



2024:KER:56284

CRL.MC NO. 2515 OF 2016

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 15<sup>TH</sup> DAY OF JULY 2024 / 24TH ASHADHA, 1946

CRL.MC NO. 2515 OF 2016

CRIME NO.490/2014 OF Vadakkancherry Police Station, Palakkad  
AGAINST THE ORDER/JUDGMENT DATED IN CC NO.3430 OF 2014 OF  
JUDICIAL MAGISTRATE OF FIRST CLASS ,ALATHUR

PETITIONER/S:

- 1 MOIDUTTY MUSLIYAR  
AGED 50 YEARS  
AGED 50 YEARS, S/O. ABOOBACKER, RESIDING AT  
THITTUMAL, CHABDAPPURA, PUTHUKODU.
- 2 MUJEEB REHMAN AGED 27 YEARS SO.ASANAR  
RESIDING AT NALUPURATHODI, POTTA, PAZHAYANNUR.
- 3 ZULFICKER ALI AGED 42 YEARS SO.ABDUL REHIMAN  
RESIDING AT THACHANADY, PUTHUKODU.
- 4 K.C. HANEEFA AGED 70 YEARS SO.CHEKUTTY  
RESIDING AT THACHANADY, PUTHUKODU.
- 5 VEERAN KUTTY P.M AGED 43 YEARS SO.MUHAMMED  
RESIDING AT THACHANADY, PUTHUKODU.

BY ADVS.

SRI.R.O.MUHAMED SHEMEEM

SMT.NASEEHA BEEGUM P.S.

RESPONDENT/S:

- 1 SUB INSPECTOR VADAKKENCHERRY POLICE STATION



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VADAKKENCHERRY POLICE STATION, VADAKKENCHERRY,  
PALAKKAD DISTRICT-678 683.

- 2 INTEGRATED CHILD DEVELOPMENT SCHEME OFFICER  
ICDS OFFICE, ALATHUR ADDITIONAL, VADAKKENCHERRY,  
PALAKKAD DISTRICT - 678 683.
- 3 STATE OF KERALA REPRESENTED BY THE  
GOVERNMENT PLEADER, HIGH COURT OF KERALA-682031.

OTHER PRESENT:

SRI.RENJITH.T.R, SR.PP, SRI.K.M.FIROZ, AMICUS CURIAE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
15.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**CR****P. V. KUNHIKRISHNAN, J.**-----  
Crl.M.C.No.2515 of 2016  
-----Dated this the 15<sup>th</sup> day of July, 2024**ORDER**

Kerala is known for its 100% literacy. But, it is sad to hear that, even after the enactment of the Prohibition of Child Marriage Act decades ago, there are allegations of Child Marriage in Kerala. The saddest thing is that the petitioners herein are trying to justify the alleged child marriage stating that as per Mohammedan Law, a Muslim girl enjoys a religious right to marry after attaining puberty irrespective of age, even though the Prohibition of Child Marriage Act apply to all the citizens of India without and beyond India.

2. The prosecution case as per Annexure-I final report and Annexure-II FIR is like this : Integrated Child Development Scheme Officer (ICDS Officer), Vadakkencherry submitted a



complaint to the Circle Inspector of Police, Vadakkencherry informing that a child marriage happened within the jurisdiction of ICDS Alathur Additional. The ICDS Officer relied on a complaint submitted by one K.Syed Muhammed in which it is stated that a child marriage happened on 30.12.2012. Based on this information and complaint, Crime No. 490/2014 was registered by the Vadakkencherry Police Station alleging offences punishable under Sections 10 and 11 of the Prohibition of Child Marriage Act, 2006 (for short 'Act 2006'). Annexure-II is the FIR. After investigation, Annexure-I final report is filed by the investigating officer against five accused, who are the petitioners in this Crl.M.C, alleging offences punishable under Sections 10 and 11 of the Prohibition Act, 2006. The prosecution case is that on 30.12.2012, the 1<sup>st</sup> accused conducted the marriage of his minor daughter with the 2<sup>nd</sup> accused as per the religious tenets and rites in Islam. Accused Nos. 3 and 4 are the President and Secretary of Hidayathul Islam Juma Masjid Mahal Committee. The 5<sup>th</sup> accused is the



witness who signed the record regarding the conduct of the marriage. Therefore, it is alleged that all the accused committed the offences. The petitioners who are the accused in Annexure-I final report submitted that even if the entire allegations are accepted, no offence under Sections 10 and 11 of the Prohibition Act, 2006 is attracted and therefore, the continuation of the proceedings is an abuse of process of court. Hence, this Crl.M.C. is filed.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

4. Considering the importance of the question to be decided in this case, this Court appointed Adv. K.M.Firoz as Amicus Curiae and requested him to address argument on the legal issue.

5. The counsel for the petitioners raised two contentions. The 1<sup>st</sup> contention is that the parties involved in the above case are following Islamic faiths. Accordingly, a marriage below the age of 18 is not a void marriage. It is



submitted that a Muslim girl enjoys a religious right known as 'Khiyar-ul-bulugh' or 'Option of Puberty'. According to the petitioners, the Mohammedan Law recognises and accepts such marriages leaving the marriage voidable at the instance of married girl on her attaining majority. It is submitted that every child marriage, whether solemnized before or after the commencement of the Act 2006, is voidable only at the option of the married girl. It is also submitted that even as per the secular law, such marriages are not void ab initio, but only voidable at the option of contracting parties. Therefore, it is contended that a Muslim girl, who has attained puberty, that is 15 years, could marry and such a marriage would not be a void marriage. Hence, it is submitted that, when the Muslim personal law permit a girl to marry on attaining puberty, Act 2006 curtail that right and prescribe punishment for the same. According to the petitioners, the same is illegal and Muslim personal law prevail over Act 2006. Therefore, it is submitted that the offence alleged against the petitioners is unsustainable.



It is also submitted that there is a delay in filing the complaint and that shows that, it was filed with malafide intention. Therefore, on that score also, the final report is to be quashed is the submission. The 2<sup>nd</sup> contention raised by the petitioners is that the birth date of the girl is incorrectly noted by the school authorities. The parents are illiterate and coming from very remote and economically backward village is the submission. According to the petitioners, the 1<sup>st</sup> petitioner's wife delivered his daughter on 27.11.1994. However, the child has not joined the school at her appropriate age. Therefore, she was admitted to the primary school, giving an incorrect date of birth by the school authorities, and therefore, the wrong entry of the date of birth in the school records occurred. Hence, it is submitted that the prosecution against the petitioners is to be quashed.

6. The Amicus Curiae filed a paper book containing the relevant provisions and also all the decisions of different courts, including the Apex Court on this issue. The Amicus Curiae deserve an appreciation for the work he has done in this case



by submitting the paper book and for addressing the argument with clarity. I will discuss the decisions submitted by the Amicus Curiae in detail. But the crux of the submission of the Amicus Curiae is that when the Act 2006 is in force, the same will override the personal law of the parties. The Public Prosecutor also supported the argument of the Amicus Curiae and submitted that there is nothing to interfere with the final report.

7. I will consider the relevant provisions of the Prohibition of Child Marriage Act first. The Act 2006 was enacted by the Parliament in the 57<sup>th</sup> year of the Republic of India. It will be better to extract the statement of objects and reasons including the salient features of the bill which is mentioned in the statement of objects and reason:

“Statement of Objects and Reasons. - The Child Marriage Restraint Act, 1929 was enacted with a view to restraining solemnisation of child marriages. The Act was subsequently amended in 1949 and 1978 in order, inter alia, to raise the age limit of the male and female persons for the purpose of marriage. The Act, though restrains solemnisation of child marriages yet it does not declare them to be void or invalid.





The solemnisation of child marriages is punishable under the Act.

2. There has been a growing demand for making the provisions of Act more effective and the punishment thereunder more stringent so as to eradicate or effectively prevent the evil practice of solemnisation of child marriages in the country. This will enhance the health of children and the status of women. The National Commission for Women in its Annual Report for the year 1995-96 recommended that the Government should appoint Child Marriage Prevention Officers immediately. It further recommended that-(i) the punishment provided under the Act should be made more stringent; (ii) marriages performed in contravention of the Act should be made void; and (iii) the offences under the Act should be made cognizable.

3. The National Human Rights Commission undertook a comprehensive review of the existing Act and made recommendations for comprehensive amendments therein vide its Annual Report 2001-2002. The Central Government, after consulting the State Governments and Union territory Administrations on the recommendations of the National Commission for Women and the National Human Rights Commission, has decided to accept almost all the recommendations and give effect to them by repealing and re-enacting the Child Marriage Restraint Act, 1929.

4. The salient features of the Bill are as follows:-

(i) To make a provision to declare child marriage as voidable at the option of the contracting party to the marriage,



who was a child.

(ii) To provide a provision requiring the husband or, if he is a minor at the material time, his guardian to pay maintenance to the minor girl until her remarriage.

(iii) To make a provision for the custody and maintenance of children born of child marriages.

(iv) To provide that notwithstanding a child marriage has been annulled by a decree of nullity under the proposed section 3, every child born of such marriage, whether before or after the commencement of the proposed legislation, shall be legitimate for all purposes.

(v) To empower the district Court to add to, modify or revoke any order relating to maintenance of the female petitioner and her residence and custody or maintenance of children, etc.

(vi) To make a provision for declaring the child marriage as void in certain circumstances.

(vii) To empower the Courts to issue injunctions prohibiting solemnisation of marriages in contravention of the provisions of the proposed legislation.

(viii) To make the offences under the proposed legislation to be cognizable for the purposes of investigation and for other purposes.

(ix) To provide for appointment of Child Marriage Prevention Officers by the State Governments.

(x) To empower the State Governments to make rules for effectively administration of the legislation.



5. The Bill seeks to achieve the above objects.”

8. From the above it is clear that the Parliament enacted Act 2006 in response to mounting calls for strengthening the provisions of the Child Marriage Restraint Act 1929 (for short 'Act 1929') more effective and for making the punishment thereunder more stringent so as to eradicate or effectively prevent the evil practice of solemnisation of child marriage in the country. As per the provisions of the Act 2006, the courts are empowered to issue injunctions prohibiting the solemnisation of marriage. It also contains a provision requiring the husband or if he is a minor at the material time, his guardian to pay maintenance to the minor girl until her remarriage. There are other salient provisions also which will be discussed in detail later.

9. Section 1 (2) of Act 2006 says that, it extends to the whole of India and it applies also to all citizens of India without and beyond India. From the above provision itself it is clear



that if a person is a citizen of India, Act 2006 is applicable irrespective of his religion, whether he is a Hindu, Muslim, Parsi, Christian etc. Therefore, from Section 1(2) of Act 2006, it is clear that it extends to the whole of India and it applies also to all citizens of India without and beyond India.

10. What is the meaning of the sentence 'it applies also to all citizens of India **without and beyond India**'?. This means that Act 2006 applies to all persons within India, i.e., citizens residing in India and it is also applicable to Indian citizens outside India i.e., Indian citizens living abroad. In other words, the Act has extraterritorial jurisdiction, and it applies to Indian citizens regardless of their location even if they are residing outside India. Therefore, the phrase 'without and beyond India' in Act 2006 extends the law to Indian citizens regardless of their location.

11. Section 3 of Act 2006 says that child marriages to be voidable at the option of contracting party being a child. Section 3(1) of Act 2006 says that every child marriage,



whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage. Section 3(2) also permit that if the petitioner is a minor at the time of filing a petition, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer. Section 4 of Act 2006 deals about the provision for maintenance and residence to female contracting party to child marriage. Section 5 deals with custody and maintenance of children of child marriages. Section 6 says about the legitimacy of children born of child marriages. Section 7 deals with power of district court to modify orders issued under section 4 or section 5. Section 8 deals with the court to which petition should be filed for the grant of relief under Sections 3, 4 and 5. Section 9 deals with the punishment for male adult marrying a child. The term 'child' as defined in Section 2(a) means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.



Section 10 deals with the punishment for solemnising a child marriage. Section 11 deals with the punishment for promoting or permitting solemnisation of child marriages. Section 12 deals with the marriage of a minor child to be void in certain circumstances mentioned in Clauses (a) to (c) of that section. Section 13 deals with the power of court to issue injunction prohibiting child marriages. Section 14 says that child marriages in contravention of injunction orders to be void *ab initio*. As per Section 15 of Act 2006, offences punishable under this Act shall be cognizable and non-bailable. Section 16 deals about the appointment of Child Marriage Prohibition Officers and Section 17 says that the Child Marriage Prohibition Officers are public servants. Section 18 of Act 2006 give protection of action taken in good faith by the Child Marriage Prohibition Officer in respect of anything in good faith done or intended to be done in pursuance of this Act or rules or order made thereunder.

12. A perusal of the above provisions of Act 2006 would



show that it is a complete code as far as the Child Marriage is concerned. It is a special law enacted by the Parliament with a great object. Therefore, it is the duty of the officials to see that the provisions of Act 2006 are implemented in its letter and spirit.

13. The duties of a Child Marriage Prohibition Officer is mentioned in Section 16(3) of Act 2006. The same is extracted hereunder:

**“(3) It shall be the duty of the Child Marriage Prohibition Officer—**

- (a) to prevent solemnisation of child marriages by taking such action as he may deem fit;
- (b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;
- (c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
- (d) to create awareness of the evil which results from child marriages;
- (e) to sensitize the community on the issue of child marriages;
- (f) to furnish such periodical returns and statistics as the



State Government may direct; and

(g) to discharge such other functions and duties as may be assigned to him by the State Government.”

14. The Government of Kerala in exercise of the powers conferred by Section 19 of Act 2006 framed Kerala Prohibition of Child Marriage Rules, 2008 (for short 'Rules 2008'). Rule 3(2) says that in addition to the duties and functions assigned to a Child Marriage Prohibition Officer under Clauses (a) to (g) of sub-section (3) of Section 16 of the Act, the following duties are assigned to every Child Marriage Prohibition Officer:

“3. Method of appointment, duties and functions of Child Marriage Prohibition Officer-(1), The State Government shall, by notification in the Gazette, appoint Child Marriage Prohibition Officers for such part as may be specified in the notification.

(2) In addition to the duties and functions assigned to a Child Marriage Prohibition Officer under clauses (a) to (g) of sub-section (3) of section 16 of the Act, it shall be the duty of every Child Marriage Prohibition Officer-

(a) to act immediately upon any information of the solemnization of any child marriage that may be received through any mode of communication including written or oral i.e., through a letter, telephone, telegram, e-mail etc. or by any





other means and forthwith initiate all necessary action;

(b) to furnish quarterly return and statistics to the Chief Child Marriage Prohibition Officer in Form I;

(c) to file petition for annulling a child marriage in the District Court in the case if the petitioner is a minor;

(d) to file petition before the District Court to pay maintenance to the female contracting party of the marriage until her remarriage,

(e) to file petition to the District Court for the custody and maintenance of children of the child marriage.”

15. Rule 6 says that a complaint/information to the Child Marriage Prohibition Officer may be filed/given by any person in any form, written, phone, e-mail etc., that means any citizen can inform the Child Marriage Prohibition Officer if he got any reliable information that a child marriage is going to happen or a child marriage happened at any place. It can be even by phone or e-mail to the Child Marriage Prohibition Officer. So it is the duty of every citizen of the State to inform the Child Marriage Prohibition Officer if information is received about any child marriage in the State. The citizens of the State should be



alert about the above provision and the Child Marriage Prohibition Officers also should be vigilant about their duties and powers as per Act 2006 and Rules 2008.

16. Section 13 of Act 2006 says that, notwithstanding anything to the contrary contained in the Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

17. A complaint under sub section (1) of Section 13 can be made by any person having personal knowledge or reason to believe and a non-governmental organization having reasonable information, relating to the likelihood of taking place of solemnization of a child marriage or child marriages. That



shows the duties of the citizens and non-governmental organizations etc., once again. Therefore, as observed by me earlier, it is the duty of every citizen, non-governmental organization to approach the court concerned or at least to inform the child marriage prohibition officer, if there is any likelihood of taking place solemnization of a child marriage or child marriages.

18. There is a duty on the part of the Judicial Magistrate of the First Class also as per Section 13(3). *Suo motu* powers are given to the Judicial Magistrate of First Class/the Metropolitan Magistrate, as per Section 13, to take cognizance on the basis of any reliable report or information. Therefore, if any reliable report or information is received about a child marriage, it is the duty of the Judicial Magistrate of First Class/the Metropolitan Magistrate to *suo motu* take cognizance based on such reliable report or information. There are other procedures also mentioned in Section 13. Therefore, I am of the considered opinion that, all the Magistrate in the State



should be vigilant to take cognizance, if any reliable report or information is received about any child marriage. The Judicial First Class Magistrates working in the State should be alert about their power that any information or reliable report is a ground to take *suo motu* cognizance as far as child marriage is concerned.

19. I am of the considered opinion that, the Print and Visual Media can play a significant role in raising awareness and prohibiting child marriages. It is the duty of the Print and Visual Media to publish articles highlighting the evils of child marriage, sharing stories of survivors and victims, creating awareness about the loss and consequences of child marriage, promoting education and empowerment of girls and exposing perpetrators and their actions. The visual media should also broadcast documentaries and shows on child marriage, creating public service announcements and awareness campaigns, depicting the negative consequences of child marriage in movies and TV shows, interviewing experts, survivors and



activists. The print and visual media should be a platform for voices against child marriage, encouraging public discourse and debate, supporting and amplifying initiatives working towards eradicating child marriage, holding those in power accountable for enforcing laws and policies, educating the public about the physical, emotional and psychological harm caused by child marriage etc,. I am sure that, the Print and Visual Media will rise to the occasion to see that no child marriage occurs in our state hereafter.

20. The main contention raised by the petitioner in this case is that the personal law of Muslims permits every Mohammedan of sound mind, who has attained puberty to enter into a contract of marriage. Therefore, the contention of the petitioner is that, the provisions of Act 2006 is not applicable to Muslims. I am happy that this case is registered based on a complaint from a person who belongs to Muslim community. One Mr. Syed Muhammed submitted a complaint to the Child Development Project Officer, Alathur on



16.12.2013, based on which the officer concerned submitted a complaint to the police and subsequently, Annexure-II FIR was registered. That shows that even the members of the Muslim community are coming forward against child marriage in their community and that is a proud moment to every citizens of India because, to uphold an Act of parliament, religion or personal laws of religions are not at all a consideration for them. The same will show that every citizen of this country is aware of the evilness of child marriage irrespective of their religion.

21. The first point to be decided is whether the Mohammedans are exempted from the applicability of Act 2006. As I mentioned earlier, as per Section 1(2) of Act 2006, the same is applicable to all citizens of India without and beyond India. A person should be a citizen of India first, and thereafter only his religion comes. Religion is secondary and citizenship should come first. Therefore, I am of the considered opinion that, irrespective of religion, whether a person is Hindu,



Muslim, Christian, Parsi etc., Act 2006 is applicable to all. Section 3 of the Majority Act, 1875 says that, every person domiciled in India shall attain the age of majority on his completing the age of 18 years and not before. But, Section 2(a) of the Majority Act, 1875 says that, nothing herein contained shall affect the capacity of any persons to act in the following matters(namely), marriage, dower, divorce and adoption. Section 2 says that to the religion or religious rites and usages of any class of citizens of India also, the Majority Act is not applicable. But, the Majority Act is enacted in the year 1875. Act 2006 come into force on 01.11.2007. I am of the considered opinion that the Act 2006 will override the provisions of the Majority Act as far as child marriage is concerned.

22. The Muslim Personal Law (Shariat) Application Act, 1937 was enacted on 07.10.1937. Section 2 of the above Act deals about the application of personal law to Muslims. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 is



extracted hereunder:

"2. Application of Personal Law to Muslims:- Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila , zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

23. But, I am of the considered opinion that, the provisions of Act 2006, which was subsequently enacted, is applicable to Muslims also as far as child marriage is concerned. This is because of the importance of Act 2006 and also because it is a special Act enacted with a great object. It is true that the Principles of Mahomedan Law by Mulla says that, every Mahomedan of sound mind, who has attained puberty, may





enter into a contract of marriage. But, as I observed earlier, every Indian is a citizen of the country first and thereafter only he becomes a member of the religion. When the Act 2006 prohibits child marriage, it supersedes the Muslim personal law, and every citizen of this country is subject to the law of the land, which is Act 2006, irrespective of his or her religion. Moreover, the Apex Court considered this point in detail in **Independent Thought v. Union of India and Another** [2017 KHC 6719]. Two separate judgments were delivered by the two Honourable judges of the Supreme Court in the above case, but with same conclusions. It will be better to extract the relevant portion of the judgment delivered by Honourable Justice Madan B. Lokur:

“126. It is obvious that while making amendments to various laws, some laws are forgotten and consequential amendments are not made in those laws. After the PCMA was enacted both the Hindu Marriage Act, 1955 and the Dissolution of Muslim Marriages and Divorce Act, 1939 also should have been suitably amended, but this has not been done. In my



opinion, the PCMA is a secular Act applicable to all. It being a special Act dealing with children, the provisions of this Act will prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned.

127. Section 3 of the Majority Act, 1875 provides that a person shall attain the age of majority on completing the age of 18 years and not before. It would, however, be pertinent to mention that Section 2 of the Indian Majority Act contains a non-obstante clause excluding laws relating to marriage, divorce, dower and adoption from the provisions of that Act. Under Section 4(i) of the Guardians and Wards Act, 1890 a minor has been defined to mean a person, who has not attained majority under the Majority Act. Under Section 4(a) of the Hindu Minority and Guardianship Act, 1956 a minor has been defined to mean a person who has not completed the age of 18 years. Under the Representation of the People Act, 1951 a person is entitled to vote only after he attains the age of 18 years.” (underline supplied)

24. In the concurring opinion of the above judgment, Honourable Justice Deepak Gupta, observed that Act 2006 is a special Act dealing with children, and the provisions of this Act



will prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned. In **Rajeev P.S. v. Sree Narayana Trusts** [2023 (7) KHC 355], the Division Bench of this Court observed that when a Division Bench considers a matter, the Judges constituting the Bench would exchange their views and it is only when the view expressed by one is acceptable to the other and vice versa, a decision is rendered by one among them on behalf of the Bench. It also observed that a concurring opinion has to be construed as part of the order itself, and it has to be presumed that the Judge who delivered the order, agreed to the view expressed in the concurring opinion, and if the Judges mean to differ in their views, the order would not have been rendered at all on behalf of the Bench. Therefore, the concurring opinion, in **Independent Thought's** case (*supra*), having not been differed by the judges who delivered the order, can be taken as dictum of the Apex Court.

25. Karnataka High Court in **Seema Begaum v. State of**



**Karnataka** [2013 SCC Online Kar 692] observed that no Indian citizen on the ground of his belonging to a particular religion, can claim immunity from the application of Act 2006. A Full Bench of the Delhi High Court in **Court on its own Motion (Lajja Devi) and Others v. State and Others** [2012 KHC 2782] observed that, Act 2006, being a special law, will have overriding effect over the Hindu Marriage Act to the extent of any inconsistency between the two enactments. Similarly the Gujarat High Court in **Yunusbhai Usmanbhai Shaikh v. State of Gujarat** [2016 KHC 2446] observed that the Muslim personal law would not prevail over the Prohibition of Child Marriage Act. This Court in **Khaledur Rahman v. State of Kerala** [2022 (7) KHC 264] observed that marriage between Muslims under personal law is not excluded from the sweep of POCSO Act and if one of the parties to the marriage is a minor, irrespective of the validity or otherwise of the marriage, offences under the POCSO Act will apply. This Court observed that it is trite law that when the provisions of a Statue are



repugnant to, or contrary to the customary law or personal law, in the absence of any specific exclusion of the said customary or personal law from the statutory provisions, the Statute will prevail, and the personal law or the customary law shall stand abrogated to the extent of the inconsistency.

26. A Division Bench of Madras High Court in **Mohamed Abbas M. v. Chief Secretary, Government of Tamil Nadu and Others** [2015 KHC 3764] observed that the provisions of Prohibition of Child Marriage Act, 2006 are in no way against the religious rights guaranteed under Articles 25 and 29 of the Constitution of India. It will be better to extract the relevant portion of the above judgment:

“23. When the World community is considered as a global village in the modern society and the Constitution emphasises equal right for men and women, legitimate right of education and empowerment should not be denied for any girl. It is also relevant to note that Shariat Law, never says that marriage should be performed for a girl before she attains the age of 18 years. In olden days Hindus were also accepting 'Balya Vivaha' or Child



marriage, which is prohibited under the prohibition of Child Marriage Act. Hence, the Act is not against muslim religion and that the Prohibition of Child Marriage Act, 2006 would not be detrimental to the muslim community.

24. Having considered the facts and circumstances as discussed above, we hold that the provisions of Prohibition of Child Marriage Act, 2006 are in no way against the religious rights guaranteed under Articles 25 and 29 of the Constitution of India. In fact, the same is in favour of all the girl children in getting proper education and empowerment and equal status as that of men in the Society, as guaranteed under Articles 14, 15, 16 and 21 of the Constitution. Therefore, the writ petition is liable to be dismissed as not legally sustainable.”

27. I am in perfect agreement with the above judgments. Article 25 of the Constitution only says about freedom of conscience and free profession, practice and propagation of religion. Article 29 of the Constitution deals with Protection of interests of minorities. When the Parliament enacted the Prohibition of Child Marriage Act, 2006, I am of the considered opinion that the same will prevail over personal laws as far as



child marriage is concerned. It is true that the Patna High Court in **Md. Idris v. State of Bihar and Others** [1980 KHC 1043] observed that under the Mohammedan Law, a girl who has attained the age of puberty, can marry without the consent of her parents. Similarly the Punjab and Haryana High Court also observed in **Kammu v. State of Haryana** [MANU/PH/5039/2010] to the effect that a Muslim girl at the age of 15 years can marry without the consent of her natural guardian under the Mohammedan Law and as on date, i.e., at the age of 15 years, she has expressed her desire to accompany a person who married her, it cannot be said that he is keeping her in the illegal custody. Again, the Delhi High Court also observed in **Tahra Begum v. State Of Delhi & Ors.** [2012 SCC Online Delhi 2714], that a Muslim girl who has attained puberty i.e., 15 years can marry and such a marriage would not be a void marriage. However, it is also observed that she has the option of treating the marriage as voidable, at the time of her attaining the age of majority. I am in respectful



disagreement with the above decisions of the Patna High Court, Punjab and Haryana High Court and the Delhi High Court. As I observed earlier, religion is secondary and citizenship is primary. When Act 2006 prohibits child marriage, the same is applicable to all, irrespective of religion, whether the parties are Hindus, Muslims, Christians, Parsi, etc.

28. The petitioners contented that since the daughter of the 1<sup>st</sup> petitioner is a Muslim, she enjoys the religious right to marry after attaining puberty, i.e., at the age of 15. In the light of the above discussion, I reject that contention of the petitioners in this criminal miscellaneous case. The other contention raised by the petitioners is that the actual date of birth of the daughter of the 1<sup>st</sup> petitioner is wrongfully mentioned in the school register. This Court cannot accept that version of the petitioners and quash the proceedings at this stage. That is a matter of evidence. The petitioners are free to adduce evidence on that before the trial court at the appropriate stage and the court concerned will consider the





same in accordance with law based on the evidence adduced by the petitioners.

29. The other contention raised by the petitioners is that there is 1½ years' delay in filing the complaint after the marriage. A perusal of the original complaint filed by Mr.K.Syed Muhammed which is appended along with Annexure-II FIR would show that it is dated 16.12.2013 and the alleged marriage was on 30.12.2012. It is true that there is some delay in filing the complaint. The purpose of Act 2006 is to eradicate child marriage. When a citizen, that also a person belonging to Muslim community, submits a complaint stating that there is a child marriage in his religion, the Court cannot reject the same saying that there is a delay in submitting the complaint. Therefore that contention is also rejected.

30. The prohibition of child marriage is important in the modern society. Child marriage denies children their basic human rights, including the right to education, health and protection from exploitation. Early marriage and pregnancy can



lead to health problems such as infant mortality, maternal mortality and sexually transmitted infections. Child marriage often forces girls to drop out the school, limiting their education and future opportunities. Child brides are more vulnerable to domestic violence and abuse. Child marriage can perpetuate poverty and limit economic opportunities for individuals and communities. Child marriage can lead to emotional and psychological trauma, including depression and anxiety to the children. Child marriage can lead to social isolation and disconnection from the family and community. Moreover, child marriage is a violation of international human rights law and conventions as well. Let the children study according to their wishes. Let them travel, let them enjoy life and when they attained maturity, let them decide about their marriage. In the modern society, there cannot be any compulsion for marriage. Majority of the girls are interested in studies. Let them study and let them enjoy their life, ofcourse with the blessings of their parents. When they attain majority and decided that a partner



is necessary in their life, let it happen at the appropriate stage so that child marriage can be eradicated from the society. As I mentioned earlier, it is the duty of every citizen to see that there is no child marriage. It is also the duty of the non-governmental organizations to inform the Child Marriage Prohibition Officer, if any information is received about the likelihood of taking place of solemnization of child marriage. The Judicial First Class Magistrate of the State also should be alert and should take *suo motu* cognizance, if any reliable report or information is received about child marriage. Let the print and visual media also take initiative to see that there is no child marriage in the State in future at least. I am sure that, all of them will do their job to see that our girls are protected from child marriage.

31. In the light of the discussion stated above, I am of the considered opinion that, no case is made out by the petitioners to quash the proceedings. But I make it clear that the petitioners can adduce evidence to prove their case before



the trial court at the appropriate stage. I also make it clear that, at the time of trial, the learned Magistrate will decide the matter untrammelled by any observation in this judgment on merit except on questions of law decided by this court. Before parting with the case, I record my deep appreciation to Advocate K.M.Firoz, the Amicus Curiae, who helped this court by furnishing all relevant materials.

32. In the light of the discussion stated above, there is no merit in this Criminal Miscellaneous Case. Consequently, this Criminal Miscellaneous Case is dismissed.

Sd/-  
**P. V. KUNHIKRISHNAN**  
**JUDGE**

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APPENDIX OF CRL.MC 2515/2016

**PETITIONER ANNEXURES**

- ANNEXURE NO.1** CERTIFIED COPY OF FINAL REPORT IN CC NO.3430 OF 2014 PENDING BEFORE JUDICIAL 1ST CLASS MAGISTRATE COURT, ALATHUR IN CRIME NO.490 OF 2014, DTD.21.3.2014 OF VADAKKENCHERRY POLICE STATION, PALAKKAD).
- ANNEXURE NO.2** CERTIFIED COPY OF CRIME NO.490 OF 2014, DTD.21.3.2014 OF VADAKKENCHERRY POLICE STATION.