

Basil Babu vs State of Kerala

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Court : Kerala Orders

Decided On : Aug-01-2024

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/6747/2022

Appellant : Basil Babu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA,
CRL.MC NO. 6747 OF 2022 CRIME NO.1439/2020 OF Angamali Police
Station, Ernakulam SC NO.1227 OF 2021 OF FAST TRACK SPECIAL
COURT, ALUVA PETITIONER/ACCUSED: XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX BY ADVS. KRISHNADAS P. NAIR
M.A.VINOD HARIDAS P.NAIR M.RAJESH KUMAR ANU PRABHAKAR
K.L.SREEKALA RESPONDENTS/STATE : 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031. 2 THE SUB INSPECTOR OF POLICE,
ANGAMALY POLICE STATION, ERNAKULAM, PIN - 683101. 3 XXXXX

XXXXXXX PUBLIC PROSECUTOR SRI M P PRASANTH THIS
CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
23.07.2024, THE COURT ON 01.08.2024 PASSED THE FOLLOWING:
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A. BADHARUDEEN, J.

===== Crl.M.C.No.6747 of 2022-C
===== Dated this the 1st day of
August, 2024

ORDER

This Criminal Miscellaneous Case has been filed by the sole accused, under Section 482 of the Code of Criminal Procedure, to quash Annexure A1 FIR and Annexure A2 final report in S.C.No.1227/2021 on the files of Fast Track Special Court, Aluva, arising out of Crime No.1439/2020 of Angamaly Police Station.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail.

3. I have perused Annexure A1 FIR and Annexure A2 final report, which are under challenge.

4. The prosecution allegation is that the accused herein, with intention to outrage the modesty and commit rape against the defacto complainant, reached the Blueberry Diagnostic Hi-Tech Lab, where the defacto complainant was
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studying for Lab Technology Course, at 3.30 p.m on 19.12.2020 and trespassed upon the Lab room in the absence of others and forcefully subjected her to sexual intercourse after keeping her in

illegal detention and obstructing her attempt to rescue. The further case of the prosecution is that earlier a relationship between the accused and the defacto complainant was maintained and the defacto complainant deviated from the

relationship on knowing the fact that the accused is a person having involvement in sale of Ganja. Thereby the prosecution alleged commission of offences punishable under Sections 450, 354 and 376 of the Indian Penal Code ('IPC' for short), by the accused.

5. The learned counsel for the petitioner

given emphasis to Annexure A3 affidavit filed by the defacto complainant stating that the matter has been settled. According to the learned counsel for the petitioner, in view of the settlement, proceedings are liable to be quashed.

6. Whereas the learned Public Prosecutor strongly Crl.M.C.No.6747/2022 4

opposed quashment sought for on the submission that in this matter the prosecution allegations are very serious and the offences alleged are also very serious. Therefore, merely acting on the affidavit of the defacto complainant, settlement proposed could not be accepted, to quash the proceedings. It is also submitted that the prosecution materials, prima facie, would show commission of the above offences and, therefore, the prosecution may be permitted to adduce evidence.

7. Going by the prosecution allegation, the accused herein, with intention to outrage the modesty and commit rape against the defacto complainant, reached the

Blueberry Diagnostic Hi-Tech Lab, where the defacto complainant was studying for Lab Technology Course, at 3.30 p.m on 19.12.2020 and trespassed upon the Lab room in the absence of others and forcefully subjected her to sexual intercourse after keeping her in illegal detention and obstructing her attempt to rescue. The further case of the prosecution is that earlier a relationship between the accused and the defacto

Crl.M.C.No.6747/2022 5 complainant was maintained and the defacto complainant deviated from the relationship on knowing the fact that the accused is a person having involvement in sale of Ganja.

8. The law as it stands is that although High Court

can invoke its jurisdiction u/s.482 Cr.P.C. even in non- compoundable offence and can quash the proceedings on the basis of settlement arrived at between the parties even in the cases of non-compoundable offences but while exercising its jurisdiction this Court must consider the fact that whether the proceeding relates to any serious and heinous offences and whether the crime in question has impact over the society. In cases of serious nature which affects the society at large this Court should not exercise its jurisdiction under Section 482 Cr.P.C. for quashing the proceedings on the basis of compromise executed between the parties. (See decisions in *Gian Singh v. State of Punjab and Another* reported in [(2012) 10 SCC 303], *Narinder Singh and Others v. State of Punjab and Another* reported in [(2014) 9 SCC 466], *Shimbhu v. State of Haryana*

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reported in [AIR 2014 Supreme Court 739](three Bench), *State of Madhya Pradesh v. Madanlal* reported in [AIR 2015 Supreme Court 3003] (two Bench), *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another* reported in [(2017) 9 SCC 641], *State of Madhya Pradesh v. Laxmi Narayan & Ors.* reported in [(2019) 5 SCC 688], *Arun Singh and Others v. State of Uttar Pradesh Through its Secretary and Another* reported in [(2020) (3) SCC 736], *Ram Gopal & Another v. State of Madhya Pradesh* reported in [(2021) 0 Supreme (SC) 529], *Daxaben v. The State of Gujarat & others* reported in [2022 LiveLaw (SC) 642], *P.Dharmraj v. Shanmugam and others* decided on 8th September 2022 in Crl.Appeal Nos.1515-1516 of 2022).

9. Reading the prosecution case, keeping the

settled law in mind, prima facie, this is a case of rape alleged to be committed by the accused, after trespassing upon the Lab room he confined the defacto complainant inside a Lab room Crl.M.C.No.6747/2022 7

despite her resistance. Going by the prosecution allegations, serious offences under Sections 450, 354 and 376 of IPC are well made out, prima facie. In such a

case merely acting on the affidavit filed by the defacto complainant, quashment of the proceedings could not be resorted to. In view of the matter, this petition fails and is accordingly dismissed.

10. Therefore, the quashment, as prayed for, stands disallowed, with liberty to the petitioner to raise his contentions before the trial court during trial.

11. In the result, this petition is dismissed. Interim

order shall stand vacated.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps. Sd/- A. BADHARUDEEN, JUDGE rtr/

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