IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 10TH DAY OF SEPTEMBER 2024/19TH BHADRA, 1946

CRL.MC NO. 5035 OF 2023

CRIME NO.691/2021 OF NADAKKAVU POLICE STATION, KOZHIKODE

SC NO.280 OF 2022 OF DISTRICT COURT & SESSIONS COURT, KOZHIKODE

PETITIONER/ACCUSED:

PRAVEEN PRAKASH
AGED 24 YEARS
S/O. PRAKASHAN D,
VADAKKEKALATHIL (H),
PERUMANNUR P.O,
ERNAKULAM DISTRICT,
PIN - 682015

BY ADV MITHUN BABY JOHN

RESPONDENTS/STATE:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031

ADDL R2 SREELAKSHMI K.K,
AGED 20 YEARS
D/O SHANEEJ K.K,
KULAGARAKANDY (H),
ASHOKAPURAM, CALICUT P.O,
CALICUT – 673 001

IS IMPLEADED AS ADDL.R2 AS PER ORDER DATED 14/08/2024 IN CRL.M.A.NO.1/2024 IN CRL.M.C.NO.5035/2023.

BY ADV N.U.HARIKRISHNA

SRI. M P PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10.09.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CR

O R D E R

Dated this the 10th day of September, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, to quash Annexure A1 FIR, Annexure A2 Final Report and all further proceedings against the petitioner in S.C.No.280/2022 on the files of the Additional Sessions Court, Kozhikode, arose out of crime No.691/2021 of Nadakavu Police Station, Kozhikode. The petitioner herein is the sole accused in the above crime.

2. Heard the learned counsel for the petitioner, the learned counsel for the defacto complainant and the learned Public Prosecutor in detail. Perused the relevant documents.

3. In this matter, the prosecution alleges commission of offences punishable under Section 354D of the Indian Penal Code (hereinafter referred to as 'IPC' for

short) as well as under Section 12 r/w 11(iv) of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'PoCSO Act' for short).

4. According to the learned counsel for the petitioner, going by the First Information Statement as well as the additional statement given by the victim, the only allegation is that the accused used to send messages and calls to the victim, who was aged 17 years, to her mobile phone and disturbed her. It is pointed out that the messages so sent are neither disclosed in the statements nor available in the prosecution records. Therefore, none of the offences made out from the prosecution records so that the matter would require quashment on merits. He also submitted that now the victim filed an affidavit stating that the matter has been settled and further action in this matter is not necessary. The learned counsel for the defacto complainant also conceded filing of affidavit, supporting settlement.

5. The learned Public Prosecutor opposed quashment of the proceedings against the petitioner and submitted that acting on the affidavit filed by the victim or their parents, settlement of PoCSO offences is not legally permissible.

6. As rightly pointed out by the learned Public Prosecutor, settlement of PoCSO offences, acting on the affidavit filed by the victim or their parents, is not legally permissible. Therefore, quashment on the ground of settlement could not yield. However, on reading the First Information Statement and the additional statement given by the victim, it could be seen *prima facie* that the allegation is confined to sending of messages and making calls to the victim, who is aged 17 years and the disturbance on that count.

7. Section 11 of the PoCSO Act deals with sexual harassment. It is provided that a person is said to commit sexual harassment upon a child when such person

with sexual intent commits overt acts dealt in sub-sections (i) to (vi) mentioned therein. Here, the prosecution allegation is that the petitioner herein committed offence punishable under Section 11(iv) r/w. 12 of the PoCSO Act. Section 11(iv) provides that a person said to commit sexual harassment upon a child when such person with sexual intent, repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means. Thus mere sending of messages or having chats with a child would not constitute an offence under Section 11(iv) punishable under Section 12 of the PoCSO Act unless the messages or chats would prima facie depict the sexual intent. In order to find the ingredients to bring home an offence under Section 11(iv) of PoCSO Act, the messages or chats to be part of the prosecution records so as to scrutinize the same to find as to whether the materials would prima facie show that the accused committed the offence. Thus it is not justifiable to fasten criminal culpability to an accused

without having scrutiny of the chats or messages or any other overt acts with certainty. When the messages or chats not even collected and made part of the prosecution records, it is incorrect to hold that offence under Section 11(iv) of the PoCSO Act is made out prima facie.

8. Here, the prosecution allegation is confined to that of sending of messages and calls to the victim to her mobile phone and in turn the same disturbed her. But nothing available from the prosecution records to find prima facie that the accused herein repeatedly or constantly followed or contacted the child through electronic digital or any other means with sexual intent, so as to attract offence under Section 11(iv) r/w. 12 of the PoCSO Act and Section 354D of IPC. Therefore, this matter would require quashment on merits.

Accordingly, this petition stands allowed. Annexure A1 FIR, Annexure A2 Final Report and all further proceedings against the petitioner in S.C.No.280/2022 on the

files of the Additional Sessions Court, Kozhikode, arose out of crime No.691/2021 of Nadakavu Police Station, Kozhikode, as against the petitioner stand quashed.

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

Sd/-
A. BADHARUDEEN
JUDGE

nkr

APPENDIX OF CRL.MC 5035 of 2023

PETITIONER ANNEXURES

ANNEXURE A1	**TRUE COPY OF FIR DATED 15.10.2021 ALONG WITH FIS IN CRIME NO.691/2021, NDAKKAVU POLICE STATION, CALICUT DISTRICT**
ANNEXURE A2	**A TRUE COPY OF FINAL REPORT DATED 20.01.2022 IN SC 280/2022 ON THE FILES OF HON'BLE ADDITIONAL DISTRICT & SESSIONS COURT, (POCSO ACT), CALICUT**

RESPONDENTS ANNEXURES : NIL