



CRL.MC NO.427 OF 2024

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2025:KER:14551

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 20TH DAY OF FEBRUARY 2025 / 1ST PHALGUNA,

1946

CRL.MC NO. 427 OF 2024

CRIME NO.330/2023 OF TOWN EAST POLICE STATION, THRISSUR

SC NO.1071 OF 2023 OF FAST TRACK SPECIAL COURT - II,

THRISSUR

PETITIONER/ACCUSED:

SREERAJ K.C. ,
AGED 31 YEARS
S/O.CHENTHAMARAKSHAN, KANDANKULANGARA HOUSE,
AYALUR P.O., PALAKKAD DISTRICT, PIN - 678510
BY ADVS.
M.T.SURESHKUMAR
MANJUSHA K
SREELAKSHMI SABU
RESWIN A.KHADIR

RESPONDENTS/STATE & DE FACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031
- 2 XXXXXXXXXXXX
XXXXXXXXXX

R1 BY PUBLIC PROSECUTOR SRI.JIBU.T.S.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 20.02.2025, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



CR

ORDER

Dated this the 20th day of February, 2025

Sole accused in S.C.No.1071/2023 on the files of the Special Court for the trial of cases under the Protection of Children from Sexual Offences Act (for short 'the PoCSO Act' hereinafter), Thrissur, has filed this Criminal Miscellaneous Case under Section 482 of the Code of Criminal Procedure, 1973, arising out of Crime No.330/2023 of Town East Police Station, Thrissur, and the prayer herein is as under:

To quash Annexure A2 Final Report and all further proceedings arising therefrom and pending as S.C.No.1071 of 2023 on the file of the Fast Track Special Court – II, Thrissur in Crime No.330 of 2023 of Town East Police Station, Thrissur.

2. Heard the learned counsel for the petitioner/accused and the learned Public Prosecutor, in detail. Even though the de facto complainant was served notice and a counsel appeared for the de facto complainant,



now he filed a memo stating that he has relinquished the vakalath. But the de facto complainant or any other counsel not appeared.

3. In this matter, the prosecution alleges commission of offences punishable under Sections 342 and 376(2)(n) of the Indian Penal Code (for short, 'the IPC' hereinafter) by the accused. Initially, FIR was registered alleging commission of offences punishable under Sections 376(2)(n), 323, 324, 342, 384 and 506 of the IPC and later on investigation, final report filed alleging commission of the above said offences.

4. In this matter, the prosecution case is that, the accused, who is working as a police officer, offered to marry the de facto complainant and thereafter, on promise of marriage, the de facto complainant was subjected to sexual intercourse on 24.4.2022 and subsequently, till the ides of October, 2022 in Thrissur, Guruvayoor etc. During this time, the accused procured Rs.9,30,000/- (Rupees Nine Lakh Thirty Thousand only) from the de facto complainant and thereafter, retracted from the marriage.

5. While seeking quashment of the proceedings



on the allegation that the offences are not made out *prima facie*, the learned counsel for the petitioner submitted that the petitioner *bona fide* made a proposal to marry the de facto complainant believing that she is an unmarried lady and thereafter, when it was noticed that she is a lady already married and having two children, the proposal was dropped as legal marriage could not be solemnized. By the time, false allegations were raised against the petitioner that he subjected the de facto complainant to repeated sexual intercourse with promise of marriage. According to the learned counsel for the petitioner, going by the First Information Statement as well as the additional statement recorded as that of the de facto complainant, there are repeated assertions that the de facto complainant is a married lady and she is having two children. Further, she has been continuing her earlier marriage relationship also during the alleged promise of marriage. Therefore, the entire prosecution allegations are false and the same would require quashment. It is also pointed out by the learned counsel for the petitioner that the de facto complainant is a lady, used to impersonate others with a view to grab money from innocent persons. Accordingly, it is



submitted that one Akhilesh filed complaint against the de facto complainant alleging commission of offences punishable under Sections 406, 420 and 506 of the IPC, which led to registration of Annexure A3 FIR in Crime No.304/2024 of Melparamba police station on 21.6.2024, where the allegation was that the de facto complainant who got acquainted with the said Akhilesh impersonating her as an employee of ISRO and Income Tax Office, obtained one sovereign of gold and Rs.1 Lakh from Akhilesh. Similarly, Annexure A4 FIR in Crime No.501/2024 of Kasargode police station was registered against the de facto complainant alleging commission of offence punishable under Section 318(4) of the Bharatiya Nyaya Sanhita (BNS), 2023, at the instance of one Devi Das wherein also, the allegation was that the de facto complainant impersonated herself as an Income Tax Officer and also as a Bank Manager and obtained Rs.73,000/- (Rupees Seventy Three Thousand only) and 83.81 grams of gold ornaments from the above said Devi Das. Relying on Annexure A5 FIR registered by Kollam East Police Station as per Crime No.1373/2024, the de facto complainant alleged to have committed offences punishable under Sections 316(2), 318(4)



and 319(2) of the Bharatiya Nyaya Sanhita, (BNS), 2023, where one Henna Najumudheen raised allegation that while the de facto complainant was staying along with Henna Najumudheen at Kailas Working Women's Hostel, the de facto complainant made her to believe that she is the Manager of Federal Bank and obtained Rs.41,000/- (Rupees Forty One Thousand only) on 23.12.2020, Rs.82,750/- (Rupees Eighty Two Thousand Seven Hundred and Fifty only) on 24.12.2020 and Rs.1,23,750/- (Rupees One Lakh Twenty Three Thousand Seven Hundred and Fifty only) on two occasions on the premise of treatment of renal disease of her father. The sum and substance of the argument advanced by the learned counsel for the petitioner is that the de facto complainant is a lady, engaged in cheating others and the present case also is one registered due to rivalry arose out of withdrawal of the marriage proposal at the instance of the petitioner.

6. The learned Public Prosecutor even though supported the prosecution allegation, he also conceded the fact that in the statement and in the additional statement of the de facto complainant, she disclosed that she is a married lady and she is having two children. Further, the earlier marriage was



not divorced.

7. Addressing the rival submissions, going by the statement of the de facto complainant, she was subjected to sexual intercourse by the accused on the promise of marriage on 24.4.2022 and subsequently, till the ides of October, 2022 and during this time, the petitioner procured Rs.9,30,000/- (Rupees Nine Lakh Thirty Thousand only) from her. Even though the last occurrence is during October, 2022, no complaint lodged till 3.2.2023.

8. In this matter, the sexual intercourse in between the petitioner and the de facto complainant is the outcome of consent and the offences would attract only when it is shown *prima facie* that the consent was obtained on misconception of fact. It is true that offering marriage and subjected a lady to sexual intercourse on that promise of marriage would amount to obtaining consent by misconception of fact. But the scenario is absolutely different when the lady alleges sexual intercourse on promise of marriage, is a lady solemnized earlier marriage and continuing the said marriage relationship without being divorced. In such cases, the very promise of marriage is an impossibility and



such allegation is only baseless. Therefore, question of misconception also does not arise.

9. Even though as per Annexures A3 to A5 crimes registered against the de facto complainant, that by itself is not a reason to quash the criminal proceedings. Further, in view of the finding entered into by this Court hereinabove, this argument is of no significance.

10. In the instant case, as argued by the learned counsel for the petitioner and as conceded by the learned Public Prosecutor, the de facto complainant is a lady already married and she is having two children and she is continuing her earlier marriage relationship without being divorced, as volunteered by her.

In such view of the matter, the promise of marriage is an outright impossibility. Therefore, the alleged sexual intercourse on 24.4.2022 and subsequently, till the ides of October, 2022, is to be held as one arose out of consent by the de facto complainant and therefore, no offence under Section 376 of the IPC, would attract. In such scenario, no wrongful confinement also could be found *prima facie* to attract the penal provision under Section 342 of the IPC also.



Accordingly, the quashment prayer is liable to succeed.

In the result, this petition stands allowed. Annexure A2 Final Report and all further proceedings in S.C.No.1071 of 2023 on the files of the Special Court for the trial of cases under the PoCSO Act, Thrissur, arising out out of Crime No.330 of 2023 of Town East Police Station, Thrissur, against the petitioner herein, stand quashed.

Sd/-
A. BADHARUDEEN
JUDGE

Bb



APPENDIX OF CRL.MC NO.427 OF 2024

PETITIONER'S ANNEXURES

- ANNEXURE A1** TRUE COPY OF THE FIRST INFORMATION REPORT DATED 3.2.2023 IN CRIME NUMBER 330 OF 2023 OF THRISSUR EAST POLICE STATION
- ANNEXURE A2** TRUE COPY OF THE FINAL REPORT SUBMITTED IN CRIME NO.330 OF 2023 OF THRISSUR EAST POLICE STATION DATED 15.5.2023
- ANNEXURE A3** TRUE COPY OF THE FIR IN CRIME NO.304 OF 2024 OF MELPARAMBA POLICE STATION DATED 21/6/2024
- ANNEXURE A4** TRUE COPY OF THE FIR IN CRIME NO.501 OF 2024 OF KASARGODE POLICE STATION DATED 29/7/2024
- ANNEXURE A5** TRUE COPY OF THE FIR IN CRIME NO.1373 OF 2024 OF KOLLAM EAST POLICE STATION DATED 5/8/2024
- RESPONDENTS' ANNEXURES : NIL**