



2025:KER:26499

Crl.Rev.Pet.No.137 of 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 26TH DAY OF MARCH 2025 / 5TH CHAITHRA, 1947

CRL.REV.PET NO. 137 OF 2023

AGAINST THE ORDER DATED 18.01.2023 IN CRL.M.P. NO.254 OF 2021

IN SC NO.758 OF 2019 OF FAST TRACK SPECIAL COURT, PUNALUR

REVISION PETITIONER/ACCUSED NO.3:

**1 DR. LAILA ASOKAN
AGED 62 YEARS
W/O DR. ASOKAN, DEEN HOSPITAL,
PUNALUR, PIN - 691305
BY ADVS.
S.SREEKUMAR (SR.)
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITHESH
AJAY BEN JOSE
MANJUNATH MENON
SACHIN JACOB AMBAT
ANNA LINDA EDEN
HARIKRISHNAN S.**

RESPONDENT/STATE & DE-FACTO COMPLAINANT:

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

**2 XXX
XXX
BY ADVS.
SRI. E.C. BINEESH (PP)
SRI. BIJU RAJAN K.R. FOR R2**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 26.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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C.JAYACHANDRAN, J.

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Dated this the 26th day of March, 2025

O R D E R

The petitioner herein is the 3rd accused in S.C.No.758/2019 before the Fast Track Special Court, Punalur. Originally, the offences alleged were under Sections 202 and 312, read with Section 34 of the Indian Penal Code and also under Section 19, read with Section 21 of the POCSO Act. As per orders in Crl.M.P.No.254/2021 in the above sessions case, the petitioner was discharged of all the offences afore referred, except the one under Section 202 of the Penal Code. The instant revision is directed against the said Order seeking discharge in respect of the offence under Section 202 as well.



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2. Heard Sri.S.Sreekumar, learned Senior Counsel, (duly instructed by Sri.S.Hari Krishnan) on behalf of the petitioner and Sri.E.C.Bineesh, learned Public Prosecutor, on behalf of the 1st respondent/State and Sri.Biju Rajan K.R. on behalf the 2nd respondent/victim.

3. The essence of the prosecution allegation is that the 1st accused committed penetrative sexual assault on victim/CW2, a minor, from 2016 onwards, which caused pregnancy. The specific allegation against the petitioner/A3, who is a gynecologist, is that she conducted the medical termination of pregnancy without the knowledge of the de-facto complainant, besides failing to report the commission of the offence under the POCSO Act to the Special Juvenile Police Unit or the local Police, as enjoined by the Section 19 of the POCSO Act and also under Section 202 of



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the Penal Code, thus committing the offences enumerated above. Offence under Section 312 of the Penal Code is alleged on the premise that the miscarriage caused was neither in good faith, nor for the purpose of saving the life.

4. Learned Senior Counsel would point out that, by virtue of the impugned order in Crl.M.P.No.254/2017, the petitioner/A3 was discharged under Section 227 Cr.P.C in respect of all offences, except the one under Section 202 of the Penal Code. Once the petitioner/A3 is exonerated for offence under Section 21, read with Section 19 of the POCSO Act, the offence under Section 202 of the Penal Code, cannot sustain, is the submission. It was pointed out that the petitioner/A3 was made to believe that CW2 was married and her husband was abroad. Before conducting the medical termination, the



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consent of the mother of the victim was taken, as per law. According to the learned Senior Counsel, there was no occasion for the petitioner/A3 to know that an offence has been committed in respect of the victim/CW2. It was pointed out that, in order to constitute the offence under Section 202 of the Penal Code, there should be an intentional omission to give any information with respect to the offence, which ingredient is conspicuously lacking in the instant facts. Learned Senior argues that, when an offence dealing with the failure to report an offence under the POCSO Act is separately engrafted in the special statute (POCSO Act), Section 202 constituting a similar offence under the General Code (I.P.C) cannot be pressed into service, especially when the petitioner/A3 stands exonerated from the offence under Section 21, read with Section 19 of the POCSO Act. On



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such premise, learned Senior would seek discharge in respect of the offence under Section 202 as well, by allowing this revision.

5. *Per contra*, learned Public Prosecutor would point out that the medical record would indicate that the victim/CW2 was aged only 17 years, from which, it would have been easily deciphered that an offence under the POCSO Act stood committed, in as much as the victim/CW2 has become pregnant. The learned Public Prosecutor would ascribe to the reasoning made by the learned Special Judge in paragraph no.14 of the impugned order so as to sustain the findings therein.

6. Learned counsel for the 2nd respondent adopts the arguments of the learned Public



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Prosecutor.

7. Having heard the learned counsel appearing for the respective parties, this Court finds that the offence under Section 202 of the Penal Code cannot be sustained against the petitioner/A3. This Court finds substantive merit in the argument raised by the learned Senior Counsel that a general offence constituted by virtue of Section 202 of the Penal Code cannot be pressed into service, when a specific similar offence is constituted by Section 21, read with Section 19 of the POCSSO Act, a special statute. This is all the more so when the petitioner stands exonerated in respect of the offences under the special enactment. It is settled that when a special enactment is seized with the subject matter, the provisions of the General Code cannot be taken recourse to.



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This Court notices that the offence in Section 202 lies in intentionally omitting to give any information in respect of an offence, which he is legally bound to give. It may be that, since Section 202 forms part of the Penal Code, the offence under Section 202 lies in the intentional omission to give information in respect of an offence under the Penal Code. Similar is the offence under Section 21 of the POCSO Act, where the term used is failure to report the commission of an offence, as enjoined by Sections 19 and 20 of the Act. The word 'intentional' as occurring in Section 202 is not available in Section 21, which expands the scope of the offence under Section 21, in comparison with the offence under Section 202 of the Penal Code. There is no quarrel that the petitioner/A3 stood exonerated of the offence under Section 21, read with Section 19 of the POCSO Act and



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that the State has not carried any challenge to the same. If that be so, the charge in respect of offence under Section 202, a general provision under the General Code, can hardly be sustained.

8. This Court also takes into account that the fact that the petitioner/A3 is entitled to the benefit of the second exception to the offence under Section 375 of the Penal Code, which stipulates that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. Of course, the offence of rape is not canvassed in the instant facts. However, the medical records reflect an endorsement to the effect that the victim/CW2 is married and her husband is abroad. It is not in dispute that the victim was aged 17 years, at the time when she approached the



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petitioner/A3 for termination of the pregnancy. Therefore, sexual intercourse between such persons may be brought under an exception, which would also justify the conduct of the petitioner/A3 is not reporting the event to the authority concerned; rather in not suspecting an offence from the attendant facts and circumstances.

9. It is too much to think that a doctor who is seized with a medical situation - that too an emergent medical situation, arising from the condition called encephalocely, which warrants an immediate action - should necessarily identify the possibility of an offence impregnant therein. The victim/patient was admittedly aged 17 years; and even in the midst of a marriage being recorded in the medical records, the doctor should have thought of an



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offence in terms of POCSO Act, is too far fetched a proposition, to infer an offence Under Section 202. It needs no emphasis that a medical professional is concerned with the medical condition and the remedial action thereof; and his or her thoughts are not expected to take a free flight with respect to the possibility of any offence under any Act, unless the same is ex-facie revealed. Inasmuch as the offence in question now is under Section 202 of the Penal Code, the word 'intentional' looms large; and unless such an omission to report is intentional, there cannot be any offence at all.

10. Criminal prosecutions launched against medical professionals are liable to warded off, unless an offence, in clear and unmistakable terms, is made out, as otherwise, the same may affect their confidence and priorities.



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11. In the circumstances, this Criminal Revision Petition is allowed and the Order in Crl.M.P.No.254/2021 in S.C.No.758/2019 dated 18.01.2023, is interfered with, only in so far as it upholds the sustainability of offence under Section 202 of the Penal Code. Consequently, it is held that the petitioner/A3 will be discharged in respect of the offence under Section 202 of the Penal Code as well.

The Criminal Revision Petition is allowed as indicated above.

SD/-

C. JAYACHANDRAN, JUDGE.

Raj