IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946

CRL.REV.PET NO. 805 OF 2022

CRIME NO.1385/2013 OF MANNUTHY POLICE STATION, THRISSUR

AGAINST THE ORDER DATED 17.10.2022 IN CRL.MP NO.426 OF 2022 IN SC NO.650 OF 2014 OF FAST TRACK SPECIAL COURT, THRISSUR.

REVISION PETITIONER/1ST ACCUSED (IN CRIME NO.1385/2013 OF MANNUTHY POLICE STATION):

ANILKUMAR
AGED 32 YEARS
SON OF ASOKAN, EDATHARA VEEDU, K.A.U. QUARTERS NO.49,
MANNUTHY POST, OLLUKKARA VILLAGE, THRISSUR DISTRICT,
KERALA., PIN – 680 651

BY ADVS.
SHIBIN K.F.
SEBY JOSEPH

RESPONDENT/RESPONDENT/STATE OF KERALA:

1. **STATE OF KERALA,**
   REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   PIN – 682 031
2. **STATION HOUSE OFFICER/CIRCLE INSPECTOR,**
   MANNUTHY POLICE STATION, MANNUTHY POST, KERALA,
   PIN – 680 651

BY ADVS.
SMT SEENA C (PUBLIC PROSECUTOR)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.G AJITHKUMAR, J.
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Crl.Rev.Petition No. 805 of 2022
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Dated this the 30th day of July, 2024.

O R D E R

This Revision Petition is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). The petitioner challenges correctness, legality and propriety of the order of the Fast Track Special Court, Thrissur, by which the plea of discharge of the petitioner was rejected.

2. The Trial Court ordered to frame charge against the petitioner for the offences punishable under Sections 450, 511 of 376 and 376(2)(n) of the Indian Penal Code 1860, and Section 6 r/w 5(l) and 8 r/w 7 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the PoCSO Act'), and Section 66E and 67A of the Information Technology (Amendment) Act, 2008.

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

4. Annexure-A2 is the statement of the de facto complainant, which contains the allegations of sexual abuse made by the petitioner as well as a few others. The allegations against the petitioner are contained in page Nos. 4 and 6 of Annexure-A2. What is mentioned in page No.4 is that, while the de facto complainant was studying in the 9th standard, the petitioner had subjected her to sexual intercourse. From the materials on record, it is seen that the de facto complainant studied in the 9th standard in the year 2011. Further, allegation in page No.6 of Annexure-A2 statement is that, her relationship with the petitioner continued till June 2013.

5. In the light of the said statements, the learned counsel for the petitioner urged two contentions, firstly that, at the time when the first incident occurred, the PoCSO Act did not come into force and therefore, the

petitioner cannot be charged for the offences under the PoCSO Act concerning that and secondly, that the version of the de facto complainant that she continued relationship with the petitioner till 2013 June is insufficient to implicate the petitioner for an offence of penetrative sexual assault or even sexual assault.

6. The Trial Court after considering the materials on record, ordered as follows:-

> "10. After going through the records produced by the prosecution, I am of the view that charge is liable to be framed against the petitioner for commission of offences punishable u/s 450, 511 of 376 and 376(2)(n) of IPC, Sec.6 r/w 5(1) and 8 r/w 7 of the POCSO Act and Sec. 66A and 67E of The Information Technology (Amendment) Act, 2008.
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> 11. In the above situation, the conclusion to be drawn is that the prayer for discharge is without merit. It is my firm view that the petitioner has to face trial."

7. The contention of the petitioner is that from the assertions of the de facto complainant that her relationship continued till June 2013, commission of any sexual act by the petitioner cannot inferred. The version that relationship

continued till June 2013 cannot be understood in isolation. That has to be read in the context of the preceding statements. Therefore, the view taken by the Trial Court in that regard is not liable to be interfered with.

8. In regard to the sexual act allegedly occurred in the year 2011, no offence under the PoCSO Act can be attracted. The PoCSO Act came into force only on 09.11.2012. It can have only prospective application. Therefore, the view taken by the trial court that a charge for the offence under Section 6 r/w 5(l) and 8 r/w 7 of the POCSO Act could be framed even regarding the act allegedly committed in the year 2011 is incorrect. To that extent, the impugned order is liable to be interfered with. The charge against the petitioner shall be modified accordingly.

9. The Revision Petition is therefore, allowed in part. The trial court will proceed to frame charge in regard to the incident occurred in 2011, that is, while the de facto

complainant was studying in the 9th standard, for the offences excluding the offences under the PoCSO Act. The remaining offences which continued till June, 2013 shall be charged under separate head and the offences shall be the mis mentioned in the impugned order.

Sd/-

P.G. AJITHKUMAR,

JUDGE

JJ