
(2016) 11 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31378 of 2016 (V)

Sudheesh Kumar S.R.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Protection of Children from Sexual Offences Act, 2012 — Section 23

Citation : (2017) ALLMRCri 113 : (2017) 1 CriCC 598 : (2017) CriLJ 443 :
(2017) 1 ILRKerala 255 : (2016) 4 KerLJ 848 : (2017) 1 KLT 173 : (2017) 2
RCRCriminal 672

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Smt. Ambika Devi, Spl. Government Pleader, for the Respondent
Nos. 1 to 5; Sri. S. Rajeev, Sri. R. Gopan, Sri. K.K. Dheerendrakrishnan, Sri. V.
Vinay and Sri. D. Feroze, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Shaji P.Chaly, J. - This writ petition is filed by the petitioner seeking to quash Ext. P15 order, and for other related reliefs. Ext.P15 is an order passed by the Kerala State Commission for Protection of Child Rights, dated 22.08.2016, whereby a recommendation was made to conduct enquiry against the petitioner and take appropriate action under the provisions of Protection of Children from Sexual Offences Act, 2012 [hereinafter called, the POCSO Act], and as per the provisions of Child Protection Commission Act. Material facts for the disposal of the writ petition are as follows:

2. Petitioner is a practising lawyer with 13 years experience before various Courts in Thiruvananthapuram District. Petitioner is a public spirited citizen and legal advisor of FICUS Charitable Society, constituted with the object of fighting against corruption and for protection of child education, providing financial assistance to children who are financially poor. Petitioner filed several complaints against a teacher in a Higher Secondary School, Kanjiramkulam, with respect to

numerous irregularities noticed for violation of Ext.P1 Government Order, for collecting excess fees from SC/ST students, etc. etc. Petitioner came to know that a teacher working as UPSA in the said school had sexually molested three girl children, and parent of a child filed a complaint before the Head Master. Since there was no action taken against the said person, despite adverse report and recommendation of the Educational Officer, Neyyattinkara, petitioner secured documents through the Right to Information Act. In spite of all earnest efforts of the petitioner, there was no action forthcoming from the authorities, and therefore, with the bona fide intention to pressurize the authorities, posted Exts.P9, and P7 and P8 received along with Ext.P9, under the RTI Act, in the face book. Ext.P8 contains the name, class, division and school of the child. According to the petitioner, petitioner did not notice it before posting Ext.P8 in the face book.

3. On noticing the name of the child next day itself, petitioner deleted the same from the face book account of the petitioner. One Vijaya Kumar, who is also an activist of FICUS charitable society, requested the 3rd respondent through Ext.P10 to take action against the said teacher, based on the report of the DPI and records received under the RTI Act. In reply to Ext.P10, 3rd respondent sent Ext.P11 communication to Mr. Vijaya Kumar, stating that it is trivial or frivolous matter and it is outside the purview of the Commission. It is also stated, at the instance and influence of the Manager and teacher in question of the school, in collusion with 6th respondent filed Ext. P12 complaint before the Commission on the basis of Ext. P12, and 3rd respondent issued Ext. P13 notice to the petitioner to appear in person before the Commission. Petitioner appeared before the Commission and submitted detailed explanation. However, without considering the explanation submitted by the petitioner, Commission passed Ext.P15 order, directing the 5th respondent to conduct enquiry into Ext. P12 complaint as well as Ext. P14 objection and take steps to proceed against the culprits. It is thus challenging Ext. P15, this writ petition is filed.

4. Fifth respondent has filed a statement through the Special Government Pleader (Women and Children), disputing the statements, allegations and claims and demands made by the petitioner. It is also stated, the complaint originated from a face book post of the petitioner on 23.05.2016 disclosing the personal details of the child who was alleged to have been sexually abused by a male teacher. The photocopy of the face book post uploaded by the petitioner is produced as Annexure- (a). It is also stated that the various documents which were uploaded in the face book post clearly show the name of the victim, school and the name of the male teacher alleged to have sexually abused the child, thereby revealing the identity of the child and also intruding into her privacy. It is further stated, apart from Exts.P7, P8 and P9, yet another document is also posted in the face book, produced as Annexure-(b), and in the said document also, the identity of the victim girl as well as the injuries allegedly sustained to her self respect was mentioned.

5. That apart, it is submitted, consequent on the receipt of the complaint, notice was issued to the petitioner, received objection and considered the objection, complaint and after providing an opportunity of hearing only, Ext.P15 order is passed. However, it is also stated, an enquiry was conducted through the Deputy Superintendent of Police, Neyyattinkara, wherein the father of the victim girl, Head Master of the school and another lady teacher of the school were questioned, from which it was revealed that a complaint was made against the teacher for child molestation. However, the Head Master when enquired into the complaint revealed that the complaint had no sanctity. Yet, departmental action was taken against the teacher on the report of the Head Master and certain steps were taken affecting the service conditions of the said teacher. It is also stated, father of the student, did not submit any other complaint before any other office in connection with this matter. Moreover, father had also stated, his daughter is studying in the same school for Plus One and he was unaware of any face book post or regarding any agency investigating the matter. According to him, the studies and future of his daughter are of paramount importance to him.

6. However, the petitioner, after five years, when the victim girl is doing her Plus One in the same school had gone behind the incident under the RTI Act for reasons best known to him and uploaded the face book post with disgraceful comments. Therefore, according to the respondents, the disclosure of identity of the child, contravened Section 23(1) and (2) of the POCSO Act. It is according to the provisions of law, Ext.P15 order is passed. It is also stated that the impugned order is passed observing all principles of natural justice and therefore petitioner has not made out any case warranting interference of this Court by invoking the power of judicial review under Article 226 of the Constitution of India.

7. Petitioner has filed a reply affidavit to the statement filed by the respondents, reiterating and adopting the stand taken in the writ petition. It is also stated therein that the school management or Child-line activists did not lodge a complaint with respect to the incident before police due to the influence of the teacher in question and the Manager of the school, and now the 6th respondent has filed Ext.P12 complaint against the petitioner. However, did not file any complaint against the teacher who is the real culprit. It is also stated that the subject matter should have been reported to the police and police ought to have taken appropriate action.

8. Heard learned counsel for the petitioner and the learned Special Government Pleader, and perused the documents on record and the pleadings put forth by the respective parties.

9. The subject matter of this writ petition is revolving round Ext. P15 order passed by the Commission for Protection of Child Rights. The question to be decided is whether it suffers from any manner of illegality or arbitrariness enabling this Court to interfere with the same. The paramount contention advanced by learned counsel for the petitioner is that the petitioner has made the post in the face book which contained the name of the child with bona fide

and good intentions. The intention of the petitioner was to book the real culprit, who is a teacher in the school in question. It is also stated that the name of the child is contained in Exts.P7 and P8 and P9, which were received by the petitioner under the RTI Act, and therefore mere posting of the same will not amount to the offence under Section 23 of the POCSO Act. Therefore, essence of the issue is dependent on Section 23 of POCSO Act, which reads as follows:

"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 of which shall not be less than six months but which may extend to one year or with fine or with both".

10. On an evaluation of Section 23, it is unequivocally clear, a prohibition is made under sub-section (1) thereto, by which, no person shall make any report or 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. Further, as per sub-section (2), no reports in any media shall disclose the identity of a child including his name, address, photograph, family details, school etc. etc. Therefore, the intention under Section 23 is very clear that the victim child shall not be exposed to any sort of publication so as to affect her future and damn her career. In my considered opinion, in order to constitute an offence under sub-section (4) of Section 23, no mens rea, culpability, and malafide or illegal intention is required. Mere publication of the details of the victim child will attract the offence under sub-section (4). Therefore, the thrust of the contention advanced by the petitioner that the petitioner did not have any malafide intention to expose the child, cannot be sustained under law.

11. Yet another contention advanced by learned counsel is that, the incident took place before the introduction of the Act. The POCSO Act came into force in the year 2012 and the issue with respect to molestation took place much prior to that. The incident under the consideration of the Commission was not the issue

of molestation. The issue was with respect to the publication of the details of the victim child through face book post, which took place on 23.05.2016 when the post was uploaded in the face book. Therefore, in order to attract an offence under Section 23, the incident allegedly took place in respect of the molestation of the child is not at all relevant. The relevance of Section 23 is in respect of the face book post, which, even according to the petitioner, is after the introduction of the Act. Therefore, there is no substance or foundation for the contention advanced by the learned counsel accordingly.

12. Learned counsel even though has brought to my attention, discussion in the Parliament of India, Rajya Sabha, in respect of the Protection of Children from Sexual Offences Bill, 2011, and specifically to clause 23, wherein a Procedure for Media is explained. However, on going through the said report, I do not find anything in favour of the petitioner. However, the attempt of the learned counsel for the petitioner was to impress upon me a point that media means, the media which broad-casts, for public attention. However, since "media" is not defined under the POCSO Act, a reference to dictionary meaning of the term would be worthwhile. The Chambers Concise Dictionary defines "media" as a medium, it is further explained as any intervening means, instrument, or agency etc. etc. Therefore, in my considered opinion, the said contention advanced by the petitioner is also not having any bearing to the issue in question.

13. Learned counsel has also invited my attention to "Maxwell on the Interpretation of Statutes" Twelfth Edition, Page 239, and pointed out that, if there appears any reasonable doubt or ambiguity, it will be resolved in favour of the person who would be liable to the penalty. Further pointed out to a passage, which reads: "If the language of the statute is equivocal and there are two reasonable meanings of the said language, the interpretation which will avoid the penalty is to be adopted. The court must always see that the person to be penalised comes fairly and squarely within the plain words of the enactment". Therefore, it is the contention of the learned counsel, since there is no malafide intention on the part of the petitioner in making the post inure to the benefit of the said person and a punishment under Section 23(4) shall be avoided. This issue is discussed by me earlier and has come to a definite conclusion that no manner of malafides is required to constitute an offence. Therefore, I do not propose to take a benevolent approach in favour of the petitioner. This Court is also bound by the provisions of law since the validity of the same is not under challenge. It is well settled that a provision of a statute should be interpreted to meet the purpose and purport it needs to serve. Looking in that angle also, I have no hesitation to hold that petitioner is not entitled to get any relief. Moreover, from the impugned order itself, it is clear, petitioner was given all opportunity to defend his case and thereafter only Ext.P15 order is passed.

14. Upshot of the above discussion is, petitioner failed to establish any case to interfere with Ext.P15 order passed by the Commission, invoking the power conferred on this Court under Article 226 of the Constitution of India.

Resultantly, writ petition fails, accordingly it is dismissed.