



2025:KER:21451

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 13TH DAY OF MARCH 2025 / 22ND PHALGUNA, 1946

CRL.MC NO. 1124 OF 2020

CRIME NO.69/2019 OF KOPPAM POLICE STATION, PALAKKAD

IN S.C. NO.921 OF 2019 OF ASSISTANT SESSIONS COURT, OTTAPPALAM

PETITIONER/ACCUSED:

AJITH
S/O.UNNIKRISHNAN, AGED 27 YEARS, PUTTAKKAL HOUSE, THRITHALA
KOPPAM, PATTAMBI TALUK, KOPPAM, PALAKKAD DISTRICT

BY ADV U.K.DEVIDAS

RESPONDENTS/COMPLAINANT & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031
- 2 XXX

BY ADVS
SRI.JIBU T.S. - PP
SMT.K.V.BHADRA KUMARI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03.03.2025,
THE COURT ON 13.03.2025 PASSED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 13th day of March, 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.921/2019 on the files of the Assistant Sessions Court, Ottappalam, arose out of Crime No.69 of 2019 of Koppam Police Station, Palakkad. The petitioner herein is the accused in the above case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor, in detail. Also heard the learned counsel appearing for the defacto complainant/2nd respondent. Perused the records and relevant materials available.

3. In a nutshell, the prosecution allegation is that, the petitioner herein, who made acquaintance with the defacto complainant, with promise of marriage, subjected the defacto complainant to rape in between the period from 30.05.2014 to 20.04.2019, on the promise of



marriage. On this premise, the prosecution alleges commission of offence punishable under Section 376 of IPC.

4. While seeking quashment of the proceedings, the learned counsel for the petitioner would submit that the petitioner is innocent and the allegations are false. According to the learned counsel for the petitioner, even though the occurrence alleged in the FIR is during the period from 30.05.2014 to 20.04.2019, the FIR was lodged at a belated stage on 20.04.2019, though admittedly no relationship or contact between the petitioner and the defacto complainant. Even though in the year 2016, Annexure.VIII complaint has been lodged by the defacto complainant raising somewhat similar allegations against the petitioner, the same are not fully in conformity with the allegations raised in the present case. The learned counsel for the petitioner pointed out that, as per the additional statement given by the defacto complainant, it has been stated that there was no contact between the petitioner and the defacto complainant for a period of three years. Thus, the allegation as to commission of



offence under Section 376 of IPC by the petitioner on 30.05.2014, now alleged as per the Final Report is false. According to the learned counsel for the petitioner, in this matter, consensual relationship is the inference to be drawn from the materials available and sexual overt acts at the instance of the petitioner, in a consensual relationship would not attract offence punishable under Section 376 of IPC.

5. The learned counsel for the defacto complainant would submit that, the defacto complainant filed an affidavit supporting quashment of the proceedings, since she had no grievance at present.

6. The learned Public Prosecutor strongly opposed quashment and submitted that, going by the FIS, the allegations are made out, *prima facie*. It is discernible from the prosecution materials that, when the petitioner retracted from the marriage, the defacto complainant lodged complaint before the Women Protection Officer, Women Cell, Palakkad and thereafter when the petitioner again assured marriage with the defacto complainant, the same was not proceeded. But the petitioner deviated from



the promise again. Therefore, the defacto complainant lodged FIR suggesting the ingredients to attract the offence punishable under Sections 376 of IPC. In such a case, quashment of the proceedings could not be considered, without permitting the prosecution to adduce evidence.

7. In the instant case, FIR was registered based on the FIS given by the victim on 20.04.2019 alleging that the petitioner, who made acquaintance with the defacto complainant on the promise of marriage, subjected her to rape in between the period from 30.05.2014 to 20.04.2019. Thereafter, the petitioner retracted from the marriage.

8. In the Final Report, the allegation is that, the petitioner, who made acquaintance with the defacto complainant during the year 2011, promised to marry her. Thereafter, on 30.05.2014, on the said promise she was taken to the terrace of a nearby house of the residence of the petitioner in Koppam, where there were no residents and she was subjected to rape between 10.30 and 12.00 p.m., without her consent.



9. In this matter, the delay in lodging the FIR in between 2014 and 2019 is the main ground urged by the learned counsel for the petitioner to quash the proceedings. In fact, as per Annexure.VIII produced by the petitioner, it could be gathered that as on 05.11.2016, the defacto complainant lodged complaint before the Women Protection Officer, Women Cell, Palakkad against the petitioner. In the said complaint, the defacto complainant and the petitioner were brought to the Police Station. The endorsement made in the complaint register on 07.11.2016 is that since the defacto complainant insisted for registration of a crime, on the above facts, the defacto complainant was referred to Kongad Police Station.

10. As per Annexure.IX information furnished by the Public Information Officer, Inspector of Police, Kongad Police Station, it has been informed that the defacto complainant herein not lodged any complaint before the Kongad Police Station, in tune with the submission of the learned counsel for the petitioner. But, the endorsement in the complaint register dated 17.11.2016 was to refer the complaint lodged by the defacto complainant before the



Vanitha Cell to Kongad Police Station, and therefore there is no necessity for the defacto complainant to lodge a fresh complaint in this regard. However, it is discernible from the 164 statement given by the defacto complainant that, though during 2016 complaint was lodged, since the petitioner assured marriage after completion of M.Phil course by the defacto complainant, the said complaint was not proceeded further.

11. As per the statement given by the defacto complainant, it was stated that, there was no contact in between the defacto complainant and the petitioner for the last three years. The same would show that the defacto complainant, even had no contact with the petitioner for a lengthy period of three years and despite that she did not file any complaint or lodge FIR raising the allegations. That apart, as per the FIR the allegation is that, the defacto complainant was subjected to rape by the petitioner in between the period from 30.05.2014 to 20.04.2019 and when the Final Report has been filed, the allegation is confined to a single day's occurrence on 30.05.2014.



12. In the decision of the Apex Court reported in **[2010 (2) SCC 9 : AIR 2010 SC 1] Wahid Khan v. State of Madhya Pradesh**, it has been observed that, *it is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are.*

13. In cases where sexual assault has been alleged, the said concept has been carried for the past so many years, on the premise that, in Indian society, any girl would not make any allegation of sexual assault or any other



mode of misconduct against a person, as the same would prejudice the right of the girl or woman, as the case may be. However, in recent years, this concept seems to be diluted and in less percentage of the complaints in this line, wherein allegation of rape, sexual molestation and other misconduct projected are without any iota of truth, so as to settle a score and also to compel the persons against whom allegations are made to heed the illegal demands of the complainants. Therefore, this concept could not be followed blindly without analyzing the truth of the allegations in case to case basis. The allegation herein also to be evaluated in the said scenario.

14. In the instant case, it is true that, there was consensual relationship in between the defacto complainant and the petitioner and as per the Final Report, an occurrence on 30.05.2014, in continuation of the said relationship, on the promise of marriage has been alleged. As pointed out by the learned counsel for the petitioner, even though the first occurrence as alleged was on 30.05.2014, the crime was registered only on 20.04.2019. Though, as on 05.11.2016, the defacto complainant lodged



a complaint before the Women Cell, Palakkad, according to the defacto complainant, she did not prosecute the said complaint because of assurance given by the petitioner again to marry her. In fact, when there is a complaint as to commission of rape on the promise of marriage, again withdrawing from prosecution awaiting marriage, that too for a period of three years, without having any contact in between the parties is not digestible to prudence.

15. Therefore, the overt acts alleged against the petitioner herein is to be held as one with consent and it could not be held that the consent is vitiated by misconception of facts and the lethargy on the part of the defacto complainant would fortify the same. Therefore, the relationship between the defacto complainant and petitioner was purely consensual in nature. In such view of the matter, no materials made out in this matter to attract the offence punishable under Section 376 of IPC, where the defacto complainant filed affidavit that she has no grievance in the matter of quashing the proceedings against the petitioner. Therefore, I am inclined to allow the prayer for quashment.



Accordingly, this petition stands allowed and all further proceedings in S.C. No.921/2019 on the files of the Assistant Sessions Court, Ottappalam, arose out of Crime No.69 of 2019 of Koppam Police Station, Palakkad, as against the accused/petitioner stand quashed.

**Sd/-
A. BADHARUDEEN
JUDGE**

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**APPENDIX OF CRL.MC 1124/2020****PETITIONER ANNEXURES :**

- ANNEXURE I** CERTIFIED COPY OF THE FIR AND FIS IN CRIME NO.69/2019 OF KOPPAM POLICE STATION DATED 20.04.2019
- ANNEXURE II** CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.69/2019 OF KOPPAM POLICE STATION DATED 15.06.2019
- ANNEXURE III** CERTIFIED COPY O THE LIST OF WITNESS DATD 15.06.2019
- ANNEXURE IV** CERTIFIED COPY OF THE STATEMENT OF THE DEFACTO COMPLAINANT DATED 21.04.2019 UNDER SECTION 164 CR.P.C
- ANNEXURE V** TRUE COPY OF THE SCENE MAHAZAR DATED 21.04.2019
- ANNEXURE VI** TRUE COPY OF THE REPORT OF MEDICO-LEGAL EXAMINATION OF SURVIVOR OF SEXUAL OFFENCE CONFIDENTIAL RECORD DATED 21.4.2019
- ANNEXURE VII** TRUE COPY O THE STATEMENT OF THE SECOND RESPONDENT DATED NIL
- ANNEXURE VIII** TRUE COPY OF THE INFORMATION DATED 26.08.2019 FROM DISTRICT POLICE SUPERINTENDENT, PALAKKAD
- ANNEXURE IX** TRUE COPY OF THE INFORMATION DATED NIL FROM KONGAD POLICE STATION