

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 3RD DAY OF NOVEMBER 2022 / 12TH KARTHIKA, 1944

CRL.MC NO. 7450 OF 2022

CRIME NO.711/2022 OF ERNAKULAM CENTRAL POLICE STATION

PETITIONER/ACCUSED:

XXX
AGED 29 YEARS
XXXX, PIN - 682310
BY ADVS.
SRI RAMESH CHANDER SR ADV
C.P.UDAYABHANU
RASSAL JANARDHANAN A.
ABHISHEK M. KUNNATHU
BOBAN PALAT
P.U.PRATHEESH KUMAR
P.R.AJAY
BALU TOM
BONNY BENNY
GOVIND G. NAIR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 YYYY
YYYY
BY ADVS.
R1 BY SRI.P.G.MANU -SR.PUBLIC PROSECUTOR
R2 BY SRI.V.JOHN SEBASTIAN RALPH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
03.11.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

This Crl.M.C. has been filed to quash Annexure A1 FIR in Crime No.711/2022 of Ernakulam Central Police Station.

2. The petitioner is the accused. The 2nd respondent is the de facto complainant/victim. The offences alleged against the petitioner are punishable under Section 376(2)(n) and 313 of IPC.

3. The petitioner as well as the 2nd respondent are lawyers by profession. The prosecution case in short is that the petitioner by giving a false promise of marriage to the 2nd respondent had sexual intercourse with her at several places at Ernakulam and Wagamon. It is further alleged that the petitioner later on withdrew from his promise to marry the 2nd respondent and also made preparation to marry another girl and on coming to know of the same, the 2nd respondent attempted to commit suicide. It is also alleged that during the course of investigation it was revealed that the 2nd respondent was forced to undergo two miscarriages at the instigation of the petitioner.

4. I have heard Sri.Ramesh Chander, the learned senior counsel for the petitioner instructed by Sri.C.P.Udayabhanu, Sri.John S.Ralph, the learned counsel for the 2nd respondent and Sri.P.G.Manu, the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner Sri.Ramesh Chander submitted that even if the entire allegations in the FI statement together with the materials collected during investigation are believed in its entirety, no offence under Section 376 of IPC is made out. The learned Senior Counsel further submitted that the statement given by the victim reveals that the petitioner and the 2nd respondent were in love and they were in relationship for the last four years and the sexual intercourse, if any, they had was only consensual in nature. The learned counsel for the 2nd respondent submitted that the dispute between the parties have been settled and the 2nd respondent has already sworn in an affidavit that she has no objection in quashing the proceedings. The learned Public Prosecutor submitted that the FI statement given by the victim would show that the ingredients of the offence of rape

has been attracted and when prima facie case is made out, the jurisdiction vested with this Court under Section 482 of Cr.P.C cannot be invoked even if the dispute has been settled between the parties.

6. I went through the FI statement in detail. The reading of the FI statement would show that both the petitioner and the 2nd respondent are lawyers by profession and are practicing in this Court. They fell in love and they were in relationship for the last four years. The statement would further show that they voluntarily went to several places and stayed in hotels at Ernakulam and Wagamon and had consensual sex. In the meanwhile, the 2nd respondent suspected that the petitioner has developed a relationship with another lady and the relationship between the petitioner and the 2nd respondent strained on account of the same which led to the attempt of suicide by the 2nd respondent.

7. Section 375 of IPC, inter alia states that a man commits rape if he has had any form of sexual intercourse with a woman without her consent. Consent is at the centre of the offence of

rape. Explanation 2 to Section 375 of IPC refers to the form of consent. It specifically says that consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. Thus, if the consent as described in Explanation 2 could be made out from the statement of the victim, the offence under Section 375 of IPC cannot be said to be attracted. The Apex Court in **Deepak Gulati v. State of Haryana** (2013) 7 SCC 675] and in **Dhruvaram Murlidhar Sonar (Dr) v. State of Maharashtra** (AIR 2019 SC 327) drawing distinction between rape and consensual sex observed that the court must very carefully examine whether the complainant had actually wanted to marry the victim or had malafide motives and had made a false promise to this effect only to satisfy his lust. Drawing distinction between mere breach of a promise and non fulfilling a promise, it was observed that if the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act will not amount to rape and that if the

accused had any malafide intention or clandestine motives, it is a clear case of rape. In **Sonu alias Subhash Kumar v. State of Uttar Pradesh** (AIR 2021 SC 1405), while quashing a charge sheet alleging an offence under Section 376 of IPC, the Apex Court observed that if there is no allegation to the effect that the promise to marry given to the victim was false at the inception, no offence of rape has been attracted. Recently in **Shambhu Karwar v. State of Uttar Pradesh** (AIR 2022 SC 3901), the Apex Court held that in a prosecution for rape on the false promise of marriage, the crucial issue to be considered is whether the allegation indicates that the accused had given a promise to the victim to marry which at the inception was false and based on which the victim was inducted into a sexual relationship. It was further held that the test to exercise power under Section 482 of Cr.P.C is whether the allegation in the FIR discloses the commission of a cognizable offence. Thus, now it is trite that if a man retracts from his promise to marry a woman, consensual sex they had will not constitute an offence of rape u/s 376 of IPC unless it is established

that consent for such act was obtained by him by giving a false promise of marriage with no intention of being adhered to and that promise made was false to his knowledge.

8. A close reading of the FI statement would show that the allegation of sexual intercourse allegedly the petitioner had with the 2nd respondent is so vague. In the FI statement, the 2nd respondent stated that she could not say the dates of the alleged sexual intercourse. Admittedly, the petitioner and the 2nd respondent were in consensual relationship for the past four years. It is also not in dispute that they voluntarily went together at several places and stayed in hotels and had consensual sex. There is absolutely no specific allegation in the FI statement that the petitioner had given a promise to the 2nd respondent to marry which at the inception was false and based on which the 2nd respondent was induced into a sexual relationship. There is also no allegation in the FI statement that when the petitioner promised to marry the 2nd respondent, it was done with bad faith and with intention to deceive her. The relationship between the petitioner

and the 2nd respondent strained when the 2nd respondent entertained a suspicion that the petitioner developed intimacy with another girl. In short, the alleged sex between the petitioner and the 2nd respondent can only be termed as one on account of love and passion for the petitioner and not on account of misrepresentation made to her by the petitioner. That apart, the reading of FI statement would disclose the consent on the part of the 2nd respondent as defined under Explanation 2 of Section 375 of IPC. Therefore, I am of the view that even if the facts set out in the FI statement are accepted in totality, no offence under Section 375 of IPC is made out. During the course of investigation, Section 313 of IPC has also been added. There is no case for the 2nd respondent that the petitioner has caused miscarriage without her consent. The learned counsel for the 2nd respondent submitted that since the 2nd respondent had some medical complication, she was forced for miscarriage. In such circumstances, Section 313 of IPC is also not attracted. That apart, the affidavit sworn in by the 2nd respondent would show that the entire dispute has been settled and she does

not want to proceed with the case further.

9. In the light of the above findings, I am of the view that no useful purpose will be served by allowing the criminal prosecution against the petitioner to continue. Hence, all further proceedings pursuant to in Annexure A1 FIR in Crime No.711/2022 of Ernakulam Central Police Station stands hereby quashed.

The Crl.M.C stands allowed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

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