

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OP(Crl.).No. 4667 of 2013 (Q)

CRL.MP 4253/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOCHI

PETITIONER:-:

- * **SIDHIK V., AGED 18 YEARS,
VARIYIL KONNAM, M S LAND, MUTHANA P.O.,
PALAYAKUNNU, VARKALA, PIN - 695 146.**
- * **THE NAME OF THE PETITIONER IS CORRECTED AS 'SINDHIK.V.', AS PER
ORDER DATED 10/10/14 IN IA.12826/14.**

BY ADV. SRI.B.PREMNATH (E)

RESPONDENTS:-:

- 1. XAVIER SAJI, AGED 30 YEARS,
S/O.MYCLE, KUNNUMPURATH HOUSE, KADAKKARAPPALLY P.O.,
CHERTHALA, ALAPPUZHA, PIN - 688 529.**
- 2. DR.MARY STELLIN STELLA, AGED 62 YEARS,
GLEENERS HOUSE, A P JOSEPH ROAD, CHULLIKKAL,
THOPPUMPADY, KOCHI - 682 005.**
- 3. SIBIL SOFIA JOHN, AGED 36 YEARS,
KUNNEL HOUSE, PANDIKKUDY, KOCHI - 682 002.**
- 4. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.**

R2 BY ADV. SRI.P.SANJAY

R3 BY ADV. SRI.JINU JOSEPH

R4 BY SRI.JOM JOSE PADINJAREKKARA, ADGP

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 31-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

OP(Crl.).No. 4667 of 2013 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. TRUE COPY OF THE CRL.M.P.4253/2013 ON THE FILE OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-II, KOCHI.**

**EXHIBIT P2. TRUE COPY OF THE ORDER 05.12.2013 ENDORSED IN THE EXHIBIT P1
COMPLAINT.**

**EXHIBIT P3. TRUE COPY OF THE BIRTH CERTIFICATE OF THE PETITIONER ISSUED
BY THE REGISTRAR OF BIRTHS AND DEATHS, ADICHANALLOOR
GRAMA PANCHAYATH DATED 25/5/2004**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(Crl) No.4667 of 2013
.....

Dated this the 31st day of August, 2015

J U D G M E N T

Heard.

2. A complaint has been filed alleging sexual abuse of children. A crime was registered against one Br. Antony who was running an institution named “Kripalayam”. A series of such sexual abuses had allegedly occurred there in the year 2010. After investigation, a final report was filed against Br. Antony and presently the same is pending as Sessions Case No.104 of 2012 before the Sessions Court, Ernakulam.

3. According to the present petitioner, there was a deliberate attempt from the part of respondents 1 to 3 herein

to malign the name of the petitioner herein in the sexual abuse allegedly committed by the said Br. Antony. According to the petitioner, a statement was furnished by the first respondent that he had occasion to see the sexual abuse of the petitioner by Br. Antony. It is the case of the petitioner that respondents 1 to 3 have thereby committed offences punishable under Sections 120B, 419 and 500 IPC. When the petitioner has filed a private complaint before the Judicial First Class Magistrate's Court-II, Kochi, the same was returned for presentation before appropriate court. Further, according to the petitioner, when he had approached the Sessions Court with the complaint, he was sent back by directing him to appear before the State Commission constituted under the Commissions for Protection of Child Rights Act, 2005.

4. It seems that as per Section 25 of the Commissions for Protection of Child Rights Act, 2005 (hereinafter referred to as '2005 Act') a Court of Session has

to be specified as a Children's Court to try the offences under the said Act. When the alleged sexual abuse and the consequent proceedings in the matter were prior to the commencement of the Protection of Children from Sexual Offences Act, 2012, the matter has to be dealt with by the Children's Court specified under Section 25 of 2005 Act. The Children's Court under Section 25 of 2005 Act has no ordinary original jurisdiction and therefore, the matter has to be taken only on committal. Such cases have to be dealt with as cases for committal.

5. Therefore, the learned Magistrate ought to have entertained the present complaint and dealt with the matter in accordance with law. The court below is directed to deal with the complaint in accordance with law. The learned Magistrate shall take note of the fact that this Court has not expressed any opinion with regard to the merits of the complaint. The petitioner is free to approach the court below with the complaint.

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-: 4 :-

With the above observations, this Original Petition is disposed of.

ul/-

Sd/- B.KEMAL PASHA, JUDGE

[True copy]

P.S. to Judge