

(2021) 03 KL CK 0220
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2919 Of 2019

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APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 19-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174
Indian Penal Code, 1860 — Section 305, 354, 376(2)(i), 376(2)(n), 377
Protection Of Children From Sexual Offence Act, 2012 — Section 5(l), 6, 7, 8
Scheduled Castes And Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(w)
(i), 3(2)(va)

Citation : (2021) 03 KL CK 0220

Hon'ble Judges : V.G. Arun, J

Bench : Single Bench

Advocate : C. Rajendran, Suman Chakravarthy, P. Vijayakumar

Final Decision : Disposed Of

Judgement

1. The minor daughters of the writ petitioner died under suspicious circumstances on 13.1.2017 and 4.3.2017. This resulted in Crime Nos.43 and 240 of 2017 being registered at the Walayar Police Station. The crimes were initially registered under Section 174 Cr.P.C, the information received being of the girls having committed suicide. During the course of investigation it was revealed that, offences punishable under Sections 376(2)(i) and (n), 377, 305, 354 of IPC, Sections 5(l) read with Sections 6 and 7 read with Section 8 of the PoCSO Act and Sections 3(1)(w)(i) and 3(2)(va) of the SC/ST (POA) Act had been committed against the elder girl and offences punishable under Sections 376(2)(i) and (n), 377, 305, 354 of IPC, Section 5(l) and (m) read with Sections 6 and 7 read with Section 8 of the PoCSO Act and Sections 3(1)(w)(i) and 3(2)(va) of the SC/ST (POA) Act, against the younger girl. After investigation, two final reports were filed. The accused faced trial in S.C.Nos. 398 and 401 of 2017 before the First Additional Sessions Court (Special Court under PoCSO Act), Palakkad and were acquitted. Aggrieved, the State as well as the writ petitioner

preferred appeals and a Division Bench of this Court allowed the appeals vide Exhibit P1 judgment and remanded the case for re-trial and disposal. The trial judge was directed to consider the plea, if any, raised by the investigating agency for permission to conduct further investigation into the case. Various other directions were also issued to ensure proper conduct of the re-trial.

2. This writ petition was filed thereafter, praying for the further investigation to be entrusted with the Central Bureau of Investigation. Pending the writ petition, the Government of Kerala decided to entrust the further investigation with the CBI and issued notification under Section 6 of the Delhi Special Police Establishment Act, 1946. On receipt of the notification, the Central Government informed the State that the notification was not in accordance with the guidelines issued vide letter No.270/37/2018-AVD-II dated 22.11.2018.

3. Today, the learned Senior Public Prosecutor submitted, on instructions, that all requisite documents, as stipulated in the guidelines, have been handed over in person to the competent authority in the Central Government.

4. Learned ASGI submitted that the documents have been received and that the Central Government has sought a feasibility report from the CBI. It is informed that on receipt of the feasibility report, the Central Government will take appropriate decision regarding taking over of the further investigation.

5. The submission of the learned Senior Public Prosecutor and learned ASGI reveals that the State is keen in entrusting the further investigation with the CBI and the Central Government is not averse to the CBI taking over the investigation.

6. Having gone through the records produced and having read the findings in Exhibit P1 judgment, I am of the considered opinion that there cannot be any further delay in commencing the investigation. Hence, the Central Bureau of Investigation (4th respondent) is directed to take over the further investigation in Crime Nos.43/2017 & 240/2017 of Walayar Police Station forthwith. The State of Kerala and the State Police Chief shall take immediate measures for entrusting all files, records and materials pertaining to the crimes with the 4th respondent. The State Government shall provide all logistical support to the CBI for enabling its officers to conduct the further investigation in an unhindered manner.

Writ petition is disposed of with the above directions, reserving the petitioner's liberty to approach this Court at a later stage, if so warranted.