

Shahid vs State of Kerala

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Court : Kerala Orders

Decided On : May-28-2024

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/2155/2022

Appellant : Shahid

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 28TH DAY OF MAY 2024 / 7TH JYASHTA, 1946
CRL.MC NO. 2155 OF 2022 CRIME NO.44/2022 OF YEROOR POLICE
STATION, KOLLAM PETITIONER: SHAHID AGED 21 YEARS S/O
SHANAVAS KHAN E. AMINA MANZIL, KARUKONE, KOLLAM, PIN -
691306 BY ADVS. VINOY VARGHESE KALLUMOOTTILL
A.V.AISWARYA RESPONDENTS: 1 XXXXXXXXXXXX XXXXXXXXXXXX
XXXXXXXXXXXX 2 SUB INSPECTOR OF POLICE YEROOR POLICE
STATION, KOLLAM, PIN - 691312 3 XXX BY ADVS. PUBLIC
PROSECUTOR NIRMAL V NAIR MUHAMMED NASEEF BIN
SALIM(K/349/2021) ARATHI PRABHAKARAN(K/001158/2022) PP - M P

PRASANTH THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28.05.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 28th day of May, 2024 This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash Annexure A3 FIR in Crime No.44 of 2022 of Yeroor Police Station, Kollam.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the defacto complainant and the learned Public Prosecutor in detail. Perused the relevant materials available.

3. The prosecution allegation is that the accused

herein committed rape on the defacto complainant, when she was a minor, at about 11.30 am to 12.30 pm on 03.08.2017 by threatening her using her naked photographs taken on 19.06.2017 after giving Frooti, when she fell asleep. Thereby, the prosecution alleges commission of offences punishable under Sections 363, 366, 376, 376(2)(n), 506 of IPC, Section 119(b) of the Kerala Police Act, 2011 and Sections 4(1) read with 3(a) , 6(1) read with 5(l) of the Protection of Children from Sexual Offences

Act, 2012.

4. The learned counsel for the petitioner would

submit that the petitioner is innocent and the allegations are false. He submitted further that the petitioner is the husband of the defacto complainant. Now, there is some dispute between the family members of the petitioner and the defacto complainant and it is on this premise the defacto complainant has falsely implicated the petitioner in this case.

5. The learned Public Prosecutor opposed the prayer for quashment and submitted that there are materials in abundance, prima facie, to see commission of the above said offences by the petitioner.

6. On perusal of the FIS the same would suggest

that petitioner had committed rape on the defacto complainant, when she was a minor, by threatening her using her naked photographs. It is submitted by the learned counsel for the petitioner that the petitioner married the defacto complainant on attaining majority and they have been continuing as husband and wife. But, when there arose matrimonial dispute, the petitioner was

roped into this case, without any justification. Therefore, this is a fit case for quashment of the FIR.

7. Going by the allegations, it is clear that the

petitioner and the defacto complainant married on 04.05.2019 and there is difference of opinion between them. The present crime was registered after recording statement of the defacto complainant on 15.01.2022, after the marriage. Thus, it appears that occurrences during 2016 and 2017, prior to the marriage between the defacto complainant and the petitioner during 2019, is the crux of the allegations which led to lodging of FIS and registration of crime.

8. Since the prayer in this petition is to quash the

FIR, I am of the view that the same cannot be resorted to at this stage and the investigation shall be allowed to continue to unearth the truth of the allegation, including the contention as to whether this crime is the outcome of difference of opinion between the defacto complainant and the petitioner, after the marriage.

9. In the factual aspects of this case, where only

FIR is registered, it is necessary, in the interest of justice, to avoid arrest and detention of the petitioner, with liberty to the petitioner to move for anticipatory bail before this Court in the context of the facts involved. Having held so, this petition stands dismissed facilitating the investigation in a fair and impartial manner. It is specifically ordered that the petitioner shall not be arrested for a period of three weeks from today, in connection with this crime, though the Investigating Officer can interrogate the petitioner for the purpose of investigation and conduct medical test, if necessary. The petitioner can file anticipatory bail within the above period to canvas anticipatory bail, in accordance with law.

Sd/- A. BADHARUDEEN JUDGE SK APPENDIX OF CRL.MC 2155/2022
PETITIONER ANNEXURES : Annexure A1 TRUE COPY OF THE MARRIAGE
CERTIFICATE DATED 16.07.2019 Annexure A2 TRUE COPY OF THE
INJUNCTION PASSED IN IA COURT, KOTTARAKKARA Annexure A3
CERTIFIED COPY OF THE FIR IN CRIME RESPONDENTS ANNEXURES : NIL

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