



2025:KER:25036

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947

CRL.MC NO. 9179 OF 2024

CRIME NO.1519/2022 OF Hill Palace Police Station, Ernakulam

AGAINST SC NO.373 OF 2023 OF FAST TRACK SPECIAL COURT,

PERUMBAVOOR

PETITIONER/ACCUSED NO.4:

JOSEPH V J
AGED 53 YEARS
S/O JHON VELIPARAMBIL KUMBALANGI SOUTH KOCHI,
PIN - 682007

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN

RESPONDENT/STATE:

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

BY ADV.MAYA M.N. - PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
25.03.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



O R D E R

Dated this the 25th day of March, 2025

Petitioner herein is the 4th accused in Crime No.729/2022 of Ambalamedu Police Station, Ernakulam, which is now pending before the Fast Track Special Court, Perumbavoor, as S.C.No.373/2023. The petitioner seeks quashment of the said crime on various counts. The offences alleged are under Sections 354, 354A(1)(i), 354A(1)(ii), 354A(1)(iv) and 506 of the Penal Code and Sections 8, r/w 7; 10, r/w 9(p); 12, r/w 11(i) as against the 1st accused and Section 21, r/w 19 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short), as against the accused nos.2 to 4.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor on behalf of the respondent. Perused the records.

3. Learned counsel for the petitioner submits that the specific allegation levelled against the petitioner is that



he, along with accused nos.2 & 3, failed to inform the authorities regarding the sexual assault committed on the victim, immediately after receiving the complaint. In the instant case, the alleged incident occurred on 16.11.2022. The student gave complaint to the Principal on 17.11.2023 and thereafter, F.I.R. was registered on 18.11.2022, upon receiving the information from the school counsellor. As per the F.I.S. preferred by the counsellor, on 17.11.2022, the victim forwarded a complaint, via Whatsapp of the defacto complainant, regarding the sexual assault committed by the 1st accused. The F.I.S. given by the school counsellor would not indicate any reluctance on the part of the petitioner to inform the Police. Learned counsel would also submit that the petitioner was merely present in the Principal's room, when the complaint was forwarded by the victim to the Principal. The complaint was not forwarded to the petitioner, wherefore, he, along with accused nos.2 and 3, are illegally roped into the crime. The offences sought to be canvassed against the petitioner will not lie, is the submission made by the learned counsel for the petitioner.



4. Per contra, this application was vehemently opposed by the learned Public Prosecutor, pointing out that there was failure on the part of the petitioner to inform the concerned authorities, as mandated by Section 19 of the POCSO Act. In such circumstances, the offence is maintainable and the same is not liable to be quashed under Section 528 of B.N.S.S, is the submission made.

5. A scrutiny of the additional statement of the defacto complainant would reveal that there was a meeting at the school at 12 p.m. on 18.11.2022, including school staff, the PTA President, and the Municipal Vice Chairperson, and that during this meeting, it was decided to lodge a complaint before the Police Station. The defacto complainant would further state that, since the victim was a student of the school, the complaint had to be forwarded through the school Principal. In the event the Principal did not permit the same, the counsellor herself would forward the complaint. Moreover, there is nothing in her



statement that would indicate any reluctance on the part of the petitioner in reporting the matter, other than the specific allegation against the Principal's non-compliance in informing the authorities.

6. Having heard the learned counsel for the respective sides, this Court finds merit in the present Miscellaneous Case. Section 19 of the POCSO Act, insofar as it is relevant, is hereby extracted below:

*“19. Reporting of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,— (a) the Special Juvenile Police Unit; or
(b) the local police.*

Xxxxx

xxxxx

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(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child



Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1)."

Section 21 of the POCSO Act, is also extracted herebelow:

"21. Punishment for failure to report or record a case.—(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act."

A perusal of the above provisions would show that, there is a clear mandate to report the commission of the offence by



the persons having knowledge of the same. It is true that the matter cannot be reported at the convenience of the person, who has such knowledge. However, the statute is silent as to the time frame within which this act must be performed, wherefore, the only logical conclusion possible is that the same should be done within a reasonable time. This Court also notice that, the offence lies, in terms of Section 21, only on the failure to report the commission of the offence.

7. In the light of the above aspects, if the facts of the present crime are considered, no offence can be made out, as against the petitioner. There is no willful omission on the part of the petitioner in reporting the crime, as alleged. The petitioner cannot be implicated in the crime alleging offence under Section 19, read with Section 21 of the POCSO Act. The complaint was given by the student against the Principal. Criminal liability cannot be fastened on the petitioner for the mere reason that he was present at the Principal's room, when the complaint was



forwarded to the latter. The incident allegedly took place on 16.11.2022 and the student gave the complaint on 17.11.2022. The matter was reported to the Police and F.I.R. was registered on 18.11.2022. No failure to attract the offence can be deduced from the above conduct. Moreover, the offences against the accused nos.2 and 3 (the Principal and the teacher of the Victim's school) in the said crime had already been quashed.

In the circumstances, this CrI.M.C. is allowed. Annexure-II Final Report in Crime No.729/2022 of Ambalamedu Police Station, Ernakulam, and all further proceedings thereto in S.C.No.373/2023 pending before the Fast Track Special Court, Perumbavoor, as against the petitioner, are hereby quashed.

Sd/-

C. JAYACHANDRAN
JUDGE

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APPENDIX OF CRL.MC 9179/2024

PETITIONER ANNEXURES

Annexure I TRUE COPY OF THE FIR & FIS IN CRIME NO.
1519 OF 2022 OF HILL PALACE POLICE
STATION

Annexure II THE CERTIFIED COPY OF THE FINAL REPORT
IN CRIME NO. 729 OF 2022 OF HILL PALACE
POLICE STATION, WHICH IS NOW PENDING AS
SC.NO.373/2023 OF FAST TRACK SPECIAL
COURT, PERUMBAVOOR.