IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

CRL.REVISION PETITION NO. 479 OF 2022

AGAINST THE ORDER DATED 07.04.2022 IN CMP NO.155 OF 2022 IN SC 1053 OF 2020 OF SPECIAL COURT UNDER POCSO ACT, THIRUVANANTHAPURAM

(CRIME NO.690 OF 2019 OF NEYYARDAM POLICE STATION)

REVISION PETITIONER/PETITIONER/ACCUSED:

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BY ADV R.GOPAN

RESPONDENT/RESPONDENT/COMPLAINANT & STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI,
PIN – 682031.

BY SMT SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 17.07.2024, THE COURT ON 23.07.2024 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

Crl.Revision Petition No.479 of 2022

Dated this the 23rd day of July, 2024

O R D E R

The petitioner is the accused in S.C.No.1053 of 2020 pending before the Fast Track Special Court, Neyyattinkara. His petition seeking discharge was dismissed. Challenging that order, he filed this revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Code).

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. The final report was filed alleging commission of the offence punishable under Section 354 of the Indian Penal Code, 1860 (IPC) and Section 8 read with Section 7 of the Protection of Children from Sexual Offences Act, 2012 (PoCSO Act). The allegations are as follows:

The victim is aged 15 years. The petitioner is a distributor of newspapers and periodicals. At about 7.10 a.m. on

19.10.2019 the victim was on her way to the tuition centre. While walking along the southern side of the tarred road, the petitioner gave her a Balarama and when she stretched her hand to receive it, the petitioner held her right hand with sexual intent.

4. The trial court did not accept the contentions of the petitioner that he was innocent and the allegations would not constitute any offence. The learned counsel for the petitioner would submit that the version of the victim in the F.I.statement, Section 164 statement and Section 161 statement are not cogent and consistent. Therefore, the allegation that the petitioner had done such an act with sexual intent cannot be accepted even *prima facie*. It is also the submission that even if the assertions in the final report and the statement are accepted, the same would not amount to an offence. In order to fortify that contention that learned counsel placed reliance on **Ramlal N.R. v. State of Kerala [2020 (1) KHC 249]** and **Sushobhit Jain v. State of Madhya Pradesh [2021 KHC 3651]**.

5. The learned Public Prosecutor would submit that the version of the victim regarding the material particulars in the successive statement are consistent. She has narrated the mental agony and trauma on account of the act of the petitioner, which is indicative of his sexual intent. Further, it is submitted that culpable mental state is a matter of presumption in a PoCSO offence and therefore the plea for a discharge in this case cannot be entertained.

6. The prosecution allegation is that the petitioner has held the hand of the victim while she extended her hand to receive Balarama. As rightly pointed out by the learned counsel, the observation of the trial court that the petitioner pulled the victim towards him is an overstatement. It is stated only that while the victim was alone the petitioner caught her hand. If it was an accidental or innocent one, the victim would not have reacted in such a way. It is seen from her successive statements that it was a purposeful act and she got annoyed. When the victim says so and launches a prosecution based on her assertion, a presumption regarding the culpable mental

state as provided in Section 30 of the PoCSO Act is liable to be drawn. Certainly, it is possible for the petitioner to rebut it, which can be only at the trial.

7. In **Ramlal N.R.** (supra) the allegation was that the accused hit on the girl's hand using his shoulder. This Court in the facts and circumstances of that case held that no sexual intent could be imputed on the part of the accused. In **Sushobhit Jain** (supra) a learned Single Judge of the Madhya Pradesh High Court also took a similar view. There the accused entered the house of the victim and caught her hand and also abused her. When her parents intervened, the accused abused them also. When it was held that the act of the accused would amount to physical contact, which is one of the ingredients of a sexual assault as defined in Section 7 of the PoCSO Act, no sexual intent could be gathered.

8. In none of the said cases, the effect and applicability of Section 30 of the PoCSO Act were considered. Going by the definition of Section 7 of the PoCSO Act, whoever with sexual intent touches not only the private part

of the child, but also any other act with sexual intent would amount to an offence. A physical contact, without penetration, with such an intent also constitutes the offence. The allegation against the petitioner is that he caught at the hand of the victim with sexual intent. The version of the victim in the successive statement concerning the material overtact is consistent. From the subsequent incidents and circumstances, the possible inference is that the said act was done with a sexual intent. Such a presumption is liable to be drawn also in view of Section 30 of the PoCSO Act.

In the above circumstances, the law laid down in the aforesaid decisions is not available to the help of the petitioner. The plea of discharge of the petitioner can only fail. Hence, this revision petition is dismissed.

Sd/-

P.G. AJITHKUMAR, JUDGE

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