

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHIRCY V.

THURSDAY, THE 26TH DAY OF AUGUST 2021 / 4TH BHADRA, 1943

CRL.MC NO. 5890 OF 2020

SC 836/2017 OF 1ST ADDITIONAL DISTRICT & SESSIONS COURT, THRISSUR

CRIME NO. 734 OF 2017 OF KODUNGALLUR POLICE STATION

PETITIONERS/ACCUSED 1 & 2:

1 RAHUL P.R.
AGED 21 YEARS
S/O. REGHU P.P, 5/1164, PAYYAPPILLY HOUSE, KAVILKADAVU,
LOKAMALLESWARAM, KODUNGALLUR, THRISSUR, PIN-680 664

2 VIRJIN,
AGED 21 YEARS
S/O. NANDAKUMAR, KANJIRAPARAMBIL HOUSE, NEETHIVILASAM
COLONY DESOM, ERIYAD VILLAGE, THRISSUR-680 666

BY ADVS.
C.A.CHACKO
SMT.C.M.CHARISMA
SHRI.ALEKH THOMAS

RESPONDENTS/COMPLAINANT & DEFACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031

2 VICTIM

OTHER PRESENT:

AJITH MURALI- P.P

Crl.M.C.5890/2020

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THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12.07.2021, THE COURT ON 26.08.2021 PASSED THE FOLLOWING:

ORDER

DATED THIS THE 26TH DAY OF AUGUST, 2021

The petitioners, who are the accused in Crime No. 734 of 2017 of Kodungallur Police Station, Thrissur District registered for the offences punishable under Sections 366A, 376 and 34 of Indian Penal Code and Section 4 read with Section 3, Section 6 read with Section 5 and Section 17 read with Section 16 of the Protection of Children from Sexual Offences Act, 2002, have filed this application under Section 482 of the Code of Criminal Procedure to quash the FIR, the final report submitted by the Investigating Officer and its further proceedings now pending as S.C. No. 836 of 2020 before the 1st Additional District and Sessions Court, Thrissur.

2. Briefly stated the facts as emerge from the records are that on 23.03.2017 at 12.30 p.m. the petitioners/accused have procured the victim, who is aged only 17 years, from her lawful custody and took her forcibly to the rental house of the 2nd accused and the 1st accused committed rape on her. The 2nd accused, who is a child in conflict with law also abetted the 1st accused to commit rape on her after procuring her with the 1st accused and thereby they have committed the aforesaid offences.

3. The learned counsel has contended that they have not committed any offence as alleged by the prosecution and now the entire matter has been settled between the parties and the victim does not intend to proceed with the case against the petitioners. An affidavit has also been sworn to by her, stating that the 1st petitioner has married

her under the Special Marriage Act on 08.12.2020 and now they are living together as husband and wife. Hence, this petition to quash Annexure A1 FIR, Annexure A2 final report and all further proceedings initiated in S.C. No.836 of 2017 now pending before the 1st Additional District and Sessions Court, Thrissur.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor. Perused the records.

5. The offences alleged against the petitioners are under Sections 366A, 376 and 34 of Indian Penal Code (for short IPC). Apart from the provisions of the IPC, they have been charged for the offences under Sections 4 read with 3, 6 read with 5 and 17 read with 16 of the Protection Of Children from Sexual Offences Act (for short POCSO Act). Now this application is filed by the

petitioner with a plea to quash the entire proceedings initiated against them exercising the inherent powers of this Court as the dispute has been settled amicably and the 1st petitioner had married the victim under the provisions of the Special Marriage Act and they are living together. Annexure A3 is produced as the copy of the marriage certificate dated 08.12.2020. As referred above the 2nd respondent, the victim, in the affidavit stated that she has no complaints against the petitioners and now she has no intention to proceed against them. So, the question posed for consideration is whether the FIR registered for an offence of rape alleged to have been committed by the 1st petitioner after procuring a minor girl from her lawful custody with the 2nd petitioner, could be quashed and whether the consequent criminal proceedings initiated thereto, also could be quashed in view of the

compromise arrived at between the parties exercising power under Section 482 of Cr.P.C. The Apex Court in a catena of decisions laid down the principles, which govern the exercise of the jurisdiction of the Court and held that the inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose to prevent abuse of process of the court and with the object of advancement of justice and that the powers under Section 482 of the Cr.P.C. is an exception and not the rule which should be used sparingly with great caution and circumspection. Here, the main offence alleged is rape that too alleged to have been committed on a minor girl. It is incontrovertible that the charges levelled against the petitioners are of serious nature. Of course the 1st petitioner claims to have married her. Whether on that ground the criminal proceedings are liable to be quashed to secure the ends of

justice and to prevent the abuse of process of the court etc, have to be analysed on the basis of the guiding principles laid down by the Honourable Supreme Court.

6. The Apex Court in **Gian Singh v. State of Punjab** ((2012) 10 SCC 303) had delineated the guidelines for and limitations on exercise of power to quash criminal proceedings involving non-compoundable offences in view of compromise arrived at between the parties. It was held as under:

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. 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. In what cases power to quash the criminal proceeding or

complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions of the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the

compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to a end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

7. In **Narinder Singh and others v. State of Punjab and another** ((2014) 6 SCC 466) the Apex Court reiterated the same principles in the following words:

"29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the

Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the [Prevention of Corruption Act](#) or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender".

8. In **Parbatbhai Aahir v. State of Gujarat** ((2017) 9 SCC 641), the Apex Court has elaborately considered the scope and ambit of Section 482 of Cr.P.C. again and summarized the propositions as follows:-

"16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of [Section 320](#) of the Code of Criminal Procedure, 1973. The power to quash under [Section 482](#) is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under [Section 482](#), the High Court must evaluate whether the ends of justice would justify the

exercise of the inherent power;

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5. The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16.6. In the exercise of the power under [Section 482](#) and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. 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;

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

16.8. Criminal cases involving offences which arise

from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

9. Rape is a very serious offence and it is doubtless that it is not an offence of private in nature but is also an offence towards society. It is worse than murder as humiliating and horrifying experience are caused to the victim and so it is

considered as the most heinous, brutal and cruel crime against a woman. When it is towards a child the gravity is all the more severe and excruciating as it may even low self-esteem, self confidence and dignity of the child and that the psychic effect and impact would cause a devastating effect on the minor and result in far-reaching consequences. The Special Act (POCSO Act) itself was enacted to protect children from sexual assault and harassment. Here, the learned counsel has no argument that the essential ingredients to attract offences under Sections 376 and 366A or under any of the provisions of the Protection of Children from Sexual Offences Act are not available and that the allegations set out in the case do not constitute the offences alleged. In short, the petitioners have no case that, the case has been maliciously instituted and they are falsely implicated with an ulterior motive

and as such no offence is made out. But only on the basis of the alleged settlement between the parties, the petitioners have sought for an order to quash the FIR as well as the final report and further proceedings initiated in the case, in exercise of the jurisdiction under Section 482 Cr.P.C. Rape is not only a very serious and inhumane offence committed towards the victim alone, but also it cause very serious impact upon her relatives and the society as a whole. When the magnitude of the crime is so grave and heinous as such to shock the sense of justice, settlement between the parties and a marriage subsequently between them are not matters for consideration to quash the proceedings in a criminal case. At the risk of repetition, I would say that as the victim is a minor and the provisions of the special Act enacted to protect and save minor children from sexual offences and harassment are

also involved, the argument that, now the victim has attained the age of majority and is living happily with 1st petitioner are not valid grounds or justifiable reasons or decisive factors for consideration to quash the criminal proceedings as sought for. Therefore, the compromise and settlement entered between the parties are not accepted to hold that the allegations do not make out a case against the petitioners. Hence, it is made clear that the petitioners have to stand the test of judicial scrutiny and thus face trial before the trial court.

Dismissed.

Sd/-

**SHIRCY V
JUDGE**

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APPENDIX OF CRL.MC 5890/2020

PETITIONER ANNEXURE

ANNEXURE A1 TRUE COPY OF FIR IN CRIME NO. 734/2017 OF KODUNGALLUR POLICE STATION.

ANNEXURE A2 TRUE COPY OF FINAL REPORT IN CRIME NO. 734/17 OF KODUNGALLUR POLICE STATION.

ANNEXURE A3 TRUE COPY OF CERTIFICATE OF MARRIAGE ISSUED BY MARRIAGE OFFICER, KODUNGALLUR.

ANNEXURE A4 AFFIDAVIT OF 2ND RESPONDENT DATED 18.12.2020.