

X vs State of Kerala

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Court : Kerala

Decided On : Oct-29-2021

Judge : Honourable Mrs. Justice M.R.Anitha

Appeal No. : Crl.MC/4514/2021

Appellant : X

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE M.R.ANITHA FRIDAY,
THE 29TH DAY OF OCTOBER 2021 / 7TH KARTHIKA, 1943 CRL.MC
NO. 4514 OF 2021 (SC NO.242/2018 OF FAST TRACK SPECIAL
COURT (POCSO) ATTINGAL ARISING FROM CRIME NO.1139/2017
OF THE AYIROOR POLICE STATION, THIRUVANANTHAPURAM
DISTRICT. PETITIONER/ACCUSED: X AGED 23 YEARS XX BY ADV
P.ANOOP (MULAVANA) RESPONDENTS/STATE, DEFACTO
COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031 2 X
VICTIM 3 XX XXX OTHER PRESENT: PP SRI RENJIT GEORGE,SR
GP THIS CRIMINAL MISC. CASE HAVING COME UP FOR

ADMISSION ON 23.10.2021, THE COURT ON 29.10.2021 PASSED
THE FOLLOWING:

ORDER

Dated : 29th October, 2021

1. Petitioner is the sole accused in S.C.242/2018 on the file

of Fast Track Special Court (Po CSO) Attingal, which arose out of Crime No.1139/2017 of Ayiroor police station. This CrI.M.C has been filed seeking to quash further proceedings in the above said case.

2. Prosecution case is that petitioner/accused

(hereinafter referred as petitioner), committed aggravated penetrative sexual assault on the minor victim girl, who is a relative, on 28.10.2015, in a rented house of her sister and thereafter, repeated the same and impregnated her; thereby committed the offence afore.

3. Annexure-A1 is the copy of final report in Crime

No.1139/2017 of Ayiroor Police Station. The 3rd respondent is the de facto complainant, the mother of the victim. She had filed Annexure-A2 affidavit. Annexure-A3 is the affidavit duly sworn in by the victim.

4. According to the petitioner, marriage of the

petitioner and 3rd respondent was solemnized as per the Special Marriage Act on 8.9.2021. Annexure-A4 is the true copy of the marriage certificate. A girl child is also born to them on 21.10.2017. Annexure-A5 is the true copy of the birth certificate of the child born out of their relationship.

5. According to the learned counsel for the petitioner,

petitioner and the victim girl were in immense love from the period when the victim was 15 years old onwards. They were also relatives. Now the

petitioner married the victim while she attained majority and a child is also born to them out of their relation. The victim girl and her mother sworn in an affidavit solemnly affirming that they have no surviving grievance against the petitioner. It is also his contention that no complaint as such was filed by the victim and the case was actually happened to be registered when the girl came for treatment and delivered the child and the hospital authorities intimated the matter to the Child Line. In the statement Annexure-A1 given by the victim also, she had categorically stated about the love affair with the petitioner and they lived together in the rented house of her sister. Their relationship continued and she came to know about the pregnancy only when she went to the hospital one day in August 2017. She has also categorically stated that the petitioner had sexual contact with her promising to marry her and on 21.10.2017 she delivered a girl child. According to the learned counsel, now the petitioner is living happily with the victim girl along with their daughter aged 4 years. So in the said circumstances, the criminal proceedings against the petitioner is a harassment to the de facto complainant her child and also the petitioner. In such circumstances, according to the learned counsel, the inherent powers vested with this Court can be exercised to quash the proceedings to secure the ends of justice.

6. The learned Public Prosecutor produced the copy of the

report of the Inspector, SHO concerned and also the copy of the signed statement of the victim in which also she categorically stated that she is living happily with the child along with the petitioner and she is not interested in continuing with the proceedings against the petitioner.

7. So in the said circumstances whether the criminal prosecutions against the petitioner is liable to be set aside or not, is the point for determination.

8. The learned counsel for the petitioner relied upon

Gian Singh v. State of Punjab and Another (2012 (1) SCC 3030 = 2012 KHC 4530), Freddy @ Antony Francis and Another v. State of Kerala and Another (2017 KHC 344 = 2018 (1) KLD 558), Mohammed Rasal v. State of Kerala and Another (2019 (5) KHC 904 = 2020 (1) KLT 126) and Unni.A. v. State of Kerala and Another (CrI.M.C.2459/2018 dated 8.9.2020). Paragraph No.55 in Gian Singh is relevant in this context to be quoted which reads thus :-

B.S. Joshi¹, Nikhil Merchant², Manoj Sharma³ and Shiji alias Pappu³³ do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi¹, Nikhil Merchant², Manoj Sharma³ and Shiji alias Pappu³³, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.

9. In the above decision, the Apex Court unequivocally

stated that inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court.

10. Freddy, referred above, was a case registered

against the accused under Section 376 IPC and Section 3(1)(XII) of SC/ST Act and during the pendency of the criminal proceedings, accused married the victim and they filed a joint petition to quash the

proceedings. So this Court considered the question whether power under Section 482 Cr.P.C can be exercised or not. Paragraph 9 of the said judgment is relevant which reads thus :

It is borne out from the statement recorded by the Sub Inspector of Police of the 2nd petitioner that the parties were in love and the Crime was registered when the 2nd petitioner was under the impression that the 1st petitioner would resile from his earlier promise. However, in view of the subsequent turn of events, she has realized that her apprehension was baseless. The parties are living together as husband and wife. There is no case for anyone that the dignity of the 2 nd petitioner was violated by a wanton act of the 1st petitioner. This is not one of those cases wherein the allegations reek of extreme deparavity, perversity or cruelty. It cannot be said that the offence in the instant case would fall in the category of offences that have a serious impact on society. In the peculiar

facts of the instant case, grave hardship and

inconvenience will be caused to the 2nd petitioner, if the prosecution is permitted to continue. When the 2nd petitioner has asserted that she is not desirous of prosecuting her husband any further, the prospects of an ultimate conviction is remote and bleak. Further more, the 2nd petitioner can continue with her life with dignity and respect. Having considered all the relevant circumstances, I am of the considered view that this is a fit case in which this Court will be well justified in invoking its extra ordinary powers under S.482 of the Code to quash the proceedings.

11. The above decision would go to show that the

offence under Section SC/ST (PoA) Act has also been incorporated along with Section 376 IPC. The allegation is sexual assault upon a member of scheduled caste/scheduled tribe by a person who is not a

member of scheduled cast or scheduled tribe. Even in such situation, this Court was inclined to quash the proceedings against the petitioner in view of the fact that parties were living together as husband and wife and further that grave hardship and inconvenience will be caused to the de facto complainant if the prosecution is permitted to continue. She has also asserted that she is not desirous of prosecuting her husband.

12. Mohammed Rasal's case was also one charged under

Section 376 read with Section 5(j)(ii) of the Po CSO Act, 2012 and the question arose whether the proceedings against the petitioner, accused in that case, can be quashed under Section 482, in view of the fact that the couple have a child and is leading a peaceful married life. The Court took into account the fact that the families on both sides arranged the marriage when the accused was 25 years old and the victim, the 2nd respondent, was 17 years old. It is true that, that was also a case they entered into a sexual relationship after the solemnization of marriage. The Court also has taken note of the fact that at the time when the alleged offence was committed before 11.10.2017 before the pronouncement of the dictum in *Independent Thought v. Union of India & Anr* (2017 (1) SCC 800 = AIR 2017 SC 4904) wherein the Apex Court held that in view of the provisions contained in the Po CSO Act and other provisions in Section 375 IPC, age limit should be 18 years envisaged in Section 375 as per clause sixthly (wherein the age is mentioned as 16 years). It is true that in this case, even before 1 years on 24.7.2017 she had physical contact with the petitioner. That is a period prior to the pronouncement of that judgment.

13. However it is the admitted case of the victim

and the petitioner that they were in deep love and he has physical contact with her promising to marry her and that has been fulfilled when actually their marriage was conducted and marriage certificate is also

produced before Court. In *Denu P.Thampi v. Ms.X and Another* (2019 (3) KHC 199) this Court has categorically held that when accused promised to marry the victim and had sexual relationship with the victim and thereafter he is charged with the offence of rape and when subsequently parties got married, the allegation of false promise vanishes and in such circumstances, this Court exercised the discretion vested under Section 482 Cr.P.C and quashed the criminal proceedings.

14. *Unni.A. v. State of Kerala* also is a case

charged against the accused under Sections 3, 4 and 17 of the Po CSO Act and Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006. In that case also, there was no formal complaint and the hospital authorities after recording her age finding that she is a minor, informed the police authorities and subsequently the case was registered. So taking into account the fact that the victim has not approached the police authorities and further that her marriage was arranged on an understanding between both the families and the accused and his family members were never aware that the victim was a minor at the time of marriage proposal etc., the Court based on the dictum laid down in *Mohammed Rasal's* case, ultimately quashed the proceedings against the accused persons.

15. The learned counsel for the petitioner further

brought to my attention the order in Special Leave to Appeal (Crl) No.2782/2021 dated 16.3.2021 which arose out of Crl.M.P.3209/2021 passed by the High Court of Judicature at Madras. According to the learned counsel, the question arise in that case was whether an adolescent boy who enters into a relationship with a girl who is less than 18 years of age can be punished for the offence of sexual assault under the

Po CSO Act. The petition was preferred against an order

of Madras High Court in Maruthupandi v. State Represented by the Inspector of Police in CrI.M.P.3209/2021 holding that even if a minor girl falls in love and develops a sexual relationship with her partner, the provisions of Po CSO Act will be attracted against the latter. But the Apex Court protected the petitioner from any coercive action, in the meantime, by the order referred above in the SLP.

16. In the case in hand, it has come out that while

the victim was a minor, the petitioner had developed intimacy with her and subsequently had sexual intercourse and impregnated her. On she attaining majority a legal marriage was also conducted. Presently the petitioner is living with his wife, the 2nd respondent and a four year old daughter. So if the criminal proceedings against the petitioner in the above crimes proceeded further, it would affect their peaceful married life and it will put the petitioner, the de facto complainant and their daughter in great hardship, miseries and inconveniences since there are no surviving grievance to the de facto complainant and her family members against the petitioner. There is no chance for ending the case in a conviction also. So the entire process of trial will be a waste of valuable time of the Court without serving any purpose. So for doing complete justice to the parties and to prevent abuse of process of Court and to secure the ends of justice, I find it just and proper to quash further proceedings against the petitioner in S.C.No.242/2018 of Fast Track Special Court (Po CSO), Attingal, arising from Crime No.1139/2017 of Ayiroor Police Station, Thiruvananthapuram. Ordered accordingly. In the result CrI.M.C. stands allowed.

Sd/- M.R.Anitha, Judge MrCs/28.10. APPENDIX OF CRL.MC 4514/2021 PETITIONER ANNEXURE Annexure A1 TRUE COPY OF THE FINAL REPORT IN SC NO (POCSO) ATTINGAL. Annexure A2 TRUE COPY OF THE AFFIDAVIT FILED BY THE 2ND RESPONDENT Annexure A3 TRUE COPY OF THE AFFIDAVIT FILED BY THE 3RD RESPONDENT Annexure A4 TRUE COPY OF

THE MARRIAGE CERTIFICATE DATED 8.9.2021 Annexure A5 TRUE COPY OF
THE BIRTH CERTIFICATE NO REGISTRAR OF BIRTHS AND DEATHS
Annexure A6 TRUE COPY OF THE ORDER DATED 16.7.2021 IN SPECIAL
LEAVE TO APPEAL (CRL) NO (S)

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