
(2014) 12 KL CK 0024
In the High Court Of Kerala
Case No : Crl. M.C. No. 4186 of 2014

Letha J.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Protection of Children From Sexual Offences Act, 2012 — Section 19, 19(1), 21, 21(2), 9(f)

Citation : (2015) 3 Crimes 12 : (2015) 1 KHC 234 : (2015) 1 KLJ 392 : (2015) 1 KLT 231

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : S. Krishnamoorthy, Advocate for the Appellant; Abdul Kareem, Public Prosecutor, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—A9, A8 and A7 in Crime No. 645 of 2014 of the Mananthavady Police Station, registered for the offences under Sections 9(f), 9(l), 19(1) and 21(2) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "the POCSO Act"), have come up under Section 482 Cr.P.C., to quash Annexure A7 First Information Report in the said crime and all further proceedings based on it as against them, quashed.

2. The petitioners are Director of Technical Education, Senior Joint Director, Directorate of Technical Education and Joint Director, Regional Directorate of Technical Education, respectively.

3. On the basis of some alleged "media reports in a section of the Press on 12.06.2014", the Child Welfare Committee, Wayanad (hereinafter referred to as "the CWC, Wayanad") has seen suo motu registered a case on the alleged sexual assault on girl students in Government Technical High School at Dwaraka, Mananthavady. It is alleged that the 1st accused Anil Kumar K.V., who was a Draftsman Gr.II of the said School, had sexually assaulted and harassed the girl

students of the said School repeatedly for a long period. On 12.06.2014, the CWC, Wayanad has directed the head of the institution to submit a detailed report along with it. It seems that, they have directed the Joint Director, Regional Directorate of Technical Education also to submit a detailed report. The reports were submitted.

4. On 07.07.2014, the CWC has passed an order directing the Station House Officer, Mananthavady (hereinafter referred to as "the SHO, Mananthavady")

"to inquire into the matter and initiate appropriate legal steps against (1) Mr. Anil Kumar K.V., (2) The Superintendent of Govt. Technical High School Mananthavady at Dwaraka, (3) The Four members of the Ethics Committee, (4) The Joint Director, Regional Directorate, Technical Education, Kozhikode, (5) Senior Joint Director (PS), Directorate of Technical Education Thiruvananthapuram and (6) Director of Technical Education Thiruvananthapuram, within two weeks of the receipt of this Order and report compliance."

5. It seems that the SHO, Mananthavady has swiftly acted by registering the crime against 9 persons as accused. It is quite unfortunate that the SHO, Mananthavady has arraigned the Director, Senior Joint Director and Joint Director as A9, A8 and A7 respectively in the crime alleging the aforesaid offences.

6. Heard learned counsel for the petitioners and learned Additional Director General of Prosecution.

7. The present instance is a classic example and a fine illustration to note down the gross illegalities being committed by the CWCs without knowing as to what they are and what are their powers are, and as to how recklessly they are exercising powers, which are not even conferred on them. It seems that in this particular case, the CWC, Wayanad has crossed over all the limits and has committed gross illegality in passing such an order. The CWC has no power to register a case. Without any powers, it seems that, they have directed the SHO, Mananthavady to register the case against 6 persons, including the petitioners herein. The SHO, Mananthavady has chosen to arraign 9 persons as accused in the crime, including the present petitioners as A9, A8 and A7 respectively. The offences alleged against the petitioners are under Sections 9(f), 9(l), 19(1) and 21(2) of the POCSO Act.

8. As per Section 9(f) of the POCSO Act :

"whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution, is said to commit aggravated sexual assault."

There is no allegation against these petitioners that they have ever committed sexual assault on a child in that institution.

9. As per Section 9(l) of the POCSO Act :

"whoever commits penetrative sexual assault on the child more than once or

repeatedly; is said to commit aggravated sexual assault."

There is no allegation against any of these petitioners that they have committed any such acts as contemplated under Section 9(I) of the POCSO Act.

10. Matters being so, it seems that unnecessarily these petitioners have been dragged in the matter at the direction of the CWC and heinous offences like 9(f) and 9(I) of the POCSO Act are levelled against them.

11. The CWC has found fault with these petitioners and has noted in order dated 07.07.2014, the following:

"CWC is in receipt of the reports called for. On perusing the various reports and the certified copies of the victims' complaints, we are of the considered view that there is prima facie evidence of offences attracting Ss. 9(f)(I) & 19(1), 21(2) of the Protection of Children from Sexual Offences (POCSO) Act-2012."

It seems that the CWC have decided that there is prima facie evidence for attracting offences under Sections 9(f), 9(I), 19(1) and 21(2) of the POCSO Act. Simply based on the said illegal finding entered by the CWC, the SHO, Mananthavady has incorporated those offences against these petitioners.

12. As per Section 19(1) of the POCSO Act:

"any person, 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 the Special Juvenile Police Unit or to the local police."

13. The penal provision is contained in Section 21 of the POCSO Act. As per Section 21(2) of the POCSO Act:

"Any person, being in-charge of any company or an institution, 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 punishable with imprisonment for a term which may extend to one year and with fine."

Is it a case wherein, the Director, Senior Joint Director and Joint Director can be brought within the purview of Section 21(2) of the POCSO Act? They are not in charge of the present institution. Further, the 1st accused cannot be styled as a person, who is the immediate subordinate of any of these petitioners. It seems that the CWC has acted in a reckless manner and the same has been followed by the SHO, Mananthavady by unnecessarily registering the case against these petitioners. Much discussion is not required to conclude that the FIR as against these petitioners is liable to be quashed.

In the result, this CrI.M.C. is allowed and Annexure A7 First Information Report in Crime No. 645 of 2014 of the Mananthavady Police Station as against the petitioners is concerned, stands quashed.