

Deep vs the State of Kerala

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Court : Kerala

Decided On : Apr-04-2025

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/3258/2023

Appellant : DEEP

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947
CRL.MC NO. 3258 OF 2023 CRIME NO.544/2022 OF
THADIYITTAPARAMBA POLICE STATION, ERNAKULAM SC NO.1118
OF 2022 OF FAST TRACK SPECIAL COURT, PERUMBAVOOR
PETITIONER/ACCUSED: DEEP, AGED 23 YEARS S/O.KANNAN,
CHANADICKAL HOUSE, OLARIKKARA, PULLAZHI P.O., THRISSUR
DISTRICT, KERALA., PIN - 680012 BY ADVS. M.R.DHANIL SENITTA
P.JOJO RESPONDENTS/STATE/DE FACTO COMPLAINANT: 1 THE
STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031 *ADDL.R2

XXXX (VICTIM) XXXX *ADDL.R2 XXX (VICTIM) IS IMPEADED AS PER ORDER DATED 4.12.2023 IN CRL.M.A.NO.3/2023 IN CRL.M.C.NO.3258/2023 R1 BY PUBLIC PROSECUTOR SRI.JIBU.T.S. ADDL.R2 BY ADV.S.NIDHEESH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27.3.2025, THE COURT ON 04.04.2025 PASSED THE FOLLOWING: CRL.M.C.NO.3258 OF 2023 2 CR

ORDER

Dated this the 4th day of April, 2025 This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, by the sole accused in S.C.No.1118/2022 on the files of the Special Court for the trial of cases under the Protection of Children from Sexual Offences Act (for short the Po CSO Act hereinafter), Perumbavoor, arising out of Crime No.544/2022 of Thadiyattaparamba police station, Ernakulam, to quash Annexure A1 F.I.R, Annexure A2 Final Report and all further proceedings in Crime No.544/2022 of Thadiyattaparamba Police Station, Ernakulam.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the de facto complainant and also the learned Public Prosecutor, in detail. Perused the records inclusive of the CRL.M.C.NO.3258 OF 2023 3 affidavit filed by the de facto complainant supporting quashment.

3. In this case, the prosecution alleges commission of

offences punishable under Sections 451, 354A(1)(i) and 354D(1)(ii) of the Indian Penal Code (for short, the IPC hereinafter) as well as under Section 8 r/w Section 7 and Section 12 r/w Section 11(iv) of the Po CSO Act, by the accused.

4. Summary of the prosecution case is that, the accused,

with intention to sexually exploit the de facto complainant, aged 15, made acquaintance with her through Instagram and had constant telephone calls, apart from sending messages. In continuation of the same, at about 11.30 hrs. on 21.7.2022, the accused reached the rental house where the de facto complainant has been residing with her family, as she demanded to see him. Then, the

accused sexually molested her.

5. The learned counsel for the petitioner submitted that going by the First Information Statement, where lies the entire CRL.M.C.NO.3258 OF 2023 4

allegations, no serious overt acts with sexual intent could be foreseeable. That apart, the averments in the additional statement and in the 164 statement of the de facto complainant would show that the overt acts are at the instance of the de facto complainant. Therefore, prima facie, the offences are not made out. According to the learned counsel for the petitioner, the de facto complainant and the petitioner continued a cordial relationship and accordingly, they met at the rental residence of the de facto complainant, as she demanded to see the accused. But the petitioner has no intention to sexually assault the de facto complainant in any manner and the overt acts are much less without any sexual intent. Therefore, on merits, the matter would require quashment. In addition to that, the learned counsel for the petitioner would submit that now, the de facto complainant attained majority and she has filed an affidavit stating that she has no objection in quashing the case and the case was proceeded without properly understanding the actual facts and circumstances of the incident happened. Therefore, acting on the

CRL.M.C.NO.3258 OF 2023 5 affidavit, otherwise, quashment is liable to be allowed.

6. The learned counsel for the de facto complainant conceded quashment.

7. The learned Public Prosecutor opposed quashment on

merits as well as on the strength of affidavit pointing out the fact that the overt acts as could be borne out from the statements of the de facto complainant would show prima facie that the offences are made out. Therefore, quashment without opting procedure of trial could not be considered.

8. In the instant case, police recorded the First Information Statement of the de facto complainant. Again additional statement also was recorded. In addition to that, statement under Section 164

of Cr.P.C also was recorded by the Magistrate. In the First Information Statement, it has been stated that the de facto complainant, after completing 10th class while waiting for plus one admission during the month of May, 2021, made acquaintance with the accused through Instagram and thereafter, they had a meeting
CRL.M.C.NO.3258 OF 2023 6

during the month of August, 2021 at the house of the elder sister of her mother. Thereafter, during the month of June, 2022, while the de facto complainant was going to a Dental clinic, the accused reached there as demanded by her and accordingly, she along with the accused met the Dental Doctor and she was dropped by the

accused near her house by bus. Thereafter, at 11.30 hrs. on 21.7.2022, the accused reached the terrace of the house through the stair case outside as she wanted to see him, and he called her. Then she also went to the terrace. Thereafter, she hugged and kissed on the cheek of the accused. Thereafter, they shared and swallowed the ice cream brought by the accused. This was witnessed by her step

mother and she photographed the same. Later, this crime was registered.

9. After recording the first information statement on

23.07.2022, as on 24.07.2022, the police recorded additional statement of the de facto complainant. In the additional statement, the de facto complainant stated that there was no sexual overtures CRL.M.C.NO.3258 OF 2023 7 on the part of the accused. In the 164 statement recorded on 24.07.2022, the de facto complainant stated that on the date of occurrence, she kissed on the cheek of the accused when she hugged the accused. The de facto complainant reiterated the statement that the accused did not commit any sexual assault on her.

10. Coming to the ingredients to attract offence under Section 7 of the Po CSO Act punishable under Section 8, it is relevant to refer Section 7 of the Po CSO Act. Section 7 of the Po CSO Act reads as under:

7. Sexual assault.-Whoever, with sexual intent touches

the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. So, touching on the vagina, penis, anus or breast of the child or making the child touch the vagina, penis, anus or breast of such CRL.M.C.NO.3258 OF 2023 8 person or any other person, or doing any other act with sexual intent which involves physical contact without penetration is an act of sexual assault.

11. Under Section 11(iv) of the Po CSO Act, repeatedly or

constantly follows or watches or contacts a child either directly or through electronic, digital or any other means with sexual intent is an act of sexual harassment. Thus, as per Sections 7 and 11(iv), the overt acts should be one done with sexual intent.

12. It is not in dispute that Section 30 of the Po CSO Act deals with presumption of culpable mental state. In Section 30, it has been provided as under:

30. Presumption of culpable mental state.-

(1) In any prosecution for any offence under this

Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. CRL.M.C.NO.3258 OF 2023 9

(2) For the purposes of this section, a fact is said to

be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Explanation to Section 30 provides that culpable mental state includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

13. Thus, culpable mental state of the accused is a matter of

presumption, but the accused can prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. The application gives the right of the accused to prove so would come only during trial.

14. While considering quashment of a case, where Po CSO

Act offences are alleged, the affidavit of the de facto complainant could not be acted upon to erase the prosecution case, since law does not permit such a course of action.

15. In order to succeed quashment on merits, it has to be CRL.M.C.NO.3258 OF 2023 10

found prima facie that the overt acts, at the instance of the accused, as born out of the prosecution records, would not constitute offences under Sections 7 and 11 of the Po CSO Act and under Sections 451, 354A(1)(i) and 354D(1)(ii) of the IPC.

16. While scanning the overt acts alleged herein, the same

will be dealt under the head doing any other act with sexual intent which involves physical contact without penetration, as provided under Section 7 of the Po CSO Act, since there is no allegation for the prosecution that the accused touched on the vagina, penis, anus or breast of the child or made the child touch the vagina, penis,

anus or breast of such person or any other person. In the instant case, as already extracted, the accused and the de facto complainant had maintained a cordial relationship and the accused reached the terrace of the rental house of the de facto complainant, in response to a demand at the option of the de facto complainant to meet him. Thereafter, the version of the de facto complainant is that, she hugged and kissed on the cheek of the accused. After recording the

CRL.M.C.NO.3258 OF 2023 11

first information statement on 23.07.2022, as on 24.07.2022 police recorded additional statement of the de facto complainant. In the additional statement, the de facto complainant stated that there was no sexual overtures on the part of the

accused. In the 164 statement recorded on 24.07.2022 also, she reiterated the same. In the 164 statement also the de facto complainant reiterated the statement that the accused did not commit any sexual assault on her.

17. Here, the overt acts are not so serious in the form of

penetrative sexual assault or aggravated form of penetrative sexual assault. When the overt acts are scrutinized the accused reached the terrace of the de facto complainants house on the date of occurrence as she wanted to meet him in continuation of their cordial relationship. Then the de facto complainant joined the accused at the terrace voluntary. While talking between them, the de facto complainant hugged and kissed on the cheek of the accused, but the same was witnessed by her step mother. Thus, nothing voluntarily done by the accused with sexual intent to fasten

CRL.M.C.NO.3258 OF 2023 12

criminal culpability upon him. In order to fasten criminal culpability on a person, overt acts done by him with sexual intent shall be found prima facie. In such situation, it is difficult to hold that the accused had intention to sexually assault the de facto complainant and he had done any overt acts with sexual intent. If so, no offence under Sections 7 and 11(iv) of the Po CSO Act would attract. If so, it could not be held that offences under Sections 451, 354A(1)(i) and 354D(1)(ii) of the IPC would attract in the facts of this case.

18. Summing up the discussion, it is held that the

prosecution materials in toto would not make prima facie materials to attract the offences alleged and therefore, quashment prayer, at the instance of the petitioner, is liable to succeed. In the result, this petition is allowed. Accordingly, all further proceedings pursuant to Annexure A1 F.I.R and Annexure A2 Final Report now pending as S.C.No.1118/2022 on the files of the Special Court for the trial of cases under the Po CSO Act, Perumbavoor, CRL.M.C.NO.3258 OF 2023 13 arising out of Crime No.544/2022 of Thadiyattaparamba Police Station, Ernakulam, against the petitioner herein, stand quashed.

Sd/- A. BADHARUDEEN JUDGE Bb CRL.M.C.NO.3258 OF 2023 14 APPENDIX OF CRL.MC 3258/2023 PETITIONERS ANNEXURES ANNEXURE A1 CERTIFIED COPY OF THE F.I.R.NO.544/2022 ALONG WITH THE FIRST INFORMATION STATEMENT OF THADIYATTAPARAMBA POLICE STATION, DATED 23/07/2022 ANNEXURE A2 CERTIFIED COPY OF THE FINAL REPORT DATED STATION RESPONDENTS ANNEXURES Annexure R2(a) TRUE COPY OF THE AFFIDAVIT OF THE 2ND RESPONDENT/DE FACTO COMPLAINANT DATED

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