM ON 7.10.2021 IN CRL.MC  
NO.2050/2021.

**RESPONDENT ANNEXURES**

ANNEXURE 1 CIRCULAR NO. Q2-90891/2022/PHQ DATED  
02.06.2022

ANNEXURE 2 CIRCULAR NO. 18/2022 DATED 02.06.2022