

Sheeja.E vs State of Kerala

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Court : Kerala Orders

Decided On : Oct-28-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Crl.Rev.Pet/532/2023

Appellant : Sheeja.E

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
SATURDAY, THE 28TH DAY OF OCTOBER 2023 / 6TH KARTHIKA,
1945 CRL.REV.PET NO. 532 OF 2023 AGAINST THE ORDER DATED
23.03.2023 IN CRL.M.P.NO.2016/2022 IN SC (ATROCITIES & SEXUAL
VIOLENCE AGAINST WOMEN & CHILDREN,
THIRUVANANTHAPURAM) REVISION PETITIONER/PETITIONER/2ND
ACCUSED:

SHEEJA.E AGED 35 YEARS TC 32/181, ROGIN HOUSE,
BALANAGAR, VETTUKADU, THIRUVANANTHAPURAM., PIN - BY
ADVS. B.S.SWATHI KUMAR ANITHA RAVINDRAN HARISANKAR N
UNNI RESPONDENT/COUNTER PETITIONER: STATE OF KERALA

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. ., PIN - 682031 SRI. VIPIN NARAYAN (SR PP) THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Petitioner is the 2nd accused in Crime No.569 of 2018 of Valiyathura Police Station, Thiruvananthapuram District, which is now pending as S.C.No.1184 of 2018 on the file of the Additional Sessions Judge for Trial of Cases relating to Atrocities and Sexual Violence against Women and Children, Thiruvananthapuram. The offences alleged are those under Section 376(2)(n)(f)(l), Section 5(j)(ii) (n)(l) and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The allegation against the petitioner is that the

first accused who is the husband of the petitioner, had engaged in penetrative sexual assault of the minor victim on several occasions in the month of November 2017 and had also impregnated her. It is alleged that the petitioner/2nd accused had burnt the hand of the minor victim with a hot spatula and intimidated her not to disclose the name of the first accused to anyone. Thereby the allegation against the petitioner is that she had committed an offence under Section 75 of the Juvenile Justice Act.

3. Learned counsel appearing for the petitioner

would submit that the petitioner had filed an application under Section 227 of the Cr.P.C. seeking discharge. It is submitted that the Special Court through order dated 23.03.2023, in CrI.M.P. No.2016 of 2022 in S.C.No.1184 of 2018 had rejected the application for discharge. It is submitted that the Special Court acted with material irregularity in rejecting the application for discharge filed by the petitioner. It is submitted that even if the entire allegations are accepted as true, no offence under Section 75 of Juvenile Justice Act, will lie against the petitioner.

According to the petitioner, a close reading of the FIR, FIS, statement of witnesses and the documents on record would reveal that there are no sufficient grounds for proceeding against the petitioner and therefore, the petitioner is entitled to a discharge.

4. The learned Public Prosecutor would submit that

the trial court has found that there are sufficient materials to frame charges in respect of Section 75 of the Juvenile Justice Act against the petitioner. It is submitted that in such circumstances, there is no material irregularity or illegality in the order of the Sessions Court, warranting interference in revision at the hands of this Court.

5. I have perused the order dated 23.03.2023 in

Crl.M.P.No.2016 of 2022 in S.C.No.1184 of 2018. The learned Judge has considered the circumstances under which a discharge could be granted under Section 227 of the Cr.P.C. The learned Judge has found that a discharge under Section 227 of the Cr.P.C. can be granted only if there is no sufficient ground for proceeding against the accused. It is found that if a prima facie case exist to proceed against the accused, an application for discharge under Section 227 of the Cr.P.C. could not be maintained. The Court referred to various decisions of the Supreme Court on the point to determine the scope of Section 227

of the Cr.P.C. and proceeded to hold that an application for discharge under Section 227 Cr.P.C can be allowed only if the evidence that the prosecution proposes to adduce to prove the guilt of the accused, even if it is

accepted in toto and before challenge in cross-examination shows that the accused has not committed the offence. The learned Judge found that the allegation in so far as the petitioner is concerned is that in order to prevent the minor victim from disclosing the name of the 1st accused/husband of the petitioner (who is alleged to have committed penetrative sexual assault on the victim and impregnated her), the petitioner had intimidated the defacto complainant and had burnt her hand with a hot spatula and she had sustained a burn injury and thereby

she had committed the offence under Section 75 of the Juvenile Justice Act. The learned Special Judge has found that the allegations are sufficient to attract the offence

under Section 75 of the Juvenile Justice Act. I find no reason to interfere with that finding. Therefore, there is no ground to discharge the petitioner/2 nd accused under Section 227 of the Cr.P.C. Finding no material irregularity in the order of the Special Court warranting the exercise of revisional jurisdiction of this Court, this criminal revision petition stands dismissed. Sd/- GOPINATH P. JUDGE SSK/28/10

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