

HIGH COURT OF KERALA**Bench: The Honorable Mr. Justice P.V.Kunhikrishnan****Date of Decision: 8th December 2023**

CRL.MC NO. 9967 OF 2023

SIDHEEK**VS****STATE OF KERALA****Legislation and Rules:**

Indian Penal Code: Sections 279, 336

Motor Vehicles Act: Sections 5, 180, 199A(1), 199A(2)

Code of Criminal Procedure, 1973: Section 482

Subject: Quashing of proceedings against the petitioner for allowing a minor to ride a motorbike, leading to endangerment of public safety and life.**Headnotes:**

Issue of Guardian's Liability for Minor's Actions under Motor Vehicles Act – The case revolves around the petitioner allowing a minor to ride a motorbike, potentially endangering public safety – Under scrutiny are the applicable provisions of the Motor Vehicles Act, particularly Section 199A, and the Indian Penal Code [Paras 2-3].

Judicial Precedent Referenced – Reliance on past judgments of the Kerala High Court (Crl.M.C.No.4779/2023 and Crl.M.C.No.7479/2022), highlighting

the necessity of charging a juvenile under the Motor Vehicles Act for the guardian's culpability to be established [Para 4].

Analysis of Section 199A of the Motor Vehicles Act – Emphasis on the precondition that a juvenile must have committed an offence under the Act for the guardian to be charged – In the absence of charges against the juvenile, the guardian cannot be held liable [Paras 4-6].

Inadequacy of Evidence Against Petitioner – Absence of substantial evidence to prove the minor's age and the lack of specific allegations of rash or negligent driving against the petitioner under Section 336 of IPC [Paras 6-7].

Decision – Proceedings against the petitioner quashed due to non-establishment of a juvenile's offence under the Motor Vehicles Act and lack of sufficient evidence against the petitioner [Order].

Referred Cases: None.

Representing Advocates:

For the Petitioner: B.J.John, Prakash P. Pramel, Colin Alex Sooraj M.S.,
Varsha Vijayakumar Nair, Chackochen Vithayathil

For the Respondent: Smt Sreeja V (Public Prosecutor)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 08.12.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P. V. KUNHIKRISHNAN, J.

Crl.M.C.No.9967 of 2023

Dated this the 8th day of December, 2023

ORDER

This Criminal Miscellaneous Case is filed under Section 482 of the Code of Criminal Procedure, 1973 (“the Code” for the sake of brevity).

2. The petitioner is the accused in S.T.No.3449/2023 on the file of the Judicial First Class Magistrate Court, Tirur arising from Crime No.1115/2023 of Kuttipuram Police Station, Malappuram. The above case is chargesheeted alleging offences punishable under sections 279, 336 of the Indian Penal Code and sections 5, 180, 199A(1), 199A(2) of the Motor Vehicles Act.

3. The prosecution case is that, on 09.10.2023 at about 12.30 p.m., the petitioner permitted a minor to ride a motor cycle bearing registration no.KL-51G-8700 and thereby endangering the life and personal safety of the general public. Annexure-A1 is the FIR and Annexure-A2 is the final report in this case. The contention of the petitioner is that, Annexure-A2 chargesheet is not maintainable against the petitioner because in order to charge the offence against the guardian of a minor, offence must have been committed by a juvenile and only thereupon, the charge under section 199A of the Motor Vehicles Act can be imposed upon the the guardian of such juvenile.

4. The petitioner relied on the judgment of this Court dated 20.06.2023 in CrI.M.C.No.4779/2023 in which an order passed in CrI.M.C.No.7479/2022 is relied. Hence this criminal miscellaneous case.

5. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

6. After hearing both sides, I think Annexure-A2 final report will not stand in the light of the dictum laid down in CrI.M.C.No.7479/2022 which is followed in CrI.M.C. No.4779/2023. It will be better to extract the relevant portion of the judgment in CrI.M.C.No.7479/2022:

“4. The contention put forward by the learned counsel for the petitioner is that none of the offences alleged against him would be attracted against him. The crux of the contention of the learned counsel for the petitioner is that Section 199A of the Motor Vehicles Act requires that an offence must have been committed by a Juvenile and only thereupon the charge under Section 199A can be imposed upon the guardian of such juvenile. It is pointed out that, in this case,

no such offences are charged against the juvenile and in the absence of such prosecution, the proceedings against the petitioner cannot be continued. On the other hand, the learned Public Prosecutor would oppose the same.

5. After considering the relevant aspects, I find some force in the contention put forward by the learned counsel for the petitioner. Section 199A of the Motor Vehicles Act reads as follows:

“199-A. Offences by juveniles.--(1) Where an offence under this Act has been committed by a juvenile, the guardian of such juvenile or the owner of the motor vehicle shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing in this sub-section shall render such guardian or owner liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Explanation.-- For the purposes of this section, the Court shall presume that the use of the motor vehicle by the juvenile was with the consent of the guardian of such juvenile or the owner of the motor vehicle, as the case may be.

(2) In addition to the penalty under sub-section(1), such guardian or owner shall be punishable with imprisonment for a term which may extend to three years and with a fine of twenty-five thousand rupees.

(3) The provisions of sub-section (1) and subsection (2) shall not apply to such guardian or owner if the juvenile committing the offence had been granted a learner's licence under section 8 or a driving licence and was operating a motor vehicle which such juvenile was licensed to operate.

(4) Where an offence under this Act has been committed by a juvenile, the registration of the motor vehicle used in the commission of the offence shall be cancelled for a period of twelve months.

(5) Where an offence under this Act has been committed by a juvenile, then, notwithstanding section 4 or section 7, such juvenile shall not be eligible to be granted a driving licence under section 9 or a learner's licence under

section 8 until such juvenile has attained the age of twenty-five years.

(6) Where an offence under this Act has been committed by a juvenile, then such juvenile shall be punishable with such fines as provided in the Act, while any custodial sentence may be modified as per the provisions of the Juvenile Justice Act, 2000 (56 of 2000).]”

As per section 199A, the guardian of a juvenile can be implicated in for the said offence only if a juvenile has committed the offence under the Motor Vehicles Act. It is to be noted that, the said provision starts with the words “Where an offence under this act has been committed by juvenile”. In this case, even though it is stated that the juvenile drove the vehicle, no offence is charged against the said juvenile. In the absence of any charge against the juvenile for the commission of an offence under the Motor Vehicles Act, no offence under section 199A against the guardian of such juvenile would be attracted. In other words, the commission of the offence by the juvenile is the most crucial ingredient for attracting the offence under section 199A of the Motor Vehicles Act.

6. Besides the above ground, there is yet another aspect in this case. No materials were produced to substantiate the age of the petitioner's son, who allegedly drove the vehicle. In the absence of any documents to prove the age of the son of the petitioner, it cannot be concluded that a juvenile drove the vehicle. Since the commission of an offence under the provisions of the Motor Vehicles Act by a juvenile is a mandatory requirement for attracting the offence under Section 199A of the Act, the absence of such an offence and the materials to substantiate the commission of such an offence by a juvenile would cut the root of the prosecution case. Therefore, under no circumstances can the petitioner be prosecuted for the offences under Section 199A of the Motor Vehicles Act.

7. The remaining offence is under Section 336 of the Indian Penal Code, which reads as follows:

“336. Act endangering life or personal safety of others. — Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to

three months, or with fine which may extend to two hundred and fifty rupees, or with both.

The specific contention of the learned counsel for the petitioner is that, apart from the allegation that the petitioner permitted his minor son to drive the vehicle, there is no allegation to attract the aforesaid offences. To constitute the said offence, there must be a specific allegation that the accused committed a rash and negligent act to endanger human life or the personal safety of others. In this case, even though it is stated that the driving of the vehicle by the son of the petitioner was in a rash and negligent manner, the said rashness or negligence was attributed to the driver of the vehicle, only because of the reason that he was a juvenile and was not having a driving license. As far as the question of the minority of the driver is concerned, absolutely no documents are produced to substantiate the same and in the absence of such materials, it cannot be concluded that the person driving the vehicle was a juvenile at the relevant time. As rightly pointed out by the learned counsel for the petitioner, in the statements of the witnesses, apart from the fact that the driver was a minor, no other acts which would qualify the rashness or negligence are specified. In such circumstances, I am of the view that the offence under Section 336 of the Indian Penal Code also would not be attracted. ”

7. As held by this Court, the guardian of a juvenile can be proceeded against only if a juvenile has committed the offence under the Motor Vehicles Act. In the case on hand, there is no case for the prosecution that the juvenile has committed any offence. No proceeding has been initiated against the juvenile either. Furthermore, no materials have been placed before this Court to substantiate that the person who rode the motor cycle is a juvenile. As far as Section 336 of the IPC is concerned, a specific allegation is necessary that the accused had committed a rash and negligent act intending to endanger human life or the personal safety of others. As there is no material to show that the person who drove the motor cycle is a juvenile and that he is not having a driving license, the offence under Section 336 of the IPC will not be attracted. Hence this Criminal Miscellaneous case is to be allowed.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioner in S.T.No.3449/2023 on the file of the

Judicial First Class Magistrate Court, Tirur arising from Crime No.1115/2023 of Kuttipuram Police Station, Malappuram are quashed.

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