

(2025) 04 KL CK 1291

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 9008 Of 2024

Sindhu S

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 11-04-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528
Indian Penal Code, 1860 — Section 34, 109, 120B, 201, 419, 463, 465, 471
Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 83, 83(2)
Protection of Children from Sexual Offences Act, 2012 — Section 23, 23(1), 23(2), 23(4)

Citation : (2025) 04 KL CK 1291

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : B.Raman Pillai, V.V.Nandagopal Nambiar, V.John Sebastian Ralph, Victor George V.M., Preeja.P.Vijayan, Smitha, Pavan Rose Johnson, Vandana Bhat T.V., .P.Narayanan, Sajju.S

Final Decision : Allowed

Judgement

A. Badharudeen, J

1. Accused Nos.1 to 6 in S.C.No.575/2024 on the files of the Special Court for trial of offences under the Protection of Children from Sexual Offences Act, (for short 'the PoCSO Act' hereinafter), Kozhikode, have filed this Criminal Miscellaneous Case under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking the following prayer:

To quash Annexure-F final report and the allied proceedings before the Hon'ble Additional District and Sessions Court Kozhikode in S.C.No.575/2024 before the Hon'ble Additional Sessions Court and Fast Track Court for PoCSO Offences, Kozhikode, in the interest of justice, equity and fairness.

2. Heard the learned senior counsel for the petitioners as well as the learned Special Government Pleader - cum - Special Public Prosecutor, in detail.

3. Prosecution case;

The prosecution alleges commission of offences punishable under Sections 120B, 465, 419, 109, 471 and 201 r/w Section 34 of the Indian Penal Code (for short, 'the IPC' hereinafter), Section 83(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the JJ Act' hereinafter) as well as under Section 23(4) of the PoCSO Act, by the petitioners herein.

4. The entire prosecution case stems out from a programme telecasted by Asianet News channel owned by Asianet News Network Pvt.Ltd. on 4.11.2022 and in the YouTube channel of Asianet on 10.11.2022 under the caption 'Narcotics is a dirty business'. Even though the programme was telecasted on 4.11.2022, crime was registered on 4.3.2023. Annexure B is the copy of FIR in Crime No.101/2023 of Vellayil Police Station, Kozhikode. The allegation in the FIR is that accused Nos.1 to 4 hatched conspiracy with intention to defame the image of the Government and telecasted a programme 'Narcotics is a dirty business' as a 'Roving Report' on 10.11.2022 and failed to inform the occurrence regarding a PoCSO Act offence in relation to the child interviewed in school uniform. When final report filed after investigation, the prosecution allegation is that accused Nos.1 to 4 with intention of damaging reputation of the ruling Government, hatched conspiracy and forged video under the caption 'Narcotics is a dirty business' as a Roving Report and telecasted through Asianet News channel and Asianet YouTube channel. The specific allegation is that, in order to increase Television Rating Point, (TRP) of Asianet News channel and keep the channel in the top position and to increase its income, the 1st accused, the Executive Editor, who is authorized to plan the programmes of the channel and to permit its telecast, after its scrutiny, had WhatsApp/Zoom meeting with the 2nd accused and decided to make investigative programme and the 3rd accused, who is the Bureau Chief of Asianet, Kannur, agreed for the same. Thereafter, accused Nos.1 to 3, after sharing common intention, decided to include the victim in PoCSO Crime No.989/2022 of Kannur Police Station in the programme. Thereafter, the 3rd accused contacted the father of the survivor, but he refused to give an interview, since their family have been staying in Maharashtra. But, accused Nos.1 to 3 decided to go with the programme and for which, they had used the voice of the victim in Crime No.989/2022 recorded on 9.8.2022 and included the said voice in the programme. The further allegation is that, as part of conspiracy hatched in between accused Nos.1 to 3, they contacted the 4th accused, who is a staff of Asianet News, Kozhikode and prepared the programme showing the daughter of the 4th accused instead of the survivor, with the help of the 5th accused, the video camera man, in between 14.30 hrs and 16.30 hrs on 1.11.2022 with the aid of the 6th accused. The further allegation is that, thereafter, the said video, by impersonating the victim in Crime No.989/2022 through the daughter of the 4th accused, (another child) under the caption 'Narcotics is a dirty business' has been telecasted on 4.11.2022 and on 10.11.2022 through Asianet News channel and Asianet official YouTube channel, respectively. Further, they also deleted the preliminary video from the editing

system and also the camera which recorded the video and the camera card to screen themselves from prosecution and thereby, they have committed the above offences.

5. The learned senior counsel for the petitioners argued that the ruling Government is in loggerheads with Asianet News channel, since the said channel published many news against the interest of the Government. According to the learned senior counsel for the petitioners, as per the Kerala Government's Open Data Website, NDPS cases reported and arrests made between 2019 and 2022 are marginally very high (2019 - 74620, 2022 -126516) and therefore, Asianet News channel and the accused persons decided to do a feature on the rise of drug abuse in the State with bona fide intention to alert the public regarding increase in drug abuse among youngsters in Kerala. It is also pointed out that the intention behind telecasting the said programme is only to save the young generation from the menace of drug and psychotropic substances and make awareness among the public, politicians and administrations alike to reduce the use of the same. According to the learned senior counsel, the accused and the channel took maximum care and precautions possible to conceal the identity of the survivor while telecasting the interviews given by the survivor. In all the direct interviews given by the survivor to the news channel, the survivor was thoroughly blurred and her voice was doctored. Apart from this, multiple disclaimers were given by the news anchors where they said that the video and audio of the survivor were doctored in order to protect the survivor's identity. The program in contention, 'Roving Reporter' which features a doctored video while retaining the original voice clip, ensures an extra layer of protection as the video is so thoroughly doctored so as to take any speculation away from the survivor. Thus, the identity of the survivor is in no way disclosed through the channel. It is also pointed out that the other news channels, such as 24 News, Media One etc., had used both the original audio and video of the survivor without blurring the same or doctoring the voice and had used the unconcealed picture of the minor taken from behind during the interview to appear in the thumbnails in their YouTube channels with more danger of revealing the identity of the survivor. No disclaimers have been given by those channels either regarding non-disclosure of the identity. Despite that, Asianet News channel alone was chosen by the prosecution with a tainted and mala fide intention to wreck vengeance against the channel, since the channel is against the Government after avoiding prosecution against the other channels. The learned senior counsel for the petitioners also argued that, in fact, a noble idea to alert the public, politicians and administrations regarding increase in drug use among youngsters in Kerala, and the menace of drug abuse has given the colour of non-bailable offences with rivalry to prosecute the petitioners without any bona fides. It is further pointed out that since the intention of the petitioners is noble and benefit of the public society at large; and telecasting such programmes are permitted under Article 14 and Article 19 of the Constitution of India, quashment prayer is liable to be allowed.

6. The learned senior counsel for the petitioners also argued that even though in the police charge, it is alleged that the channel used the real voice of the survivor recorded on 9.8.2022 when the channel had an interview with the survivor on 9.8.2022, the said allegation is false and it is submitted that while telecasting the original interview recorded on 9.8.2022 and the present programme, doctored voice of survivor was telecasted and therefore, none of the offences would attract in the facts of this case. He has placed decision of this Court in *Xxxx v. State of Kerala* reported in [2024 KHC OnLine 7251] wherein this Court held as under:

".....now a days, the provisions of the PoCSO Act are being misused by certain group of persons to wreak vengeance and also to make a strong case against their rivals, so as to obtain ulterior motives therefrom. Therefore, when the courts addressing the genuineness of the case, by exercising the power under S.482 of the CrPC, have a duty to segregate the grains from the chaff to analyse whether the allegations, if taken together in the facts of a particular case, would constitute the offences alleged and the same are prima facie digestible to prudence. When the facts of the case are scanned, if the same reveals that the allegations are levelled with ulterior motives and the same are not digestible to prudence, the courts shall exercise its power under S.482 of CrPC. or under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to quash the false and frivolous litigations at the threshold."

7. The learned Special Public Prosecutor vehemently addressed the argument advanced by the learned senior counsel for the petitioners on the submission that in the instant case, the channel used the original voice of the survivor recorded on 9.8.2022 while telecasting the programme by impersonating the survivor through the daughter of the 4th accused and thereby, the parents and the teachers identified the identity of the survivor. Therefore, offence under Section 23(4) of the PoCSO Act is specifically made out. He also submitted that another minor child, who is the daughter of the 4th accused was used to impersonate the victim in Crime No.989/2022 as against the mandate of Section 83 of the JJ Act and therefore, offence under Section 83(2) of the JJ Act also is made out. Even though the learned Special Public Prosecutor is not able to justify incorporation of Section 419 of the IPC, he justified the other offences under the IPC on submitting that illegally making videos by impersonating the real person is an act of forgery.

8. Now, the question arises for consideration is whether the entire prosecution is liable to be quashed on finding that prima facie none of the offences are made out or in the alternative, whether the prosecution records would justify the offences prima facie, warranting trial?

9. The contention raised by the petitioners is that, the intent behind the programme is to alert the public, politicians and administrations regarding increase in drug use among youngsters in Kerala. The first question to be considered in this regard is whether an offence under Section 23(4) of the PoCSO

Act is made out, prima facie from the prosecution records? In this connection, it is relevant to refer Section 23 of the PoCSO Act and the same reads as under:

23. Procedure for media.—(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

10. As per Section 23(1) of the PoCSO Act, making any report or presenting comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy is an offence. Similarly, disclosure of identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child is also an offence under Section 23(2) of the PoCSO Act. The prime allegation of the prosecution is that, since the original voice of the victim in Crime No.989/2022 has been used while telecasting the programme in dispute, the channel violated Section 23(2) of the PoCSO Act and committed offence punishable under Section 23(4) of the PoCSO Act. When reading Section 23(2), name, address, photograph, family details, school, neighbourhood etc., not disclosed even as per the prosecution case. But the prosecution case would show that the voice of the victim in Crime No.989/2022 has been used as such so that the parents and the teachers identified the survivor. In this connection, statements of CW3 - the survivor, CW4 - her father, CW5 - her mother, CW6 and CW16 - teachers of the survivor, were given emphasis. On perusal of the statements, nobody given statement that the identity by showing the real photo or video of the survivor was telecasted. The case is that, the daughter of the 4th accused was placed instead of the survivor, but the original voice of the survivor was used while telecasting the programme. CW11 is cited by the prosecution to prove that in Crime No.989/2022, the survivor was interviewed by the second witness CW2 and she is the real survivor. As per Section 23(4) of the PoCSO Act, publishing any other particulars which

may lead to disclosure of identity of the child is also an offence. If so, survivor's identity could be noticed by somebody having familiarity with her voice would come within the purview under the caption 'any other particulars' which may lead to disclosure of identity of the child dealt under Section 23(2) of the PoCSO Act.

11. In this connection, it is argued by the learned senior counsel for the petitioners that Section 23 (1) and (2) of the PoCSO Act together with its proviso shall be taken into consideration while construing as to whether there was disclosure of identity of the survivor when her voice recorded voluntarily on 9.8.2022 was used even according to the prosecution. It is also submitted that, in fact, the real voice of the survivor never used by the channel, instead doctored voice extending just 11 seconds only used. But the learned Special Public Prosecutor would submit that disclosing the identity by the media itself is an independent offence under 23(2) of the PoCSO Act and in the instant case, the real voice, as such, was used and therefore offence under Section 23(2) of the PoCSO Act is prima facie made out.

12. The learned Special Public Prosecutor relied on the statements of CW3, CW4, CW5, CW6 and CW16 to contend that even though, the daughter of the 4th accused was shown in the video in school uniform and the school uniform also has no similarity with the school uniform of the survivor, the voice used in the video is that of the survivor herself which was recorded in the interview admittedly had on 9.8.2022.

13. Whereas, specific case of the petitioners is that the voice of the survivor was doctored while telecasting the same at the first instance and the voice of the survivor was used after doctoring the same in the disputed video also.

14. In view of the above submission, I am inclined to refer the statement of the survivor (CW3) recorded in this crime. In the statement, she stated in the video Roving Report, she was not shown and she did not give any interview in connection with the said video. She also stated that the uniform worn by the girl appeared in the video is not that of her school. Her further statement is that, the voice in the video is that of herself, but the voice is not used as such, but 'sentences are jumbled'. As regards the statement of CW5, who is the mother of the survivor is concerned, she did not see the video and she had only hearsay knowledge from her husband, who is CW4. CW4 also stated that the girl shown in the video is not her daughter, but the voice is that of her daughter. He also stated that the school uniform of the survivor was not worn by the girl who was shown in the video. Similar is the version of CW6 and CW16. Section 23(1) of the PoCSO Act does not prohibit making of any report or presentation of comments on any child from any form of media or studio or photographic facilities with complete and authentic information. Thus, admittedly the first interview of the victim on 9.8.2022 was with complete and authentic information. Therefore, Section 23(1) of the PoCSO Act would not apply in this case. However, admittedly going by the statements of CW3 and CW4, initially CW3 given interview to channels - Prime 21, Media One and Kannur Vision, and the survivor was

interviewed by male media persons therein while the survivor was interviewed by a female person in Asianet News channel. Thus, it appears that initially, the interview was with complete and authentic information, as already observed. This would go to show that the survivor and her father given interview in their voice with complete and authentic information and according to the petitioners, the other channels telecasted the original interview without blurring and doctoring the voice of the survivor, but the petitioners' channel did not show nothing regarding the identity of the survivor and the voice used was doctored one. In the earlier video on 9.8.2022 including the doctored voice of the father of the survivor, his statement was that, what happened to his daughter was happened, but this aspect should reach out the public to avoid any further incident in this regard to any others. This would show that the father of the survivor given interview in tune with a noble idea to save others from what happened to his daughter and the same would require appreciation.

15. Here comes the significance of the statement of the survivor herself, as already referred. The survivor had given statement that her voice was used with 'sentences jumbled'. That is to say, the voice was meddled up, disarranged and disorganized. The word 'doctored' means, change the content or appearance of (a document or picture) or voice in order to deceive or to falsify the same. This would go to show that the contention of the petitioners that they did not use the voice of the survivor in its original form, but in a doctored form is justified by the survivor's statement itself. It is true that CW3, CW4, CW5, CW6 and CW16 given statements to the effect that they identified the survivor from the video. If the voice as admitted by the survivor is in a way 'sentences jumbled', such identification and the statements in that count could not be given emphasis as against the statement of the survivor herself. In this context, it is relevant to refer the result of the laboratory analysis regarding the voice sample as stated in column No.15 of the final report.

16. Reading the laboratory analysis report also, it is only certified that Q1 and Q2 samples are the most probable voice of the specimen voice as marked as S1 to S5, and the report also does not say that voice is similar. The rationale is because of its use by jumbling the sentences.

17. The pen drive containing 20 minutes video of 'Roving Report' relating to the programme 'Narcotics is a dirty business' and the voice alleged to be that of the survivor and the recorded interviews of the survivor and his father were produced by the learned senior counsel for the petitioners. I have seen the same. In fact, the sound used in the original video was declared as doctored in the interview itself. The allegation in the present crime is use of the voice of the survivor less than 11 seconds in the 20 minutes programme which would highlight the menace of drug addiction starting from Bangalore and throughout Kerala. On viewing the programme, I would say the same as beneficial video which is intended to alert the public regarding availability of drugs even in the near vicinity of Police Stations and Excise Offices. No doubt, the menace of drug

abuse is to be given prime concern at the present time and any endeavour to arrest the menace and to save the youngsters from its trauma must be encouraged. Be it so, the channel deserves appreciation. On hearing the voice alleged to be that of the survivor, the voice are different the original video recorded on 9.8.2022 and the disputed one in this case. The short span of voice alleged to be that of the survivor, in fact, is shown in the video after jumbling the sentences, as stated by the survivor. So, on viewing the video also, it could not be held that the channel had any intention to disclose the identity of the survivor or disclosed the identity of the survivor by using her original voice, as such.

18. Here comes the significance of the statement of the survivor stating that the voice in the telecasted video was used with sentences jumbled. When the survivor herself says the voice used was by jumbling sentences, the same is akin to doctoring the voice so as to hide the identity of the voice. If so, it could not be held that the voice, as such, is used by the accused and the voice is doctored in order to avoid disclosure of identity of the survivor and if so, offence under Section 23(4) of the PoCSO Act could not be found prima facie.

19. In this case, the allegation of the prosecution is that the accused hatched conspiracy punishable under Section 120B of the IPC and also committed offences under Sections 465, 419, 109, 471 and 201 r/w Section 34 of the IPC. Section 465 of the IPC is the penal provision for the offence of forgery and forgery has been defined under Section 463 of the IPC. Section 463 of the IPC reads as under:

463. Forgery.— Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

20. Tracing the ingredients to attract offence of forgery, making a false document or a false electronic record or part thereof with intent to cause damage or injury to the public or to any other person, is an offence of forgery. So, one of the most essential ingredients to find offence of forgery is intention to cause damage or injury to the public or to any person. In the instant case, the intention of the channel is not to cause any injury to any public or to the survivor, in any manner and the intention is so vivid to the effect that it was intended to alert the public regarding increase in drug abuse among youngsters in Kerala. Use of the voice of the survivor which she voluntarily given on 9.8.2022 after jumbling the sentences is not use of the same in its original form. It would have the characteristics of a doctored voice. If so, the fundamental ingredient to constitute the offence of forgery as defined under Section 463 of the IPC, could not be prima facie found. Since offence of forgery could not be found, offence under Section 471 - use of a forged document or electronic record as genuine, does not arise. If so, the offence of abetment punishable under Section 109 of the IPC also does not arise. The learned Special Public Prosecutor also is not able to

justify how offence under Section 419 of the IPC would attract in the facts of this case. Once it is found prima facie that no forgery of documents, then, destruction of the same or causing disappearance of evidence of offence to screen the forgery also does not arise. Similarly, as per Section 83(2) of the JJ Act, any adult, or an adult group uses children for illegal activities either individually or as a gang shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees. In order to attract this penal provision, use of child or children for illegal activities should be found. A news channel has the liberty to telecast feature programmes and the same unless found to be patently illegal, Section 83(2) of the JJ Act would not have any application. In the instant case, while telecasting video to alert the public in general regarding drug abuse, the daughter of the 4th accused was shown from behind as the survivor and in fact, her identity also not disclosed. It could not be held that the said purpose is illegal. If so, offence under Section 83(2) also would not attract in the facts of this case.

21. It is true that medias and news channels are considered as the fourth pillar of democracy by guaranteeing freedom of the press. But, it is noticeable that in order to increase TRP, as part of survival strategy, now some channels and medias are engaged in publishing and telecasting variety modes of news and entertainments touching social, economic and subjects of cultural events in the society. But, some medias and channels are active in reporting any news which would give a mileage to medias and channels in any form, which ultimately increase its TRP. In this endeavour, mere allegations also being published, telecasted and circulated without having further investigation or enquiry with regard to the truth of the allegations and even without getting the words of the aggrieved or the person who is affected by the news, whose image being tarnished by the said news, which may be false. Thus, by publishing and telecasting mere allegations, channels and medias are boosting up the intention of the person/persons who made the allegations with intention to tarnish the image of the person against whom such allegations are made. The moral and elementary principles of journalism rather the legal principle of natural justice warrant to get versions of both sides and publish or telecast both versions to the domain of the readers and viewers to decide the truth of the matter independently by themselves, on evaluating both versions. Therefore, it is high time for the channels and medias to be more vigilant while giving news items in channels and medias in any form to have an enquiry with regard to the truth of the matter or to include the version of the other side (the person against whom the allegations are levelled) after hearing him, or somebody on his behalf capable of explaining the stand of the other side, then, the medias may report both versions to the viewers and readers to decide what actually is the truth behind the news.

Summing up the discussion, this petition succeeds. Accordingly, this petition stands allowed. Annexure F Final Report and all further proceedings in S.C.No.575/2024 on the files of the Special Court for trial of offences under the

PoCSO Act, Kozhikode, against the petitioners herein, stand quashed.