

(2024) 06 KL CK 0106

In the High Court Of Kerala

Case No : Criminal Revision Petition No.326 Of 2024

Sindhu Paul

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 13-06-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 227, 397, 401

Indian Penal Code, 1860 — Section 34, 305, 306

Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 23, 75, 77

Citation : (2024) 06 KL CK 0106

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : S.Rajeev, V.Vinay, M.S.Aneer, Prerith Philip Joseph, Anilkumar C.R., K.S.Kiran Krishnan, Nourin S. Fathima, Renjit George

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. This Criminal Revision Petition has been filed under Section 397 read with 401 of the Code of Criminal Procedure, 1973, to set aside the order dated 29.02.2024 in CrI.M.P. No.2000/2023 in S.C. No.689/2018 on the files of the Additional Sessions Judge-I, Kollam and to discharge the petitioners in this case.

2. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor. Perused the entire case diary and statements of the witnesses form part of the case diary, in detail.

3. In this matter, the prosecution allegation is that, witness No.2, Meera Kalyan, who was studying in 8th standard at Trinity Lyceum School, Kollam, was ordered to sit in between boys students by the accused. Thereby, Meera Kalyan was subjected to physical and mental persecution by the accused. The further allegation of the prosecution is that, when the parents of Meera Kalyan, who are witness Nos.1 and 3 informed the same to CW27 the Principal and CW28 the Vice

Principal, the 1st accused was warned in front of witness Nos. 1 to 3. When witness Nos. 1 and 3, the parents of CW2 apprehended further ill treatment from accused No.1 due to the animosity arose out of the said occurrence, the parents of Meera Kalyan demanded to observe CW2 by her elder sister, Gauri Nekha, who was also studying in the 10th standard at the same school. When, Gauri Nekha reached the class of Meera Kalyan to detect any events thereafter, the 1st and 2nd accused threatened her that she would not be given internal marks. The specific allegation is that the 1st accused along with the 2nd accused, subjected Gauri Nekha to mental and physical torture and in consequence of the same at about 13.30 hours on 20.10.2017 she jumped from the 3rd floor of the School and committed suicide. It is on this premise, the prosecution alleges commission of offences punishable under Sections 305 read with 34 of IPC as well as under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as 'JJ Act' for short) [Section 77 of the JJ Act maybe mistakenly incorporated instead of 75 of the JJ Act in the face sheet of the Final Report].

4. While the matter has been pending before the Additional Sessions Court as S.C. No.689/2018, CrI.M.P. No.2000/2023 under Section 227 of Cr.P.C. has been filed by accused Nos. 1 and 2, seeking discharge on the ground that there are no materials in this crime to constitute offences alleged against them. The learned Sessions Judge addressed this contention and dismissed the application as stated in paragraph Nos. 13 to 16 of the order as under:

"13. The learned counsel for the accused relied upon the statement given by witness no. 11 who was a student of the school u/s. 161 of Cr.P.C to the effect that on 20.10.2017, Gowri Nekha restrained witness no.11 and the children entered into a scuffle and witness no. 11 along with other children went to the class of Gowri Nekha to sort out the issue and accused no.1 who reached the place called Gowri Nekha and scolded her as well as witness no.11 and accused no.1 took Gowri Nekha to accused no. 2 who was the class teacher of Gowri Nekha. It is the contention of the learned counsel for the accused that the above acts were performed by accused no. 1 only in her capacity as the teacher of the school. The statements of witnesses no. 17 to 19 u/s. 161 of Cr.P.C are also relied upon to contend that accused no. 1 only acted in her capacity as a teacher of the school without there being any instigation to commit suicide.

14. The learned counsel for the accused relied upon the following decisions in support of the plea of discharge. In Yogesh alias Sachin Jagdish Joshi v. State of Maharashtra (2008 (10) SCC 394), the Hon'ble Supreme Court held in the context of Section 227 of Cr.P.C that if two views are equally possible and the Judge is satisfied that the evidence produced would give rise to suspicion only as distinguished from grave suspicion, the Judge will be fully within his right to discharge the accused. Sindhu Paul v. State of Kerala (2017 (4) KLT 985) was a decision rendered by the Hon'ble High Court of Kerala in this case in an application for grant of anticipatory bail filed by the accused. The Hon'ble High

Court in the context of Section 306 of IPC held that if it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, the consciousness of the court should not be satisfied for basing a finding that the accused abetted commission of suicide. In *Kanchan Sharma v. State of U.P* (2021 (13) SCC 806), the Hon'ble Supreme Court held that abetment involves mental process of instigating a person or intentionally aiding a person in the doing of a thing. In *Rajan v. Sub Inspector of Police* (2019 (1) KLT 119), the Hon'ble High Court of Kerala in the context of Section 23 of the JJ Act, 2000 held that parents, teachers and other persons in loco parentis are entitled to apply reasonable degree of force to the children as a disciplinary measure.

15. The question to be considered at this stage is whether the prosecution has established a strong prima facie case against the accused so as to proceed against the accused for the offences alleged and to frame charge accordingly. I have carefully gone through the final report and the connected records submitted by the prosecution. I have already extracted the summery of the narration of facts as contained in the final report. Specific allegations have been raised to explain the enmity of the accused towards Gowri Nekha. There is specific allegation to the effect that accused no. 1 acted along with accused no. 2 in committing the controversial acts. Witnesses no. 1 and 3 have been cited to prove commission of harassment against Gowri Nekha by the accused. Witnesses no. 1 and 3 are the parents of the deceased child. Witness no. 2 who is the sister of the deceased child has been cited to prove commission of harassment and levelling of threats by the accused. Witnesses no. 4 to 8 who are the students of the school have been cited to prove the occurrence. Witness no. 9 has been cited to prove that Gowri Nekha was seen in a gloomy condition. Witnesses no. 10 to 19 are students of the school and they have been cited to prove the occurrence and the sequence of events that led to the occurrence.

16. After going through the final report and the statements of witnesses appended to the final report, it is my firm view that the prosecution established a strong prima facie case against the accused. In my opinion, the ingredients of the offences alleged are prima facie made out."

5. The learned counsel for the petitioners given emphasis to the statements of CW27, CW10 and CW2 along with other statements, while contending that even though the prosecution allegations are taken together, then also no ingredients to attract offence under Section 305 read with 34 of IPC is made out. He also would submit that, at the most, based on the statement of Meera Kalyan, offence under Section 75 of the JJ Act alone can be said to be made out, prima facie.

6. Resisting this contention, the learned Public Prosecutor placed the case diary as such and referred the statements of CW2-Meera Kalyan, John Paul, Aliya Mujeeb, Kelvin Solly, Pranav Prasannan, Gilben Sulphicker, Stephanny Ann Luke etc. to substantiate that there are materials to attract offences under Section 305 read with 34 of IPC and under Section 75 of the JJ Act, prima facie.

Therefore, discharge sought for by the petitioners could not be granted and the learned Additional Sessions Judge rightly dismissed CrI.M.P. No.2000/2023. According to the learned Public Prosecutor, the matter shall go for trial.

7. In this matter, the entire prosecution case emanated when Meera Kalyan, witness No.2, who is the daughter of witness Nos.1 and 3, studying in the 8th standard at Trinity Lyceam School was directed to sit in between two boys of the class on the allegation that she talked to fellow students inside the class disobeying the prohibition. As per the statement of Meera Kalyan, it has been stated that even though after placing her in between boys, she requested the teacher to replace her but the same was not considered. Thereafter, the father and mother of Meera Kalyan intervened and the matter taken by the Principal and Vice Principal and the 1st accused was scolded and warned by the Principal before witness Nos. 1 to 3. According to the prosecution since CW1 to 3 apprehended further overt act of placing Meera Kalyan in between boys, the Principal entrusted the victim, Gauri Nekha to observe any other events as an aftermath from the 1st accused. When, Gauri Nekha reached the class of Meera Kalyan to detect any events thereafter, the 1st and 2nd accused threatened her that she would not be given internal marks. The specific allegation is that the 1st accused along with the 2nd accused, subjected Gauri Nekha to mental and physical torture and in consequence of the same at about 13.30 hours on 20.10.2017 she jumped from the 3rd floor of the School and committed suicide.

8. I have perused the statements of the witnesses available as pointed out by the learned counsel for the petitioners as well as the learned Public Prosecutor and noticed that there are specific allegations raised to show enmity towards Gauri Nekha at the instance of the accused. Thereafter, accused Nos.1 and 2 scolded and threatened Gauri Nekha saying that internal marks would not be given to her. These overt acts and subsequent events at the instance of the accused led to commission of suicide by Gauri Nekha and she had no other reasons to go for such a fatal decision otherwise.

9. On perusal of the order in CrI.M.P. No.2000/2023 in S.C. No.689/2018, the learned Sessions Judge meticulously analyzed the materials and held that this is a matter wherein, prima facie, materials are available to see commission of the offences by the accused and therefore, the plea of discharge would not succeed and the matter shall go for trial.

10. It is true that, as per Section 305 of IPC, it has been provided as under:

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or [imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

11. In the case at hand, the prosecution allegation is that the accused herein abetted commission of suicide by Gauri Nekha. In fact, the same is a matter of

evidence to be decided during trial. Even otherwise, in a case wherein materials are in abundance, prima facie, to see commission of offences by the accused, the plea of discharge is not legally permissible and the matter shall go for trial after framing charge.

12. In view of the matter, this criminal revision petition must fail and is accordingly dismissed with direction to the trial court to expedite the trial of S.C. No.689/2018 on the files of the Additional Sessions Judge-I, Kollam, at the earliest, at any rate, within a period of six months from the date of receipt of copy of this order.

Registry is directed to forward a copy of this order to the trial court, within three days, for information and further steps.