



2024:KER:91192

Cr1.R.P.No.1091/2024

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 1ST DAY OF NOVEMBER 2024 / 10TH KARTHIKA, 1946

CRL.REV.PET NO. 1091 OF 2024

CRIME NO.23/2023 OF MUTTOM POLICE STATION, IDUKKI

ORDER DATED 15.07.2024 IN CRMP 2544/2023 IN SC NO.317 OF 2023

OF SPECIAL COURT UNDER POCSO ACT AND CHILDREN'S

ACT, THODUPUZHA

REVISION PETITIONER/PETITIONER/ACCUSED:

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XXXXXXXXXX
XXXXXXXXXX

BY ADV SACHIN RAMESH

RESPONDENT/RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031 (THROUGH THE INSPECTOR OF POLICE,
MUTTAM POLICE STATION-690103), PIN - 682031.

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 24.10.2024, THE COURT ON 01.11.2024 DELIVERED THE FOLLOWING:



A. BADHARUDEEN, J.

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CrI.R.P No.1091 of 2024
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Dated this the 1st day of November, 2024

ORDER

This Criminal Revision Petition has been filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short), seeking to set aside order dated 15.07.2024 in CrI.M.P.No.2544/2023 in S.C.No.317/2023 on the files of Special Court for trial of Protection of Children from Sexual Offences Act ('POCSO Act' for short) Cases, Thodupuzha. The petitioner is the sole accused in this case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the order impugned.

3. Prosecution alleges commission of offences punishable under Sections 363, 354A(1)(ii), 341, 376(1)(3), 506(i) of Indian Penal Code ('IPC' for short) and Section 4(1) r/w 3(a), 6 r/w 5(o), 10 r/w 9(p), 8 r/w 7 of the POCSO Act.. The specific allegation of the prosecution is that



the petitioner herein, who is a close relative of the victim child, with intention to sexually assault her, kidnapped the minor victim from the lawful custody of her parents on 26.01.2023 and taken her to a country boat near Muttom, Malankara Dam area and thereafter the accused committed penetrative sexual assault against the victim. Though the minor victim attempted to rescue herself, he restrained her and caught hold her and kissed on her breasts, and threatened and intimidated her stating that she would be killed if the incident would be disclosed to anyone.

4. The petitioner filed a petition under Section 227 of Cr.P.C before the Special Court seeking discharge, mainly urging that this case was foisted since the families of the victim girl and the petitioner were in inimical terms. The prosecution side opposed discharge highlighting the statement of the minor victim illustrating sexual assault against her, after kidnapping her and taking her to a country boat without scope of rescue. The learned Special Judge considered the case within the parameters of Section 227 of Cr.P.C and held that the prosecution case is made out, *prima facie*, and therefore the matter would require trial.

5. While assailing the order, it is pointed out by the learned counsel for the petitioner that the accusation against the petitioner is



unfounded and the same is the outcome of conspiracy orchestrated by the petitioner's wife and her relatives to wreak vengeance against him. It is pointed out that in the medical examination, nothing suggested to see that there was penetrative sexual assault, since hymen was found intact. Therefore, the allegation of penetrative sexual assault is not sustainable for want of medical evidence. There are contradictions in the statements of the victim. Accordingly, the learned counsel for the petitioner pressed for interference in the order disallowing discharge.

6. The learned Public Prosecutor opposed interference in the order impugned pointing out that the prosecution materials suggesting penetrative sexual assault and kidnapping are made out *prima facie*.

7. On scrutiny of the available materials it is seen that as on 26.01.2023, the petitioner herein, a close relative of the victim child with intention to sexually assault her, kidnapped the minor victim from the lawful custody of her parents and taken her to a country boat near Muttom, Malankara Dam area and thereafter the accused committed penetrative sexual assault against the victim. Though the minor victim attempted to rescue herself, he restrained her and caught hold her and kissed on her breasts, and threatened and intimidated her stating that she would be killed



if the incident would be disclosed to anyone. The allegations regarding personal animosity, fabrication of this case, etc. could not be *prima facie*, seen from the prosecution materials and the same are matters of evidence. The contention raised by the petitioner that the medical evidence would show that the hymen is intact, also would not by itself sufficient to hold that there was no penetrative sexual intercourse since it is the settled law that rupture of hymen is not a mandate to find penetrative sexual assault or coitus. Thus it has to be held that the trial court disallowed the petition for discharge in a case where prosecution materials are specifically made out, necessitating trial of the matter. Therefore, dismissal of discharge petition moved by the petitioner would require no interference and hence this petition is liable to be dismissed.

8. Accordingly, this Criminal Revision Petition stands dismissed.

Registry is directed to forward a copy of this order to the jurisdictional court concerned for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



2024:KER:91192

Cr1.R.P.No.1091/2024

6

INDEX

REVISION PETITIONER'S EXHIBITS

SEALED COVER 1 : SYNOPSIS

SEALED COVER 2 : CERTIFIED COPY OF ORDER DT.15.07.2024 IN CRL.M.P.NO.2544/2023 IN SC NO.317/2023 OF THE SPECIAL COURT UNDER POCSO ACT AND CHILDREN'S ACT, THODUPUZHA.

SEALED COVER 3 : VAKALATNAMA 1.