

Hyder Ali vs State of Kerala

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Court : Kerala

Decided On : Jul-24-2024

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/5987/2024

Appellant : Hyder Ali

Respondent : State of Kerala

Judgement :

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946
CRL.MC NO. 5987 OF 2024 CRIME NO.650/2023 OF CHAVAKKAD
POLICE STATION, THRISSUR THE ORDER DATED 08.07.2024 IN
CRL.MP.NO.122/2024 IN SC NO.1222 OF 2023 OF FAST TRACK
SPECIAL COURT, CHAVAKKAD PETITIONER/ACCUSED: HYDER ALI,
AGED 42 YEARS, S/O KHADER, CHALIL HOUSE, ANCHANGADI
DESOM ROAD, KADAPPURAM VILLAGE, CHAVAKKAD, THRISSUR,
PIN - 680514 BY ADVS.SRI.E.A.HARIS SRI.M.A.AHAMMAD SAHEER
SRI.MUHAMMED YASIL SRI.ANIL K.MUHAMED

RESPONDENTS/RESPONDENT/STATE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031 BY PUBLIC PROSECUTOR
SRI.M.P.PRASANTH THIS CRIMINAL MISC.CASE HAVING BEEN
FINALLY HEARD ON 17.07.2024 THE COURT ON 24.07.2024 PASSED
THE FOLLOWING: -:2:- 'C.R.'

ORDER

Dated this the 24th day of July, 2024

This petition has been filed challenging Annexure-A7 order

whereby the Special Judge refused to implead the investigating officer, who conducted the investigation in this case and examined as PW12, as additional accused.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused Annexure-A7 order and the decision cited by the learned counsel for the petitioner in support of his contentions.

3. The learned counsel for the petitioner argued that going by the evidence given by PW1, the victim and PW2 her mother, both of them reached the police station on 18.08.2023 to give statement

in relation to the occurrence. Similarly, PW12 the Investigating Officer during his cross examination also conceded that PWs 1 and 2 reached the police station at 9.30 p.m. on 18.08.2023. Accordingly, it is argued that when information regarding commission of a -:3:-

cognizable offence under the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') was informed or reported to PW12, he has a statutory duty to record the statement and to register a crime, immediately on receipt of the information or report in tune with the mandate of Section 19 (2) of the POCSO Act. Failure to do so, would definitely attract the offence punishable under Section 21 (1) of the Act. He also submitted that in so far as the right of an

accused or a co-accused to file an application under Section 319 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') is concerned, the law is well settled and he has placed a decision of this Court in Vasudevan Nair V. State of Kerala [2005 (1) KLJ 265] where this Court held that; the view taken by the learned Magistrate that the accused had no locus standi to file

such a petition (S.319) is not correct. A reading of the provisions of Section 319 clearly shows that such a petition can be filed not only by the defacto complainant, but also a witness or even the accused. The power under Section 319 is an extraordinary power which is conferred on the Court. That power shall be exercised only if compelling reasons exist for taking cognizance against the person against whom action has not been taken. If after taking evidence the learned Magistrate finds that any other person other than the three accused now arraigned as accused is also to

-:4:- be tried along with the accused, it is open to him to pass appropriate orders under Section 319 (1) of Code of Criminal Procedure.

4. Opposing the contention raised by the learned counsel for the

petitioner, the learned Public Prosecutor submitted that it is true that PWs 1 and 2 had reached the Police Station on 18.08.2023 and informed about the occurrence. But PW1 and PW2 not disclosed the time of their

arrival before PW12. According to PW12, PWs 1 and 2 reached at 9.30 p.m. on 18.08.2023 and they were sent back since there was no woman police officer to record the statement. It is submitted further that as per Section 24 of the POCSO Act, the statement of the child victim shall be recorded as far as practicable by a women police officer not below the rank of a Sub Inspector. Since PW12 felt that, it is the best interest of the victim, the statement would be recorded by a woman police officer, PW1 and PW2 were sent back in the night and immediately on the next day i.e. on 19.08.2023 at 11.30 a.m. the statement of the victim was

recorded and crime was registered. It is also submitted that now the entire evidence of prosecution is closed and the matter stands posted for defence

evidence.

5. The learned Public Prosecutor submitted further that even

though Section 19 (2) of the POCSO Act makes it obligatory to a police officer to register a crime on getting knowledge regarding the commission of an offence under the POCSO Act and failure to record the statement -:5:-

and to register a crime as provided under Section 19 (2), would attract penal consequence under Section 21(1) of the POCSO Act, the said penal provision should not be invoked when there is timely registration of crime without much delay and when the omission, if any, for a short gap is not deliberate or not so material.

6. Addressing the rival arguments, it is necessary to refer Section 19, 21 and 24 of the POCSO Act. Going by Section 19 (2) when a person has apprehension that an

offence under POCSO Act is likely to be committed or has knowledge that such an offence has been committed, and a report was given in this regard, the police officer shall ascribe an entry number and record in writing; be read over to the informant; and shall be entered into a book to be kept by the Police Unit.

Section 21 would make it clear that any person, who fails to record such offence under Section 19 (2) would be liable for the penal consequences provided under Section 21 (1) of the POCSO Act. Going by Section 24, the statement shall be recorded as far as practicable by a woman police officer not below the rank of Sub-Inspector.

7. The learned counsel for the petitioner submitted that since

Section 24 not specifically mandates recording of statement by a woman police officer, in the absence of a woman police officer not below the rank of Sub Inspector, the officer in-charge of police station is duty bound to -:6:- record the statement and register the crime and any omission to do so, would attract penal consequences of Section 21(1) read with Section 19 (2) of the POCSO Act.

8. A perusal of the impugned order, the learned Special Judge found that when information regarding commission of offence was

reported by PW2 and PW1, there was no woman police officer at the police station to record the same as provided under Section 154 of the Cr.P.C. (wrongly mentioned instead of Section 24 of the POCSO Act). The statement was recorded by the woman police officer on the next day. Accordingly, the learned Special Judge found that if at all there was delay of few hours in recording the FIS and registering the FIR, the same could

not by itself be reasons to implead PW12 as an additional accused by invoking power under Section 319 of the Cr.P.C. Holding so the learned Special Judge dismissed the petition.

9. Now the crucial question arises for consideration is; what are

the circumstances under which a police officer who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, failed to register a crime after recording the information, to be made as an accused, on the allegation that he has committed offence punishable under Section 21 of the POCSO Act?

10. Going by the wordings under Section 19 (2) as already :-7:-

extracted, a duty is cast upon a police officer on getting information regarding commission of an offence under POCSO Act to ascribe an entry number to record the information in writing, be read over to the informant and shall be entered in a book to be kept by the Police Unit. No doubt, failure to do so, is an offence punishable with imprisonment of either description which may extend to six months or with fine or with both as

provided under Section 21 of the POCSO Act. Reading Section 19, no time limit is prescribed to record the statement or to register a crime. Therefore, the intention of the legislature is to do the said exercise at the

earliest. Therefore, when a police officer who receives report or information regarding commission of an offence under the POCSO Act has a legal obligation to record the statement and register a crime. Section 24 of the POCSO Act provides that as far as practicable, the statement of the victim shall be recorded by a woman police officer not below the rank of Sub-Inspector. But that doesn't mean that in the absence of a woman police officer not below the rank of a Sub-Inspector, the officer in-charge

of the police station has to wait or to stall recording of a statement awaiting a woman police officer. To put otherwise, in the absence of a woman police officer not below the rank of a Sub-Inspector, the officer in-charge of the police station himself is competent and duty bound to record the statement of the child victim or the informant. It is relevant to note that the spirit of Section 24 is that as far as possible, the :-8:-

statement of the victim or the informant of an offence of sexual assault under the POCSO Act to be recorded by a woman police officer not below the rank of a Sub-Inspector, to ensure proper recording of the statement and also to avoid hesitance to the victim or the informant to state all the overt acts because of the gender disparity. In other words, Section 24 is intended to ensure that the grievance of the victim/informant of POCSO offences should be recorded in it's letter and spirit providing the

victim/informant to disclose the same before a woman poli

punishable under the POCSO Act, the police officer is duty bound to record the statement and register the crime without much delay. In a case, if the police officer waits to facilitate recording of the statement by a woman police officer, so that the victim/informant could candidly state each and everything without hesitation, and while making such an attempt if some delay which was not deliberate or willful occurs, it is not safe to fasten criminal culpability upon him. No doubt, when there is deliberate or willful delay in recording and registering crime on getting information regarding commission of offences under the POCSO Act,

Section 21 of the POCSO Act would squarely apply. Therefore, when considering whether an offence under Section 21 of the POCSO Act is committed by the police officer, the court should have to evaluate -:9:- whether there is deliberate or willful omission in recording the statement. If the statement was recorded without much delay and crime

was registered, in such cases, it is not safe to hold that there was deliberate omission on the part of the investigating officer or to the police officer.

11. In the instant case, admitted by PWS 1 and 2 both of them

reached at the police station on 18.08.2023. PW12, who sought to be impleaded as an additional accused, also given statement that PWs 1 and 2 reached the police station and reported occurrence at 9.30 p.m. But, for want of woman police officer to record the statement they were sent with an advice to come on the next day. Accordingly, on 19.08.2023 both of them reached at the police station and consequently on recording the statement of the victim at 11.45 a.m crime was registered and investigated. During investigation, the guilt of the accused was found in positive and accordingly final report was also laid before the competent

court. Now the matter has reached at the defence stage. It is true that the law doesn't restrict an accused or a co-accused to file a petition under Section 319 of the Cr.P.C. Therefore, the petitioner is also competent to file such a petition. But the court must ensure whether there is deliberate omission in complying with the statutory duty cast upon the police officer as I have already pointed out, to add a police officer as an additional accused resorting to Section 319 of Cr.P.C. In the instant case, statement

-:10:- was recorded positively on the next day morning and crime was registered. Now the prosecution evidence is also completed. In such a

case, it is unjust to hold that PW12/ the Investigating Officer deliberately failed to record the statement of the victim and to register the crime as against the mandate of Section 19 (2) so as to attract an offence punishable under Section 21 of the POCSO Act. In view of the above discussion, the Special Judge has rightly

disallowed the petition to implead PW12 as additional accused. The said order doesn't require any interference.

In the result, the petition fails and is dismissed. The interim order

of stay stands vacated. The Registry is directed to forward a copy of this

order to the Special Judge, Chavakkad forthwith for information and to

proceed further. Sd/- A.BADHARUDEEN JUDGE MJL -:11:- APPENDIX OF CRL.MC 5987/2024 PETITIONER'S ANNEXURES: Annexure-A5 A TRUE PHOTOCOPY OF PETITION DATED 24.06.2024 NUMBERED AS CRL.M.P.NO.122/2024 IN S.C.NO.1222/2023 OF THE FAST TRACK SPECIAL COURT, CHAVAKKAD

Annexure-A6 A TRUE PHOTOCOPY OF THAT OBJECTION DATED 29.06.2024 IN CRL.M.P.NO.122/2024 IN S.C.NO.1222/2023 OF THE FAST TRACK SPECIAL COURT, CHAVAKKAD Annexure-A7 A CERTIFIED COPY OF THAT ORDER DATED S.C.NO.1222/2023 OF THE FAST TRACK SPECIAL COURT, CHAVAKKAD Annexure-A8 A TRUE COPY OF THE RELEVANT EXTRACTS OF THE STATEMENTS OF WITNESS RESPONDENT'S ANNEXURES : NIL /TRUE COPY/ PA TO JUDGE

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