

Kishore vs State of Kerala

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Court : Kerala

Decided On : Nov-06-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Crl.MC/1025/2022

Appellant : Kishore

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA,
1945 CRL.MC NO. 1025 OF 2022 CRIME NO.584/2020 OF
Vadakkancherry Police Station, Palakkad AGAINST THE
ORDER/JUDGMENT SC 655/2020 OF FAST TRACK SPECIAL COURT,
PATTAMBI

PETITIONER/ACCUSED: XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
BY ADV M.VIVEK RESPONDENT/STATE AND DE FACTO
COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM, PIN -
682031 2 XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX BY ADVS. G.

SUDHEER, PUBLIC PROSECUTOR M.R.MADHU THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.11.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
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ORDER

Petitioner is the accused in Crime No.584/2020 of Vadakkenchery Police Station, Palakkad District, alleging commission of offence under Sections 450 and 376(i) of the Indian Penal Code and Sections 4(i) r/w sections 3(a) and 6(i) r/w.5j(ii) of the Protection of Children from Sexual Offences Act . The matter is now pending as S.C. No.655/2020 on the file of the Fast Track Special Court, Pattambi.

2. Allegation against the petitioner is that, the

petitioner entered into a relationship with the minor victim and had sexual relationships with her, at a time when she was a minor. It is also alleged that the petitioner had impregnated the victim and thereby, he committed the offences alleged against him.

3. Learned counsel appearing for the petitioner would

submit that the petitioner was aged about 21 at the time when the case was registered against the petitioner. It is submitted that the petitioner and the victim were in a relationship. It is submitted that, after the victim attained the age of majority, a marriage was solemnized between the petitioner and the victim as is evident from Annexure-B, marriage certificate CRL.MC NO. 1025 OF 2022 3 issued by the Local Registrar of Marriages (common), Kannambra Grama Panchayat which shows that the marriage between the petitioner and the alleged victim was solemnized on 23.12.2021. It is submitted that the petitioner and the victim are now living together as husband and wife with their child and therefore, the continuance of proceedings will not be in the interest of the victim. It is submitted that, in such circumstances, this Court has held in Vishnu v. State of Kerala [2023 (4) KHC 1], that proceedings can be quashed under Section 482 Cr.P.C.

3. Heard the learned Public Prosecutor and the learned counsel appearing for the victim (the 2nd respondent).

4. Learned Public Prosecutor and the learned counsel appearing for the 2nd respondent (victim) would confirm that the victim is now living with the petitioner as his legally wedded wife along with her child.

5. Having heard the learned counsel appearing for the

petitioner, learned Public Prosecutor and the learned counsel appearing for the victim, I am of the view that, in the facts and circumstances of the case, the proceedings against the petitioner can be quashed in exercise of the jurisdiction vested in this Court under Section 482 Cr.P.C. No public purpose will CRL.MC NO. 1025 OF 2022 4 be served by continuing with the the proceedings against the petitioner. In Vishnu (Supra), it was held as follows:-

13. The Apex Court in Saju P.R. v. State of Kerala

(Criminal Appeal No. 1740 of 2019, decided on 22.11.2019), quashed a rape case on the ground of settlement between the accused and the victim for doing complete justice to the parties concerned. In Anand D.V. v. State and Another (Criminal Appeal Nos. 394-395 of 2021, decided on 12.04.2021) , the Apex Court allowed the compromise and quashed the proceedings for rape on the ground that the accused married the victim. The crime therein was registered against the accused on the complaint of the victim for offences under sections 376 and 380 IPC, alleging that the accused, by giving a false promise of marriage, had sexual intercourse with her, but the promise was not honoured. However, after the registration of the FIR, both

got married, and they approached the High Court of Delhi,

seeking to quash the proceedings invoking section 482 of Cr.P.C read with Article 226 of the Constitution of India. The High Court dismissed

their plea, and therefore, both preferred separate appeals at the Apex Court. The Apex Court allowed the appeals and quashed the proceedings holding that the parties were happily married. In *Jatin Agarwal v. State of Telangana & Another* (Criminal Appeal No.456 of 2022, decided on 21.03.2022), a similar rape case was quashed as the victim got married to the accused. That was a case where an FIR was lodged against the accused by the victim for offences under Sections 417, 420, and 376 IPC alleging that on the promise to marry, the accused made a physical relationship with her, but he withdrew from the promise and refused to marry her. However, later, both got married and therefore, they moved to the High Court of Telangana, seeking the quashing of the FIR. The High Court dismissed their plea to quash the FIR, and therefore, they moved to the Apex Court. The Apex Court accepted the settlement, allowed the appeal, and quashed the FIR, exercising its powers under Article 142 of the Constitution of India, observing that it was necessary to do complete justice to the parties. In *K. Dhandapani v. The State by the Inspector of Police* (Cr. A. No.796 of 2022, decided on 09.05.2022), the Apex Court set aside the conviction and sentence of an accused who raped his own niece and later married her. The accused was working as a woodcutter on daily wages in a private factory. An FIR was lodged against him for committing rape on his niece on a false promise of marriage under Section 5(j)(ii) read with Section 6, 5(l) read with Sections 6 and 5(n) read with Section 6 of the POCSO Act. The trial Court convicted and sentenced him to ten years of rigorous imprisonment, which

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the High Court upheld. Aggrieved thereby, the accused approached the Apex Court. The accused submitted that since he has, in fact, married the prosecutrix and they have two children, it would not be in the interest of justice to disturb their family life. The State opposed the grant of any relief to the accused, contending that the prosecutrix was aged 14 years

on the date of the offence and that the marriage might only be for the purpose of escaping punishment. The Court taking note of the custom in Tamilnadu, which permits the marriage of a girl with her maternal uncle, and the statement of the prosecutrix that she is leading a happy married life with the appellant, set aside the conviction observing that This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. However, as a note of caution, the Court added that in the peculiar facts of the case, it should not be treated as a precedent. Recently in *Kapil Gupta v. State of NCT of Delhi & Another* [(2022) SCC OnLine SC 1030], the Apex Court quashed the FIR registered under section 376 of IPC as the matter was amicably settled between the accused and the victim holding that though ordinarily, cases under Section 376 of IPC should not be quashed, the Court is not powerless in exercising the extraordinary jurisdiction to quash the proceedings in the facts and circumstances of a particular case. It was further held that while exercising the power, the Court has also to take into consideration whether the settlement between the parties is going to result in harmony between them, which may improve their mutual relationship and the stage of the proceedings. The Apex Court was hearing an appeal challenging the judgment of the High Court of Delhi dismissing the application filed by the victim for quashing the proceedings under section 376 of IPC invoking section 482 of Cr.P.C. While allowing the appeal, the Apex Court observed that since the victim herself is not supporting the prosecution case, even if the trial is allowed to go ahead, it will end in nothing else than an acquittal and if the request for quashing is not allowed, it will amount to adding one more criminal case to the already overburdened criminal courts.

14. The High Court of Karnataka in *Sathish K. and Others v State of Karnataka* [2022 LiveLaw (Kar) 178]

held that an offence under Section 376 IPC can be permitted

to be compounded, in specific circumstances, which includes a situation where the closure of such a case would promote the family life of the complainant and the accused. The Punjab and Haryana High Court in Chandan Paswan v. State of Punjab and Another (CRM-M-12854 of 2021 decided on 13.04.2023) quashed the proceedings for rape on the ground that the matter had been compromised and the accused married the victim. In Ashiq v. State of Kerala (2019(2) KLT 1130), where the accused and victim settled

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the disputes and married subsequently, the High Court of Kerala in the exercise of the extraordinary inherent powers under section 482 of the Cr.P.C. quashed the proceedings for the purpose of welfare of the victim. In Md. Jahirul Maulana v. State of Assam (Criminal Petition No.234/2016, decided on 12.07.2016), the High Court of Gauhati quashed criminal proceedings against a rape accused who married the victim holding that chances of conviction in the case are bleak in view of the compromise between the parties and marriage. It was observed that: the ends of justice will demand that they should be left at their will and their otherwise happy marital life should not be allowed to be disturbed by the interfering clouds of litigations looming over their heads. The High Court of Andhra Pradesh in Gokada Suresh v. State of Andhra Pradesh (Criminal Petition No.105 of 2023, decided on 04.01. 2023.) held that the offence under section 376 of IPC can be compounded to promote the family life of the complainant and accused. In Vijaya Kumar v. State (Criminal Petition No. 136/2020, decided on 08.01.2020), the High Court of Karnataka held that though the offences are punishable under Section 376 of IPC and the provisions of POCSO Act, since the parties have settled the dispute and the accused and the victim are living together, the petition filed under Section 482 of Cr.P.C., needs to be allowed and the proceedings have to be quashed. The High Court of Delhi in Arshad Ahmad & Others v. State of NCT of Delhi (WP (Crl). 1185 of 2022 & Crl.

M.A. 10056 of 2022, decided on 02.06.2022) while quashing an FIR for the offence of rape and cruelty by a woman against her father-in-law and others has said that quashing of FIR in matrimonial offences is welcome as it shows that parties have decided to put an end to the dispute as well as the misery. The High Court of Meghalaya in *Shri. Skhemborlang Suting & Another v. State of Meghalaya & Another* (Crl. Petn. No. 63 of 2021, decided on 23.03.2022.) quashed the case against a man under the POCSO Act, 2012, for marrying a 16-year-old girl, observing that it would be an injustice to separate a well-knitted family unit. Taking note of the unique facts and circumstances of the case, the court held that allowing prosecution would only result in the breakdown of a happy family relationship and the possible consequence of the wife having to take care of a baby with no support, physically or financially from her husband who may be languishing in jail. In *Kundan & Another v. State & Others* (Crl.M.C.No. 27/2022, decided on 21.02.2022), the High Court of Delhi quashed a similar FIR, considering that the life of the husband, wife, and child would be ruined. As did the High Court of Bombay in *Nauman Suleman Khan v. State of Maharashtra* [(2022) SCC OnLine Bom. 1148)], recently, quashing an FIR under POCSO Act for penetrative

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sexual assault after the victim, who on attaining majority, said that she and the accused were in love and are now to be married, and the accused gave the undertaking to marry her. The court accepted the same, considering the accused and the victims future and in the interest of a peaceful life. The High Court of Punjab and Haryana in *Pankaj @ Sikandar Kumar v. State of Ut Chandigarh and Another* (CRM - M No. 47266 of 2019, decided on 05.03.2020.) quashed an FIR registered under section 376 of IPC and section 6 of the POCSO Act honouring the agreement between the accused and the victim that they would solemnize their marriage as soon as the latter attains the age of

marriage. In *Manga Singh v. State of Punjab and Others* (Criminal Misc. No.M.19131/2016, decided on 01.05.2018), the High Court of Punjab and Haryana quashed the proceedings based on a compromise for the reason that the prosecutrix had solemnized marriage with the accused prior to the registration of the FIR, a child was born in that wedlock, and they were living in peace and harmony. The High Court of Kerala in *Freddy @ Antony Francis and Another v. State of Kerala and Another* (2017 KHC 344) and in *Denu P. Thampi v. Ms. X* (2019 (2) KLT 996) quashed the criminal proceedings involving sexual offence under IPC and the POCSO Act, where the accused is alleged to have committed sexual assault on the victim on the false promise of marriage, on the ground that they subsequently married and settled the dispute. It was held that since the accused and the victim are now residing as husband and wife, it would be in their welfare to quash the proceedings. A similar view was taken by the High Courts of Bombay [(*Swapnil Digambar Patil v. The State of Maharashtra and Another* (Criminal Application No. 52/2021, decided on 03.01.2022)], Uttarakhand [(*Rahul v. State of Uttarakhand* (Criminal Misc. Application 249/2020, decided on 20.02.2020)] and Punjab and Haryana [(*Lovely v. State of Punjab and Another* (CRM-M-3577-2018, decided on 09.03.2018)].

15. The inherent power given to the High Court under

section 482 of Cr.P.C. is with the purpose and object of advancement of justice. The touchstone for exercising that power would be to secure the ends of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered in accordance with the laws enacted by the legislature. The concept of justice is elastic and imprescriptible. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may instead lead to grave injustice. Nonetheless, such powers of wide

amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind:

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(i) the Nature and effect of the offence on the consciousness

of the society; (ii) the Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence or other relevant considerations [See Ramgopal v. State of Madhya Pradesh [2021 (5) KLT 601 (SC)]].

19. There is yet another category of cases where though the victim alleged that the sexual assault or rape was forceful or against her will, later, they settled the dispute, got married and led a peaceful life. In most of those cases, the victim admits that the allegation of rape was levelled only because the accused refused to marry her. Allowing prosecution to continue in those cases would only result in the disturbance of their happy family life. On the contrary, the closure of such a case would promote their family life. In such cases, the ends of justice demand that the parties be allowed to compromise. However, the Court must ensure that the marriage is not a camouflage to escape punishment and the consent given by the victim for compromise was voluntary. The Court must also be satisfied after considering all the facts and circumstances of the case that quashing the proceedings would promote justice for the victim and the continuation of the proceedings would cause injustice to her.

22. The High Court of Madras [Vijayalakshmi & Anr. V.

State & Anr. (Crl.O.P.232/21 decided on 27.01.2021)], while quashing a criminal proceeding initiated under the POCSO Act on the ground of settlement between the accused and the victim held that punishing an

adolescent boy for entering a relationship with a girl below 18 years of age was never an objective of this act. What came to be a law to protect and render justice to victims and survivors of child abuse can become a tool in the hands of certain sections of the society to abuse the process of law., it added. The High Court of Calcutta [Ranjit Rajbanshi V. The State of West Bengal and Others (C.R.A No.458 of 2018, decided on 17/9/2021)] acquitted an accused, holding that a voluntary joint act of sexual union would not attract offence under the POCSO Act. The court held that penetration as defined under the POCSO Act must mean a positive, unilateral act on the part of the accused, and consensual participatory intercourse, in view of the passion involved, need not always make penetration by itself, a unilateral positive act of the accused but might also be a union between two persons out of their own volition. The Court was considering an appeal where the accused, aged 22, was convicted under Section 376(1) of the IPC and Section 4 of the POCSO Act by the trial Court. The accused took the defence that the victim, aged 16 years, gave her consent for the act and had admitted her relationship with him. The High Court of Allahabad [Atul

CRL.MC NO. 1025 OF 2022 9 Mishra V. State of Uttar Pradesh (Crl.Misc.Bail Application No.53947 of 2021 decided on 25.01.2022)] while granting bail to a man booked under the POCSO Act for impregnating a 14- year-old girl, said that the law didnt intend to bring cases of dense romantic affairs between adolescents or teenagers under its aegis.

23. It is settled that though a minor is not qualified to

enter into a contract, it could be the beneficiary of one. In other words, a parent or guardian is competent to contract on behalf of the minor if it is in its best interest. Section 320(4) of Cr. P.C. says that if the person entitled to compound an offence is minor or lunatic, any person competent to contract on their behalf can compound such an offence on their behalf. Under Rule 7 of Order XXXII of the Code of Civil Procedure, a next friend or guardian of the minor, with the leave of the Court, can

enter into an agreement or compromise on behalf of the minor with reference to the suit in which he acts as next friend or guardian. The term best interest of the child generally refers to the deliberation courts undertake when deciding what services, actions, and orders best serve a child. Article 3.1 of the United Nations Convention on the Rights of the Child, 1989, states that in all decisions concerning children that are made by public or private social protection institutions, courts, administrative authorities or legislative branches, the child's best interest must be a vital consideration. Best interest determinations are generally made by considering several factors, with the child's safety and wellbeing as the paramount concern. As per Section 2(9) of the Juvenile Justice (Care and Protection of Children) Act, 2015, best interest of the child means the basis for any decision taken regarding the child to ensure fulfilment of its basic rights and needs, identity, social well-being, and physical, emotional, and intellectual development. Thus, while dealing with the petitions moved by the parent or guardian of the sexual assault victims to quash the criminal proceedings on the ground of compromise, the court must consider whether the allegations *prima facie* constitute the ingredients of the offence, whether the settlement is in the best interest of the minor victim and whether continuance of the proceedings against the accused and the participation of the minor victim in that proceedings would adversely affect the mental, physical, and emotional well-being of the latter.

26. These are the broad principles to be borne in mind

while considering the plea to quash criminal proceedings involving non-compoundable sexual offences based on compromise. However, every case is unique and must be decided based on its peculiar facts. The viability of quashing a criminal proceeding on the ground that the accused and the sexual assault victim settled the dispute revolves ultimately around the facts and circumstances of each case, and no

straitjacket formula can be formulated. Apart from the categories of cases discussed above, where the High Court has such facts on record which clearly exhibit that the criminal prosecution involving noncompoundable sexual offences against women and children will result in greater injustice to the victim, its closure would only promote her well-being, and the possibility of a conviction is remote, it can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach and very well decide to quash such proceeding upon a compromise between the accused and the victim after taking into account all the relevant facts and circumstances of the particular case including the nature, magnitude, consequences of the crime and genuineness of the compromise. Needless to emphasize, the sexual offences which are grave, heinous, and gruesome in nature shall never be the subject matter of compromise.

This is also a case where continuance of the proceedings against the petitioner is likely to cause greater prejudice to the victim and the child born out of the relationship between the petitioner and the victim. Further, the chances of the successful prosecution are also remote. Therefore, in exercise of the jurisdiction vested in this Court under Section 482 of the Code of Criminal Procedure, all further proceedings against the petitioner can be quashed, as no useful purpose will be served by continuing with the proceedings against the petitioner. Accordingly, the Crl.M.C is allowed and all further proceedings in S.C. No.655/2020 on the file of the Fast Track Special Court, Pattambi (arising out of Crime No.584/2020 of CRL.MC NO. 1025 OF 2022 11 Vadakkencherry police station) will stand quashed as against the petitioner. Sd/- GOPINATH P. JUDGE
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