

Biju vs State of Kerala

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Court : Kerala

Decided On : Jan-31-2020

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appeal No. : CrI.MC/1877/2016

Appellant : BIJU

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941
CrI.MC.No.1877 OF 2016 AGAINST THE ORDER/JUDGMENT IN
CRMC 695/2014 DATED 31-03- 2014 OF DISTRICT COURT &
SESSIONS COURT,TRIVANDRUM AGAINST THE
ORDER/JUDGMENT IN Bail Appl. 2629/2014 DATED 16-01-2015 OF
HIGH COURT OF KERALA CRIME NO.359/2014 OF Vanchiyoor Police
Station , Thiruvananthapuram PETITIONER/ACCUSED: BIJU AGED 46
YEARS S/O.SIVAN KUTTY, SITHARA VEEDU, T.C.41/1518,
MITHRAPURAM ROAD, PALLIMUKKU, MANACAUD,
THIRUVANANTHAPURAM-695009. BY ADV. SRI.SANTHAN V.NAIR
RESPONDENT/RESPONDENTS: 1 STATE OF KERALA

REPRESENTED BY THE STATION HOUSE OFFICE OFFICER,
VANCHIYOOR POLICE STATION, THIRUVANANTHAPURAM
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA. 2 THE CIRCLE INSPECTOR OF POLICE PETTAH POLICE
STATION, PETTAH.P.O, THIRUVANANTHAPURAM REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

Crl.M.C. No. 1877 of 2016 2 3 VICTIM R3 BY ADV. SRI.ABRAHAM SAMSON
OTHER PRESENT: P P-SRI AMJAD ALI THIS CRIMINAL MISC. CASE HAVING
BEEN FINALLY HEARD ON 31.01.2020, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING: Crl.M.C. No. 1877 of 2016 3

P.B.SURESH KUMAR, J.

----- Crl.M.C. No.1877 of 2016
----- Dated this the 31st day of January, 2020

ORDER

This is a proceedings instituted under Section 482 of the Code of Criminal Procedure for quashing the First Information Report and all further proceedings in Crime No. 359 of 2014 of Vanchiyoore Police Station.

2. The petitioner is the sole accused in the case

registered under Sections 366 and 376 of the Indian Penal Code. The accusation in the case, in essence, is that the accused had represented the de facto complainant that he would marry her and on that representation, he had sexual intercourse with the de facto complainant on two occasions at Ooty and also at Kanyakumari.

3. Heard the learned counsel for the petitioner, the Crl.M.C. No. 1877 of 2016 4 learned counsel for the de facto complainant as also the learned Public Prosecutor.

4. When the case was taken up, the learned counsel

for the petitioner submitted that the matter has been settled between the parties and an affidavit to that effect has been filed by the de facto complainant. The learned counsel for the de facto complainant as also the learned Public Prosecutor affirmed the plea of settlement.

5. It is trite that heinous and serious offences like

rape cannot be closed based on the settlement arrived at between the parties. At the same time, there cannot be any dispute that a case of this nature can be settled, if the offences are not made out on the face of the materials on record. The case

on hand, therefore, has to be examined in the light of the facts

disclosed.

6. The statement of the de facto complainant, on the basis of which the crime is registered and the subsequent statements given by the de facto complainant to the police, are CrI.M.C. No. 1877 of 2016 5 part of the records. I have perused the statements meticulously.

7. The de facto complainant in the case is a lady

aged 30 years. She is a divorcee and was working as a house maid. She claims in the statements that she was maintaining a love affair with the accused who has arranged an employment for the de facto complainant. She admits in the statements that in the light of the said relationship, she was moving with the accused whenever the accused desires to do so. She has also stated that since the accused had agreed to marry her, they had physical relationship on many occasions at different places. It is also stated that since it was revealed to her in course of time that the accused would not marry her, she has once attempted to commit suicide also. In the last statement given by the de facto complainant to the police, it is stated that it is on account of a misunderstanding that she had complained to the police and it is she who compelled the accused to take her to different places and the physical relationship they had also with her consent.

8. The materials on record would indicate beyond CrI.M.C. No. 1877 of 2016 6 doubt that it is a case of consensual sex and not a case of

violation of the dignity of a woman. This is also not a case involving allegations of extreme mental depravity, perversity or cruelty. A case of this nature would not make out the offence of rape. In the result, the CrI.M.C. is allowed and the First Information Report and all further proceedings thereto in Crime No. 359 of 2014 of Vanchiyoor Police Station are quashed.

Sd/- P.B.SURESH KUMAR JUDGE ds CrI.M.C. No. 1877 of 2016 7 APPENDIX PETITIONER'S/S EXHIBITS: ANNEXURE A TRUE COPY OF THE FIR IN CRIME NO.359/2014 OF VANCHIYOOR POLICE STATION,TRIVANDRUM ANNEXURE-B TRUE COPY OF THE ORDER DATED 21/5/2014 IN B.A.2629/2014 OF THIS HONOURABLE COURT ANNEXURE-C TRUE COPY OF THE ORDER DT. IN CRL.M.A.10996/2014 IN B.A.2629/2014 ANNEXURE-D TRUE COPY OF THE AFFIDAVIT DATED 12.3.2014 SIGNED BY THE 3RD RESPONDENT ANNEXURE-E TRUE COPY OF THE CASE DAIRY AND REMAND REPORT IN CRIME NO.359/2014 DATED 12.3.2014 ANNEXURE-F TRUE COPY OF THE ORDER DATED 13.3.2014 IN CMP.2184/2014 OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE'S COURT,TRIVANDRUM ANNEXURE-G TRUE COPY OF THE AFFIDAVIT DATED

19.3.2014 FILED AS CRL.M.P.NO.869/2014 IN CRL.M.C.695/2014 BEFORE THE SESSIONS COURT,TRIVANDRUM BY THE 3RD RESPONDENT ANNEXURE-H TRUE COPY OF THE ORDER DATED 31.3.2014 IN CRL.M.C.695/2014 OF THE SESSIONS COURT,TRIVANDRUM. ANNEXURE -I TRUE COPY OF THE FINAL REPORT IN CRIME NO. 359 OF 2014 OF VANCHIYOOR POLICE STATION, TRIVANDRUM CrI.M.C. No. 1877 of 2016 8 ANNEXURE J TRUE COPY OF THE SUMMONS DATED 22.2.2018 RECEIVED BY THE PETITIONER IN SC NO.201/2018 ON THE FILES OF ADDL. SESSIONS COURT(POSCO) TRIVANDRUM.

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