

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 05<sup>TH</sup> DAY OF MAY, 2020/15<sup>TH</sup> VAISAKHA, 1942

W.P(C) TMP NO.277 OF 2020

PETITIONERS

1. ANUPAMA P.J., AGED 32 YEARS,  
W/O. ANIL KUMAR, REJINIVAS, C.M.C. 14,  
CHERTHALA P.O., ALAPPUZHA DISTRICT. PIN - 688 524.
2. PRIYA, AGED 37 YEARS,  
W/O. ANIL KUMAR A.P., PUTHENVELIYIL HOUSE,  
MUHAMMA P.O., ALAPPUZHA DISTRICT. PIN - 688 525.
3. MANOJ, AGED 48 YEARS,  
S/O. PURUSHAN, PUTHENPARAMBU HOUSE, KAYIPPURAM,  
MUHAMMA P.O., ALAPPUZHA DISTRICT. PIN - 688 525.

BY ADVS. SRI. E. RAFEEL,  
SRI. GOKUL DAS V.V.H.

RESPONDENTS

1. THE STATE POLICE CHIEF,  
POLICE HEAD QUARTERS,  
THIRUVANANTHAPURAM. PIN - 695 001.
2. THE DISTRICT POLICE CHIEF,  
ALAPPUZHA. PIN - 695 001.
3. THE DEPUTY SUPERINTENDENT OF POLICE,  
ALAPPUZHA. PIN - 688 001.
4. THE SUB INSPECTOR OF POLICE,  
MUHAMMA POLICE STATION,  
MUHAMMA, ALAPPUZHA. PIN - 688 525.
5. X (THE NAME OF THE 5<sup>TH</sup> RESPONDENT IS SHOWN AS 'X'  
AND ADDRESS SHALL BE PROVIDED ONCE NOTICE IS

ISSUED IN THE CASE, AS TO NOT REVEAL THE  
IDENTITY OF THE VICTIM.)

BY SMT. VINITHA B., GOVERNMENT PLEADER

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON  
05.05.2020, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**BECHU KURIAN THOMAS, J.**

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**W.P.(C) TMP No.277 of 2020**  
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**Dated this the 5<sup>th</sup> day of May, 2020**

**ORDER**

The facts that have been brought to the notice of this Court through this writ petition are quite startling.

2. The petitioners are the parents of three young children, all below 7 years of age, who are alleged to have committed gang rape on a child, who is also of the same age and studying along with them. It is alleged that there has been penetrative sexual assault on the alleged victim as a result of which the children of petitioners along with few others are arrayed as accused.

3. It is the contention of Sri.Gokuldas, learned counsel appearing on behalf of the petitioners, that the children fall under the category 'doli incapax' which principle is reflected in Section 82 of the Indian Penal Code, 1872. Section 82 of IPC provides that a child below the age of 7 years cannot commit a

crime. A child between the age of 7 to 12 are also treated differently in terms of their culpability as per Section 83 of IPC.

4. Though the provisions of Sections 82 and 83 of IPC deals with the substantive character of offences when alleged against a child, the procedure when a child is apprehended as being in conflict with law, is dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the JJ Act').

5. Under the JJ Act, a child when apprehended as being in conflict with law, is to be dealt with, exclusively by the Board constituted under Section 8, that too in a manner provided under Section 3 through the procedure contemplated under Section 10 of the JJ Act. As a Special Act, when a child in conflict with law is apprehended, for an offence either under the Indian Penal Code or under any other Penal Statute, the officer apprehending the child has to resort to the procedure under Section 10 of the JJ Act.

6. It is submitted to the shock of this Court that the Station House Officer, the 4<sup>th</sup> respondent herein, had directed the petitioners along with their children to present themselves

before the police station along with the photographs of the children for the purpose of a test identification parade. It is also submitted that the children have not yet been placed before the Board. These actions, if true, are unpardonable.

7. Prima facie, I feel that the SHO is acting beyond his powers especially since he has not acted in accordance with the JJ Act or placed the children before the Juvenile Justice Board till date, even though six months have elapsed after the commission of the alleged offence. This certainly amounts to harassment and an abuse of the powers.

8. Even though the plight of the victim stares at this Court, still a child in conflict with law has to be treated in a manner contemplated under the JJ Act and not like any other hardened criminal.

9. In such circumstances, there will be an interim stay of all further proceedings in Crime No.1145 of 2019 before the Muhamma Police Station, Alappuzha and the 4<sup>th</sup> respondent is directed to place the records of the said case before the Juvenile Justice Board without any delay, pending further orders of this Court.

10. The Director General of Prosecution shall get instructions in this Case and shall also place the opinion of the Special Public Prosecutor for POCSO cases, Alappuzha District under whose advice the police is said to have acted and a copy of the FIR in a sealed cover for the consideration of this Court by the next posting.

Post on 20.5.2020 for further consideration.

**BECHU KURIAN THOMAS  
JUDGE**

vps