

Vipin vs XXXXX

Vipin vs XXXXX

SooperKanoon Citation : sooperkanoon.com/1317018

Court : Kerala Orders

Decided On : Aug-05-2024

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/9546/2022

Appellant : VIPIN

Respondent : XXXXX

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946
CRL.MC NO. 9546 OF 2022 CRIME NO.7/2020 OF KOLAVALLUR
POLICE STATION, KANNUR IN S.C. NO.238/2021 OF DISTRICT AND
SESSIONS COURT, THALASSERY

PETITIONER/ACCUSED: VIPIN AGED 32 YEARS S/O.
KUNHIKANNAN, KAVUNGULLATHIL HOUSE, THRIPPANGOTTUR
AMSOM, VILAKKOTTUR DESOM, NELLYADMUKKU, KANNUR
DISTRICT, PIN - 670703 BY ADV P.PREMARAJAN
RESPONDENTS/DEFACTO COMPLAINANT/COMPLAINANT: 1 XXXXX
XXXXX 2 STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH

COURT OF KERALA, ERNAKULAM, PIN - 682031 SR PP - RENJIT GEORGE THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19.07.2024, THE COURT ON 05.08.2024 PASSED THE FOLLOWING:

ORDER

Dated this the 5th day of August, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash Annexure-1 FIR and Annexure-2 Final Report in Crime No.7/2020 of Kulavallur Police Station, Kannur, now pending as S.C. No.238/2021 on the files of the District and Sessions Court, Thalassery. The petitioner is the sole accused in the above case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor. Perused the relevant materials available.

3. In this matter, the allegation of the prosecution

in a nutshell is that, the accused herein who is none other than the neighbor of the defacto complainant, subjected her to repeated sexual intercourses, starting from August, 2017 to 09.12.2019, on threatening that he would publish the nude photographs of the defacto complainant, which were available in his mobile phone. On this premise, the prosecution alleges commission of offences punishable under Sections 452, 376(2)(n), 354, 324 and 506 of Indian

Penal Code.

4. While canvassing quashment of the proceedings,

the learned counsel for the petitioner given much emphasis to the affidavit filed by the defacto complainant stating the entire matter has been settled by mediation in the presence of elders in the locality and the defacto complainant stated in the affidavit that she has no grievance in quashing the proceedings in Crime No.7/2020 of Kulavallur Police Station, Kannur. Therefore, the FIR and Final Report registered in this crime required to be quashed in view of the settlement.

5. The learned Public Prosecutor zealously opposed

this contention and submitted that this is a clear case of rape as borne out from the FIS. According to the learned Public Prosecutor, since the prosecution materials established commission of the above said offences by the accused, prima facie, the matter shall go for trial. Therefore, this crime could not be quashed merely on settlement, restraining prosecution from adducing evidence.

6. On going through the FIS given by the defacto

complainant, she stated that she is a married lady having three children and her husband has been employed abroad. During the Panchayat election, somebody trespassed upon her residence and made destruction and it was noticed that those overt acts were done by BJP workers. According to the defacto complainant she is also a BJP follower. During this crisis, the accused being the neighbor of the defacto complainant, intervened and helped her. While so, during the month of August, 2017, the accused made a call from his mobile phone and requested the defacto complainant to talk with him. But she did not heed this demand and requested the accused not to repeat such acts. Thereafter, during night, the accused trespassed upon her residence and the bed room of the defacto complainant and compelled and threatened her to have sexual intercourse with him. Later, on several occasions, the accused subjected the defacto complainant to forceful sexual

intercourse, on threatening that her nude photographs would be published in the porn sites.

7. Adverting to the power of this Court to quash criminal proceedings restoring to Section 482 of the Cr.P.C.

is concerned, indubitably, in respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. In a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her

which is nothing but putting pressure in an adroit manner; and that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. Such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity

cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy,

cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community, but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a settlement through duress, threats, social boycotts, bribes or other dubious means. It is well said that let no guilty man escape, if it can be avoided.

8. Thus, 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 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. In the present case, sexual assaults against the

defacto complainant, which led to registration of crime under Sections 452, 376(2)(n), 354, 324 and 506 of Indian Penal Code, sought to be quashed merely on the ground of settlement. Going by the available materials, the prosecution case as to commission of the above offences by the accused, made out, prima facie. Such a case cannot be quashed merely on the ground of settlement, since the law does not permit the same. Therefore the quashment sought for is liable to fail.

10. In the result, this Criminal Miscellaneous Case stands dismissed. Interim order of stay in this matter stands vacated. Registry is directed to forward a copy of this

order to the trial court, within three days, for information

and further steps. Sd/- A. BADHARUDEEN JUDGE SK

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com