



2024/KER/51402

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946

CRL.MC NO. 5650 OF 2024

AGAINST THE ORDER DATED 28.06.2024 IN CMP NO.144/2024 IN SC

NO.1516 OF 2021 OF SPECIAL COURT UNDER POCSO ACT, MANJERI

CRIME NO.55/2021 OF VANITHA POLICE STATION, MALAPPURAM, MALAPPURAM

PETITIONERS/ACCUSED:

1 XXXX
XXXX
XXXX

2 XXXX
XXXX
XXXX

BY ADVS.

ANAND KALYANAKRISHNAN

C.DHEERAJ RAJAN

RESPONDENT/STATE:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA,

ERNAKULAM, PIN - 682031

SRI.RENJIT GEORGE, SR.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
10.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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CR**ORDER**Dated this the 10th day of July, 2024

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for short), challenging imposition of heavy cost, while allowing CMP No. 144/2024 in S.C.No.1516/2021 filed by accused Nos.1 and 2, to re-call PWs.1, 2, 3 and 6. The petitioners herein are accused Nos.1 and 2 in the above case.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor. Perused the relevant documents.

3. It is discernible from the impugned order that the learned Special Judge, while allowing Annexure 1 petition filed under Section 311 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C' for short) for recalling PWs.1, 2, 3 and 6, imposed cost at the rate of Rs.20,000/-



each payable to them.

4. According to the learned counsel for the petitioners, the cost ordered by the learned Special Judge is onerous and thereby the benefit of the order is given a go-by. Therefore, the impugned order would require interference.

5. The learned Public Prosecutor is asked as to whether any challenge raised by the prosecution inasmuch as the recall of PWs.1, 2, 3 and 6 as ordered by the Special Judge, it is fairly submitted that the prosecution is not aggrieved by the order.

6. It is interesting, rather shocking to note that when the Special Judge found it necessary to recall PWs. 1, 2, 3 and 6 to have a just decision of this case, with the aid of Section 311 of Cr.P.C., he had imposed a heavy cost and thereby the benefit of the order deemed to be denied to the accused. That is to say, if the accused did not have sufficient money to pay Rs.80,000/- as cost, though recalling of PWs.1, 2, 3 and 6 found necessary by the Special Judge,



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the accused could not re-examine the witnesses to defend their case and prove their innocence. Law does not permit imposition of such a heavy cost, which is a burden to the accused. No doubt, cost is liable to be imposed, in consideration of the ordeal of the witness/ess by recalling them, to take care of them and their expenses on account of recalling. An order of the court while granting a relief should be reasonable and fruitful. If onerous and unaffordable cost is imposed, the same is akin to denial of the relief, ie., denial of justice. If courts grant reliefs by imposing conditions like *“you can cut the flesh, without a drop of blood being spilled”*, the same is nothing but outright denial of relief on the guise of allowing the same. Therefore, the impugned order would require interference, in the interest of justice, so as to make the order effective and fruitful in its letter and spirit. In such view of the matter, I am inclined to modify the impugned order.



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7. Therefore, the cost imposed by the learned Special Judge is modified and reduced to Rs.3,000/- (Rupees three thousand only) each to PWs.1, 2, 3 and 6, since it is submitted by the learned counsel for the petitioners that the petitioners are ready to pay the same.

8. The learned Special Judge is directed to fix the date for appearance of PWs.1, 2, 3 and 6, without much delay, if the petitioners file memo stating that the petitioners would pay the cost directly to the witnesses on their appearance.

This Criminal Miscellaneous Case stands disposed of as indicated above.

Registry is directed to forward a copy of this order to the trial court concerned for information and compliance forthwith.

**Sd/-
A. BADHARUDEEN
JUDGE**



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APPENDIX OF CRL.MC 5650/2024

PETITIONER ANNEXURES

- Annexure 1** THE TRUE COPY OF THE PETITION DATED 25.06.2024 IN CMP NO.144/2024 IN S.C.NO.1516/2021 ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, MANJERI
- Annexure 2** THE TRUE COPY OF THE OBJECTION FILED BY THE SPECIAL PUBLIC PROSECUTOR DATED 28.06.2024
- Annexure 3** THE FAIR COPY OF THE ORDER DATED 28.06.2024 IN CMP NO.144/2024 IN SC NO.1516/2021 ON THE FILES OF THE SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, MANJERI

RESPONDENTS ANNEXURES : NIL