

**DIRECTORATE OF HEALTH SERVICES**

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No.DHS/5132/2025-FWB3

Dated: 28-02-2025

CIRCULAR

Subject: Medical Termination of Pregnancy of a minor victim- preservation of fetus is mandatory - Order dated 19th February 2025 of The Hon High Court of Kerala in CRL.MC NO. 4372 OF 2022-complied with -rcular issued -Reg.

☐

☐ The Honorable High Court of Kerala,in its order dated 19th February 2025 ,while disposing CRL.MC NO. 4372 of 2022 dated 19th February 2025 from Honorable High Court of Kerala, observed and instructed as follows;

*" It is pertinent to note that, as I have already pointed out, when a doctor is doing MTP of a minor victim, as of now, there is no law or rule, which would mandate the doctor to preserve the fetus automatically, in such cases. Therefore, this aspect is to be addressed by the legislature, at the earliest. Accordingly, the State legislature and the Central legislature may consider appropriate legislation or to amend the existing legislation to incorporate such a provision, mandating preservation of the fetus in MTP cases involving minor victims, where POCSO Act offences are made out, prima facie. **Till then, in order to protect the interest of the minor victims and to avoid flee of the accused from trial, for want of vital piece of evidence, there shall be a direction to the Director, Health Department, State of Kerala, to communicate this order in the form of a circular to all the doctors in the State, directing them to preserve the fetus of minor victims mandatorily, without being destructed and in order to destruct the fetus, the doctors should get written permission from the Investigating Officer or from the District Police Superintendent concerned.**"*

In the circumstances,in compliance with the above, it is hereby directed that all doctors in the State must ensure that when performing MTP of a minor victim, the fetus must be preserved without destruction. To destroy the fetus, written permission must be obtained from the Investigating Officer or the District Police Superintendent concerned.

All Medical Practitioners, who are conducting Medical Termination of Pregnancy should strictly follow the above instructions.

All District Medical Officers are directed to forward this Circular to all Government and Private Health Care institutions in the district.

A copy of the Hon.High Court order is Annexed to this circular for ready reference.

Signed by

Reena K J

DIRECTOR OF HEALTH SERVICES

Date: 28-02-2025 14:39:47

To

1. District Medical Officers (All districts)
2. District RCH Officers (All Districts)
3. Superintendent of Hospitals
4. Medical Officers i/c Health Care Institutions
5. Kerala Federation of Obstetrics and Gynecology
6. Indian Medical Association.
7. Website of Directorate of Health Services
8. All Medical Officers

Copy to.

The Advocate General Kerala,Ernakulam (With C/L)



2025:KER:13879

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 19TH DAY OF FEBRUARY 2025 / 30TH MAGHA, 1946

CRL.MC NO. 4372 OF 2022

CRIME NO.313/2021 OF THRIKKAKARA POLICE STATION, ERNAKULAM

IN S.C. NO.283 OF 2022 ON THE FILES OF THE ADDITIONAL DISTRICT & SESSIONS
COURT (FOR THE TRIAL OF POCSO ACT CASES), ERNAKULAM

PETITIONER/ACCUSED NO.2:

DR. HAFEEZ RAHMAN. P. A.
AGED 58 YEARS, S/O P.K.ABDUL RAHMAN,
HOUSE NO. 6/218B, PDIYATH HOUSE, VANACHIRA ROAD,
KOLLAMKUDIMUGAL, KAKKANAD VILLAGE, ERNAKULAM DISTRICT,
PIN - 683021
WORKING AS CHAIRMAN AND MEDICAL DIRECTOR, SUNRISE HOSPITAL,
SEAPORT AIRPORT ROAD, MAVELIPURAM, KAKKANAD, KOCHI-682030

BY ADVS.
P.T.MOHANKUMAR
GEORGE CHERIAN
RAJESH CHERIAN KARIPPAPARAMBIL
MANEESHA JOY

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682018
- 2 THE ASSISTANT COMMISSIONER OF POLICE, THRIKKAKKARA POLICE
STATION, KOCHI, PIN - 682030

ADDL R3 XXXX

(DE-FACTO COMPLAINANT IS SUO-MOTU IMPLEADED AS ADDITIONAL R3
AS PER ORDER DATED 06.08.2024)

PP JIBU T S

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04.02.2025,
THE COURT ON 19.02.2025 PASSED THE FOLLOWING:

**“C.R.”****ORDER****Dated this the 19th day of February, 2025**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings in S.C. No.283/2022 on the files of the Special Court for the trial of cases under the Protection of Children from Sexual Offences Act [hereinafter referred as 'POCSO Act' for short], Ernakulam, arose out of Crime No.313 of 2021 of Thrikkakara Police Station, as against the petitioner. The petitioner herein is the 2nd accused in the above case.

2. Heard the learned counsel for the petitioner, in detail and also the learned Public Prosecutor. Perused the records and decision placed by the learned counsel for the petitioner and also referred the provisions pointed out by the learned Public Prosecutor, while opposing quashment.

3. In this matter, the crime was registered by Thrikkakara Police and after investigation Final Report filed



alleging that the 1st accused had committed offences punishable under Sections 363, 449, 376(3), 376(2)(n), 354A(I)(i), 354A(2) of the Indian Penal Code, under Sections 4(2) read with 3, 6(1) read with 5(I)(j)(ii), 10 read with 9(I), 12 read with 11(iv) of the POCSO Act and under Sections 3(1)(w)(i), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 2015.

4. The allegation against the 2nd accused, the doctor, who treated the victim from 12.04.2021 to 14.04.2021 is that, he had done MTP [Medical Termination of Pregnancy] and aborted the pregnancy of the victim illegally on knowing that the gestational age of the fetus is 17.2 weeks. Further allegation is that, the petitioner destroyed the fetus, without being preserved for the purpose of investigation. Accordingly, the prosecution alleges commission of offences punishable under Section 5(3) of the Medical Termination of Pregnancy Act, 1971 [hereinafter referred as 'MTP Act' for short] and under Section 201 of the Indian Penal Code (hereinafter referred as 'IPC' for short).

5. The learned counsel for the petitioner argued



that, none of the offences alleged by the prosecution would attract against the petitioner and the petitioner bonafidely attended the victim, who met him with pregnancy, which warranted timely interception to save her life. According to the learned counsel for the petitioner, the petitioner on 12.04.2021, the date on which he met the victim, reported the crime to the Police as per Annexure.A4. So, the petitioner has no intention to screen the offender, since he rightly reported the crime, in tune with the mandate of Section 19(1) of the POCSO Act. According to the learned counsel for the petitioner, the allegation as to commission of the offence punishable under Section 5(3) of the MTP Act would not attract against the petitioner, since the MTP was done at Sunrise Hospital, Kakkanad, where certificate in Form No.B of sub rule (6) of Rule 5 of the Medical Termination of Pregnancy Rules [hereinafter referred as 'MTP Rules' for short] was issued by the District Medical Officer as on 18.07.2014. In the case diary placed by the learned Public Prosecutor, the certificate of approval in Form No.B issued to Sunrise Hospital, Kakkanad is available and the name of the owner is stated as Dr.Hafeez Rahman



P.A., who is the 2nd accused/petitioner herein.

6. The learned counsel for the petitioner would submit that, in Annexure.A9, obstetric sonography report dated 12.04.2021, the LMP [Last Menstruation Period] of the victim is recorded as 25.12.2020. But, as per the sonography report, the estimated gestational age is shown as 15.3 weeks and the average gestational age is shown as 17.2 weeks. The learned counsel for the petitioner argued that, the normal method to calculate the gestational age is to count the days from LMP. According to the learned counsel for the petitioner, if the gestational age is counted from 25.12.2020, in the normal method, the gestational age of the fetus of the victim is within 12 weeks and not beyond 12 weeks and as per the license issued, the petitioner is authorized to do MTP in respect of pregnancy upto 16 weeks. If so, the offence under Section 5(3) of the MTP Act would not attract as against the petitioner.

7. The learned counsel for the petitioner has placed an article in the journal of Pregnancy and Neonatal Medicine, published by the University of Adelaide, School of Medicine, Australia, wherein it has been stated that, *the*



discrepancies between different methods of gestational age measurement are common and can lead to confusion and uncertainty in clinical practice. Clinicians should be aware of the limitations of each method and interpret results cautiously, considering the clinical context and individual patient factors. In the journal, it is further stated that, *measuring gestational age involves various techniques like Last Menstrual Period (LMP) dating, ultrasound measurements, and fundal height assessment. LMP dating relies on the first day of the woman's last menstrual period, while ultrasound provides precise measurements of fetal size and development. Fundal height measurement estimates gestational age by measuring the height of the uterus. Accuracy and accessibility are key considerations, as discrepancies between methods can impact clinical decisions and patient care. Gestational age determination is vital for monitoring fetal development, timing interventions, and ensuring optimal outcomes in obstetric practice.* Highlighting the genesis of the case, the learned counsel for the petitioner implored the reliefs sought for.

8. The learned Public Prosecutor opposed



quashment of the proceedings as against the petitioner. The learned Public Prosecutor submitted that, as per the license issued, Sunrise Hospital manned by the petitioner is authorized to do MTP in relation to the pregnancy upto 16 weeks. But, in this matter, as per Annexure.A9, the average gestational age of the fetus of the victim is shown as 17.2 weeks. Therefore, MTP done by the petitioner is without any authorization to do MTP beyond 16 weeks of gestational age and the same is illegal. He further pointed out that, the certificate of approval was issued as early as on 18.07.2014 and the same was not renewed thereafter. Therefore, at the time of MTP done on 12.04.2021, Sunrise Hospital has no approval as per the MTP Rules. Therefore, the offence under Section 5(3) of the MTP Act, alleged by the prosecution is made out, *prima facie*, since MTP was performed at a place, for which there was no valid license.

9. In this matter, the first question to be decided is, whether the offence under Section 5(3) of the MTP Act, would attract against the petitioner?

10. According to the learned counsel for the petitioner, there was license issued in Form No.B of sub rule



(6) of Rule 5 of MTP Rules as evident from the certificate dated 18.07.2014 form part of the case diary. Accordingly, Sunrise Hospital was authorized to do MTP in relation to fetus upto 16 weeks of gestational age. In Annexure.A9, even though the average gestational age of the fetus is stated as 17.2 weeks based on the obstetric sonography method, the LMP was stated as 25.12.2020 and when the normal method to count the days from the LMP is applied, the gestational age is within 12 weeks. That apart, as per Annexure.A9 also the estimated gestational age is 15.3 weeks.

11. At this juncture, it is relevant to address contention raised by the learned Public Prosecutor with reference to the report of the District Medical Officer form part of the case diary that, there was no renewal of certificate of approval issued on 18.07.2014. Therefore, at the time of MTP done on 12.04.2021, Sunrise Hospital has no approval as per the MTP Rules. In this connection, it is relevant to refer Sections 4 and 5 of the MTP Act. The same are as under:

4. Place where pregnancy may be terminated.- No termination of pregnancy shall



be made in accordance with this Act at any place other than-

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

5. Sections 3 and 4 when not to apply.-

(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which



may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

12. Reading Section 4(b) of the Act, a place for the time being approved for the purpose of the Act by Government or a District Level Committee constituted by the Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee is authorized to do MTP. In the instant case, it is not in dispute that Sunrise Hospital owned by the petitioner herein was given Form B certificate on 18.07.2014. But, no period provided therein. According to the learned Public Prosecutor there was no renewal of certificate. In this connection, it is relevant to refer the Rules 5 and 7 of the MTP Rules. The same are as under:



5. Approval of a place- (1) No place shall be approved under clause (b) of section 4, -

(i) Unless the Government is satisfied that termination of pregnancies may be done therein under safe and hygienic conditions; and

(ii) Unless the following facilities are provided therein, namely: -

In case of first trimester, that is, up to 12 weeks of pregnancy:-

a gynecology examination/labour table, resuscitation and sterilization equipment, drugs and parental fluid, back up facilities for treatment of shock and facilities for transportation;

in case of second trimester, that is, up to twenty four weeks of pregnancy:-

(a) an operation table and instruments for performing abdominal or gynaecological surgery;

(b) anaesthetic equipment, resuscitation equipment and sterilization equipment;

(c) drugs and parental fluids for emergency use, notified by the Central Government from time to time; and

in case of termination beyond twenty four weeks of pregnancy:-

(a) an operation table and instruments for performing abdominal or gynaecological surgery;

(b) anaesthetic equipment, resuscitation equipment and sterilization equipment;

(c) availability of drugs, parental fluids and blood for emergency use, as may be notified by the



Central Government from time to time; and

(d) facilities for procedure under ultrasound guidance.

Explanation : In the case of termination of early pregnancy up to nine weeks using RU-486 with Misoprostol, the same may be prescribed by a Registered Medical Practitioner (RMP) as defined under clause (d) of section 2 of the Act and Section 4 of MTP Rules, at his clinic, provided such a Registered Medical Practitioner has access to a place approved under Section 4 of the MTP Act, 1971 read with MTP Amendment Act, 2002 and Rules 5 of the MTP Rules. For the purpose of access, the RMP should display a Certificate to this effect from the owner of the approved place.

(2) Every application for the approval of a place shall be in a Form A and shall be addressed to the Chief Medical Officer of the District.

(3) On receipt of an application under sub-rule (2), the Chief Medical Officer of the District may verify any information contained, in any such application or inspect any such place with a view to satisfying himself that the facilities referred to in sub-rule (1) are provided, and that termination of pregnancies may be made under safe and hygienic conditions.

(4) Every owner of the place which is inspected by the Chief Medical Officer of the District shall afford all reasonable facilities for the inspection of the place.



(5) The Chief Medical Officer of the District may, if he is satisfied after such verification, enquiry or inspection, as may be considered necessary, that termination of pregnancies may be done under safe and hygienic conditions, at the place, recommended the approval of such place to the Committee.

(6) The Committee may after considering the application and the recommendations of the Chief Medical Officer of the District approve such place and issue a certificate of approval in Form B.

(7) The certificate of approval issued by the Committee shall be conspicuously displayed at the place to be easily visible to persons visiting the place.

(8) The place shall be inspected within 2 months of receiving the application and certificate of approval may be issued within the next 2 months, or in case any deficiency has been noted, within 2 months of the deficiency having been rectified by the applicant.

(9) On the commencement of these rules, a place approved in accordance with the Medical Termination of Pregnancy Rules, 1975 shall be deemed to have been approved under these Rules.

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7. Cancellation or suspension of certificate of approval, - *(1) If, after inspection of any place approved under rule 5, the Chief Medical Officer of the District is satisfied that the facilities specified in rule 5 are not being properly maintained*



therein and the termination of pregnancy at such place cannot be made under safe and hygienic conditions, he shall make a report of the fact to the Committee giving the detail of the deficiencies or defects found at the place and the committee may, if it is satisfied, suspend or cancel the approval provided that the committee shall give an opportunity of making representation to the owner of the place before the certificate issued under rule 5 is cancelled.

(2) Where a certificate issued under rule 5 is cancelled the owner of the place may make such additions or improvements in the place and thereafter, he may make an application to the Committee for grant of approval under rule 5.

(3) In the event of suspension of a certificate, of approval, the place shall not be deemed to be an approved place during the suspension for the purposes of termination of pregnancy from the date of communication of the order of such suspension.

13. On reading Rules 5 and 7, there is no validity period provided for the certificate of approval. But, on satisfying that the facilities specified in Rule 5 are not being properly maintained in the institution to which the certificate of approval is given, the Chief Medical Officer of the District has the right to cancel or suspend the



certificate of approval. Rule 6 provides for the procedure for inspection of the place. Thus, the MTP Rules do not provide any validity period for the certificate of approval and a certificate issued will be valid, unless the same is cancelled or suspended by the procedure provided in Rule 7 of MTP Rules. Hence, after issuance of license to Sunrise Hospital, the same was not either cancelled or suspended and in such contingency, it could not be held that there was no authorisation to the Sunrise Hospital to conduct MTP upto 16 weeks of gestational age.

14. In fact, the normal method of calculating the gestational age of the fetus is by counting the days from the LMP. In Annexure.A9 obstetric sonography report, the estimated gestational age of the fetus is shown as 15.3 weeks and the impression as per Annexure.A9 is that "single intrauterine live fetus in variable lie presentation of 17.2 week size with good cardiac activity and fetal movements". At the same time, in Annexure.A9 the LMP is recorded as 25.12.2020. Counting 16 weeks from 25.10.2020, the same is available upto 16.04.2021. If so, the gestational age of the fetus of the victim, by calculating



the same in the normal method by counting the days from the LMP, is within 16 weeks. Here, as per Annexure.A9 the estimated gestational age is stated as 15.3 weeks and the impression as per Annexure.A9 further is that "single intrauterine live fetus in variable lie presentation of 17.2 week size with good cardiac activity and fetal movements". The records would show that MTP was done by the petitioner after getting Annexure.A5 medical opinion given by Dr.Aby Koshy, whereby it was opined that in order to prevent grave injury to the physical and mental health of the victim medical termination of pregnancy is necessary. In this connection, it is relevant to refer Section 5 of the MTP Act. As per Section 5(1), it has been provided that, *(1) the provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.* Thus, Section 5(1) of



the MTP Act is an exception to Section 4(1) and Section 3(2) of the MTP Act and it was permitted to terminate pregnancy if a medical practitioner forms an opinion in good faith that termination of pregnancy is immediately necessary to save the life of the pregnant person. In the instant case as per Annexure.A5, though it was not opined that termination of pregnancy of the victim is immediately necessary to save the life of the victim, it was opined that it was necessary to prevent grave injury to her physical and mental health akin to danger to the victim's life. Thus, summarizing the discussion, it is held that Sunrise Hospital was given certificate of approval to terminate pregnancy upto 16 weeks and the said approval is in force as on the date of MTP. Similarly, though the gestational age is a matter of divergence as per Annexure.A9, by operation of Section 5(1) of the Act, in the instant case, the same would justify MTP done by the petitioner that too after informing the same to the Police. Therefore, *prima facie* offence under Section 5(3) of the MTP Act not made out against the petitioner.

15. The second question to be decided is whether the offence punishable under Section 201 of IPC would



attract against the petitioner?

16. Section 201 of IPC deals with causing disappearance of evidence of offence, or giving false information to screen offender. Section 201 of IPC provides as under:

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.
—and if the offence is punishable with [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years'



imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

17. In this matter, as pointed out by the learned counsel for the petitioner, the victim was first treated by the petitioner on 12.04.2021 and as per Annexure.A4 he informed the Police on the same day that the minor victim was admitted at Sunrise Hospital at 5.43 p.m. on 12.04.2021 for MTP, alleged to have been caused by sexual contact, for the purpose of registering the case. In the meantime, on 13.04.2021, as per the medical opinion dated 12.04.2021 given by Dr.Aby Koshy stating that, in order to prevent grave injury to the physical and mental health of the victim, it is necessary to terminate the pregnancy and thereby the pregnancy of the victim was aborted. Although Annexure.A4 information was given on 12.04.2021, the MTP was done on 13.04.2021 acting on Annexure.A9 obstetric sonography report and Annexure.A5 medical opinion, the



Assistant Police Commissioner issued a letter to the Medical Officer, Sunrise Hospital, Kakkanad, only on 16.04.2021, intimating that, as informed by the doctor, if MTP of the victim was carried out, the fetus was to be preserved for DNA examination. Thus, the petitioner reported the crime without much delay, but he did not preserve the fetus and there is no legal mandate to preserve the fetus voluntarily by the doctor and such preservation would be done, only when there was instruction. Therefore, there is no deliberate attempt on the part of the petitioner to cause disappearance of evidence of offence or giving false information to screen offender, *prima facie*.

18. The learned counsel for the petitioner also placed decision of the Apex Court in ***Sukhram v. State of Maharashtra*** reported in ***[2007 KHC 3864 : 2007 (7) SCC 502 : 2007 (4) KLT SN 14]*** with reference to paragraph No.22, in support of his contentions. Paragraph No.22 is as under:

22. The sole reason given by the High Court for holding appellant A2 guilty of offence under S.201 of IPC is the circumstance flowing from the evidence of PW 12, wherein she had stated that:



Accused No.1 and the deceased Meerabai were sleeping in one room and we were sleeping in the other room. Undoubtedly, the mainstay of the prosecution case was the testimony of PW 12. There is absolutely no other evidence or circumstance attributing to A2, the knowledge of the commission of offence in respect of his daughter inlaw, Meerabai. Merely because he happened to be father of appellant A1, it cannot be presumed as a matter of legal proof that he must be deemed to have the knowledge of the offence committed by his son. Even if the evidence of PW 12 is taken at its face value, though the witness was declared hostile and had been cross examined by the prosecution counsel, mere presence of the appellant, A2 in the house, in our opinion, is not sufficient to draw a presumption that he had the knowledge of commission of offence by his son, appellant, A1. There is no other established circumstance to complete the chain to bring home the offence under S.201 IPC. We are of the view that the prosecution has failed to establish that the conduct of appellant A2, both at the time of the occurrence and immediately thereafter, is consistent with the hypothesis of his guilt. We have therefore, no hesitation in holding that the learned Judges of the High Court were in error in convicting appellant A2 for having committed offences punishable under S.302 and 201 IPC.



19. Thus, it appears that, even though the doctor informed the crime on getting information regarding the matter, without any delay, he did not preserve the fetus and according to the learned counsel for the petitioner, there was no legal mandate to preserve the fetus voluntarily by the doctor and such preservation would be done, only when there was instruction.

20. In the instant case, instruction was given by the Police only on 16.04.2021 to the hospital and the fetus of the victim was destroyed before that and the doctor never intended to screen the offender by destroying the evidence, as alleged.

21. The learned Public Prosecutor is asked to justify, if there is any standing rules or law or guidelines, which would prescribe automatic preservation of fetus in cases of MTP involving minor victims, since commission of POCSO Act offences could be gathered, *prima facie*. The learned Public Prosecutor would submit that, no such mandate is in force, so far.

22. In the instant case, as already discussed, the petitioner met the victim on 12.04.2021 and he conducted



the MTP on 13.04.2021, as advised by Dr.Aby Koshy, after reporting the crime to the Police on 12.04.2021 itself. But, the Police given instruction to preserve the fetus only on 16.04.2021 and by the time the fetus was already destroyed. If there is no mandate in the form of law or rule or guidelines to preserve the fetus by a doctor voluntarily, who is doing MTP of a minor victim, where POCSO Act offences embedded, *prima facie*, and specific instruction in this regard was received at a belated stage, the doctor, who bonafidely done MTP and destroyed the fetus, could not be held as a person, who caused disappearance of evidence of the offence to screen the offender. Thus, it could not be held that the petitioner herein destroyed the fetus deliberately to screen the offender. Even otherwise, the petitioner within no time, informed the Police about the crime, with a view to unmask the offender. In such view of the matter, the offence punishable under Section 201 of IPC would not attract against the petitioner.

23. Holding so, the criminal prosecution as against the petitioner in this crime, alleging commission of offences punishable under Section 5(3) of the MTP Act and under



Section 201 of IPC is unwarranted and without any justification, *prima facie*. Therefore, the quashment prayer at the instance of the petitioner is liable to succeed.

24. Accordingly, this petition stands allowed. The proceedings against the petitioner/2nd accused for the offences under Section 5(3) of the MTP Act and under Section 201 of IPC in S.C. No.283/2022 on the files of the Special Court for the trial of cases under the POCSO Act, Ernakulam, arose out of Crime No.313 of 2021 of Thrikkakara Police Station, stand quashed.

25. It is pertinent to note that, as I have already pointed out, when a doctor is doing MTP of a minor victim, as of now, there is no law or rule, which would mandate the doctor to preserve the fetus automatically, in such cases. Therefore, this aspect is to be addressed by the legislature, at the earliest. Accordingly, the State legislature and the Central legislature may consider appropriate legislation or to amend the existing legislation to incorporate such a provision, mandating preservation of the fetus in MTP cases involving minor victims, where POCSO Act offences are made out, *prima facie*. Till then, in order to protect the



interest of the minor victims and to avoid flee of the accused from trial, for want of vital piece of evidence, there shall be a direction to the Director, Health Department, State of Kerala, to communicate this order in the form of a circular to all the doctors in the State, directing them to preserve the fetus of minor victims mandatorily, without being destructed and in order to destruct the fetus, the doctors should get written permission from the Investigating Officer or from the District Police Superintendent concerned.

26. Registry is directed to forward a copy of this order to the Law Secretaries of the State of Kerala and Union of India and also to the Director, Health Department, Thiruvananthapuram, forthwith, for further steps in tune with paragraph No.25 of this order.

Registry is further directed to forward a copy of this order to the Special Court, within seven days, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE