

**X vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1444887](http://sooperkanoon.com/1444887)

**Court :** Kerala

**Decided On :** Jul-20-2022

**Judge :** Honourable Dr. Justice Kauser Edappagath

**Appeal No. :** Crl.Rev.Pet/62/2021

**Appellant :** X

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH  
WEDNESDAY, THE 20TH DAY OF JULY 2022 / 29TH ASHADHA, 1944  
CRL.REV.PET NO. 62 OF 2021

**ORDER IN CMP 438/2020 IN SC 322/2015 OF ADDITIONAL  
DISTRICT**

& SESSIONS COURT(FOR TRIAL OF CASES RELATING TO ATROCITIES &  
SEXUAL VIOLENCE AGAINST WOMAN AND CHILDREN) ERNAKULAM  
REVISION PETITIONER/DEFACTO COMPLAINANT (MOTHER OF MINOR  
VICTIM: X BY ADVS.T.M.RAMAN KARTHA SMT.KEERTHI.S.NAIR  
RESPONDENTS/STATE, COMPLAINANT & ACCUSED: 1 STATE OF KERALA

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031. 2 INSPECTOR OF POLICE (STATION HOUSE OFFICER), KALAMASSERY POLICE STATION, KALAMASSERY, PIN-683 104. 3 Y(FATHER OF VICTIM BY ADV CP Udayabhanu SRI. G. SUDHEER, PP THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: - :2:-

## **ORDER**

Dated this the 20th day of July, 2022

### **This revision petition has been preferred challenging order**

dated 9.9.2020 in Crl.M.P.No.438/2020 in SC.No.322/2015 on the file of the Additional District and Sessions Court (For the trial of cases relating to Atrocities and Sexual Violence against Women and Children).

2. The revisions petitioner is the mother of the victim. The 3rd respondent is the accused.

3. A crime was registered by the Circle Inspector of Police, Kalamassery Police Station as Crime No. 1037/2014 on

13.8.2014 against the 3rd respondent alleging offences punishable under Section 5(m)(n)(i) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 23 of the Juvenile Justice (Care and Protection of Children) Act. The allegation is that the 3 rd respondent committed sexual harassment on the victim who is his own daughter at their home during the year 2014. After conducting investigation, the 2nd respondent filed final report at the court -:3:- below. Thereafter, the court below took cognizance of the offences and the case was numbered as S.C.No.322/2015.

4. Thereafter, the investigating officer initiated further investigation under Section 173(8) of Cr.P.C and after further investigation, submitted a refer report before the court below

styled as supplementary final report. It was found in the said supplementary final report that the case was false. On receipt of the supplementary final report, notice was issued to the defacto complainant/revision petitioner. She filed C.M.P.No.438/2020 at the court below challenging the refer report dated 17.7.2020. The court below accepted the supplementary final report/refer report and dismissed C.M.P.No.438/2020 as per the impugned order. The said order is under challenge in this CrI.R.P.

5. I have heard Sri. T.M. Raman Kartha, the learned

counsel for the revision petitioner, Sri. Navaneeth N. Nath, the learned counsel for the 3rd respondent as well as Sri. G. Sudheer, the learned Public Prosecutor.

6. The learned counsel for the petitioner Sri. Raman Kartha, relying on the decision of the Supreme Court in Vinay Tyagi v. Irshad Ali @ Deepak & Others [(2013) 5 SCC 762] -:4:- and Lukose Zachariah @ Zak & Others v. Joseph Joseph &

Others [2022 Live Law (SC) 230] submitted that the proceedings of the court below in accepting the supplementary final report and winding up the proceedings totally ignoring the initial final report is illegal and improper and thus the impugned

**order is liable to be set aside. The learned counsel further**

submitted that the court below ought to have considered both the reports and took a decision which one is to be accepted. On the other hand, the learned counsel for the 3rd respondent submitted that a perusal of the impugned order would show that the court below has taken into account both the reports. No illegality or impropriety is committed by the court below, submitted the counsel.

7. As stated already, two reports have been submitted. One under Section 173(2) of Cr.P.C and another under Section 173(8) of Cr.P.C. The former one is positive report and the latter one is negative report. In the initial report filed under Section 173(2) of Cr.P.C., it was found that the accused was involved in commission of the offences as alleged. However, in the supplementary report filed under Section 173(8) of Cr.P.C, the -:5:- investigating agency concluded that no prima facie case

involving commission of offence was involved and the proceedings are liable to be dropped.

8. In *Vinay Tyagi (supra)*, the Apex Court has held that

the significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency and that it was continuation of the previous investigation. It was further

**held that the supplementary report would have to be dealt with**

as part of primary report in view of the provisions of sub

Sections 3 to 6 of Section 173 of Cr.P.C. Recently, the Apex Court in *Lukose Zachariah (supra)* has held that the Magistrate have to take into account the initial report filed under Section 173(2) of Cr.P.C as well as the supplementary report filed under Section 173(8) of Cr.P.C and thereafter should take a decision in accordance with law as to whether there is ground for presuming that the persons named as accused have committed the offence. Thus, in a case where a positive report under Section 173(2) and a negative report under Section 173(8) is filed, it is the duty of the Magistrate Court to apply its mind to both the reports and to

-:6:- take a decision, in accordance with law, whether there is ground for presuming that the accused have committed the offence.

9. A perusal of the impugned order would show that the court below simply went through the supplementary report filed under Section 173(8) of Cr.P.C and took a view that it has to be accepted. The court below did not either peruse or apply its mind to the initial report. In these circumstances, I am of the view that the impugned order is not sustainable and is liable to be set aside. In the result, this CrI.R.P is allowed. The impugned order is set aside. The court below shall pass fresh order in accordance with law, after perusing both the reports and after hearing both parties. Sd/- DR. KAUSER EDAPPAGATH JUDGE kp

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