

IN THE COURT OF FAST TRACK SPECIAL COURT, PALAKKAD

Present: Sri.T.SANJU, SPECIAL JUDGE

Friday, the 2nd day of June ,2022
12th day of Jyaista 1945 S.E.

SESSIONS CASE No. 280/2023

Complainant	:	State represented by the Inspector of Police, Vadakkencherry Police Station in Crime No.92/2023
Name of accused	:	Prasad aged 40 years, S/o Eacharan, Kunisseryparamb, Manjapra, Kannambra, Palakkad
Charge	:	Punishable Under Sections 326, 354 of the Indian Penal Code
Sentence or Order	:	Case is transferred to the Court of Judicial First Class Magistrate-I, Alathur for trial in accordance with the procedure for trial of warrant cases instituted on Police Report.
Name of Police Station : and Crime Number	:	Crime No.92/2023 of Vadakkencherry Police Station,
Name and designation of : committing Magistrate and the No. of the case on his file.	:	Nil
Prosecution conducted : by	:	Smt.Sobhana T, Special Public Prosecutor, Fast Track Special Court, Palakkad.
Accused defended by	:	Sri.Shanavas, Advocate

ORDER

The accused herein originally stands charge-sheeted by the Inspector of Police, Vadakkencherry Police Station in respect of offences under sections 326, 3354 of the Indian Penal Code, and, Section 8 r/w S.7 of the Protection of Children from Sexual Offences Act 2012.

2.The prosecution case in brief is as follows:

At a public road inside one Harijan colony, Kunisseryparambu, at Manjapra in Kannambra-I village at 3.30 P.M on 29-01-2023 the accused grabbed the right hand of the survivor with sexual intent. There ensued a quarrel between the two. When CW1 attempted to interfere the accused threw a granite piece, a deadly weapon, onto her face in which she suffered dislocation of three incisors in her upper jaw. On grabbing the hand of the survivor her modesty was outraged. By the above acts, the accused committed the offences punishable under Sections 326, 354 of the Indian Penal Code, and, Section 8 r/w S.7 of the Protection of Children from Sexual Offences Act 2012.

3. Investigating Officer filed objection report opposing the prayer for discharge.

4. I heard learned Public Prosecutor (POCSO) as well as the learned defence counsel under section 227 of the Code of Criminal Procedure.

5. Point for determination:

1. Whether the prosecution records make out the offence u/s 7 r/w 8 of the POCSO Act 2012?
2. Whether there is sufficient ground for that is presuming that the accused committed an offence i.e., not exclusively triable by a Court of Session so as to invoke Section 228 (1) (a) of Cr.P.C.?

6. Point Nos.1 and 2: For the sake of convenience, these points are considered together.

As per the prosecution records, there is only a 161 statement given by CW2 survivor aged 16 years. In fact, the FIS was lodged not by the survivor, but by her aunt who is none other than CW1. Even a cursory perusal of the FIS would show that she has no case of the accused grabbing the hand of the survivor with sexual intent. The relevant statement of CW1 as per her FIS reads thus:- "ഉച്ചക്കുശേഷം 3.30 മണിക്ക് എന്റെ വീടിന് മുൻവശം റോഡിൽ വെച്ച് അയൽവാസിയായ പ്ലംബർ എന്നയാൾ മദ്യപിച്ച് ബഹളം വെക്കുന്നത് കേട്ട് ഞാൻ വീടിന് വെളിയിൽ

വന്നുനോക്കിയ സമയം എന്റെ സഹോദരൻ പ്ലാറ്റിന്റെ മകൾ xxxxx (Survivor) വഴക്കുകൂട്ടുന്നത് കണ്ടു". As per the above version, CW2 survivor and the accused had quarrel and nothing of sexual nature finds any place in the FIS.

7. Now let me come to the 161 statement subsequently given by the survivor aged 16 years. The necessary statement reads thus:-" അച്ഛൻ പോയി കുറച്ചുകഴിഞ്ഞതും ഞാൻ ആന്റിയുടെ വീട്ടിലേക്ക് പോകുന്നതിനായി എന്റെ വീട്ടിൽ നിന്ന് ഇറങ്ങി റോഡിലൂടെ നടന്നു പോകുന്ന സമയം കുനിശ്ശേരി പറമ്പിലുള്ള പ്ലാറ്റിന്റെ റോഡിൽ നിൽക്കുന്നുണ്ടായിരുന്നു . എന്നെ കണ്ടതും നീ എവിടേക്കാണെടി പോകുന്നത് എന്നു പറഞ്ഞ് എന്റെ കയ്യിൽ കയറി പിടിച്ചു ഞാൻ പ്ലാറ്റിനോട് കൈ വിടാൻ എന്ന് ഉറക്കെ നിലവിളിച്ചു പറഞ്ഞു". This version of grabbing the hand of CW2 by the accused is the sole reason for the Investigating Officer to incorporate the offence u/s 7 r/w 8 of the POCSO Act 2012. It is noteworthy that this version of CW2 is also a subsequently recorded one. This Court is at a total loss to find any element of sexual nature or sexual intention from the allegations born out from the FIS and the above 161 statement. The only offences in respect of which there is sufficient ground for proceeding are the offences u/s 354

and 326 of IPC.

8. Another aspect is that, if at all it is assumed that the accused outraged the modesty of CW2 and sexually assaulted her simultaneously, then that is a distinct offence for which a separate Crime ought to have been registered. Instead, the Police clubbed the offences allegedly committed against CWs 1 and 2 together, and made a futile attempt to find the accused to a case under the POCSO Act 2012, which mandates severe punishment. This Court is of the view that this a fit case to invoke Section 228(1)(a) of Cr.P.C.

Point is answered in favour of the petitioner and against the prosecution.

In the result

1. Charge under Section 354 and 326 IPC is framed and the case against the accused is sent to the Court of Judicial First Class Magistrate, Alathur u/s 228(1)(a) of Cr.P.C who shall try the offences in accordance to Code of Criminal Procedure for trial of warrant cases instituted on Police Report.

He is discharged of the offence punishable u/s 7 r/w 8 of the POCSO Act.

2. Accused shall appear before that Court on 03-07-2023.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court on this the 2nd day of June, 2023)

Sd/-
Special Judge
Fast Track special Court, Palakkad.

Prepared by: Annamma

Compared by: Kesavankutty

/true copy/

Special Judge
Fast Track special Court, Palakkad.

Order in

SC 280/2023

Dated 02.06.2023

FAIR ORDER

IN

S.C 280/2023

DATED: 02.06.2023

