State Of Kerala & Ors vs O.C.Kuttan & Ors on 17 February, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1044, 1999 (2) SCC 651, 1999 AIR SCW 679, 1999 (1) SCALE 505, 1999 (1) ADSC 683, 1999 SCC(CRI) 304, 1999 (1) LRI 550, 1999 CRIAPPR(SC) 172, 1999 CALCRILR 228, 1999 CRILR(SC&MP) 252, 1999 ADSC 1 683, 1999 (3) SRJ 326, (1999) 1 JT 486 (SC), (1999) 2 SUPREME 182, (1999) 38 ALLCRIC 503, (1999) 1 EASTCRIC 732, (1999) 1 KER LT 747, (2000) 1 MADLW(CRI) 147, (1999) MAD LJ(CRI) 432, (1999) 16 OCR 502, (1999) 1 RECCRIR 831, (1999) 1 CURCRIR 110, (1999) 24 ALLCRIR 541, (1999) 1 SCALE 505, (1999) 1 CHANDCRIC 77, (1999) 1 ALLCRILR 434, (1999) 1 CRIMES 104, (1999) 1 CURLJ(CCR) 646, 1999 CRILR(SC MAH GUJ) 252

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Bench: M.B. Shah

PETITIONER:
STATE OF KERALA & ORS.

Vs.

RESPONDENT:
O.C.KUTTAN & ORS.

DATE OF JUDGMENT: 17/02/1999

BENCH:
G B Pattanaik, M.B. Shah

JUDGMENT:

Pattanaik.J Leave granted in both the matters.

These two appeals one by State of Kerala and another by the State Women's Commission as well as the alleged victim lady are directed against one and the same order of the High Court of Kerala. By the impugned Judgment and Order Dated 4th November, 1997 the Division Bench of Kerala High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India has quashed the criminal proceedings as against five of the accused persons manely Shri O.C.Kuttan, Shri G. Mohanan, Shri S.Suresh Kaimal, Shri Tony Antony and Shri K.C. Pater, on coming to a conclusion that the uncontroverted allegations made in the F.I.R. and other statements do not

constitute the offence of rape.

On 23.7.96, Seens gave a vivid account as to how she was being exploited and sexually harassed by large number of accused persons under threat, coercion, force, allurement and on the basis of the said statement, a case was registered as Crime No. 5.96 of Vanitha Polic Station, Ernakulam. The case was registered under Sections 366A, 372, 376 and 344 read with Section 34 I.P.C. The Police started investigating into the said allegations and in the course of investigation the victim girl was examined on 24.8.96 and on 25.8.96. These respondents filed writ petitions in the kerala High Court praying therein that the FIR and the Criminal Proceedings arising out of the said allegations should be quashed as against them since the allegations do not make out any offence so far as they are concerned. When those writ petitions were listed before the learned Single Judge, the learned Single Judge was of the opinion that the matter should be heard by a Division Bench to decide the question whether criminal proceedings could be quashed in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and that is how the matter was heard by the Division Bench. By the impugned Judgment, the Division Bench though indicated how the lady has unfolded her pathetic story as a victim of rape and narrated the events of her life right from the time when she went to school till she was arrested by the Police, but on comparison of the three statements of the victim girl and on entering into an arena of conjecture and improbability came to the conclusion that the lady was more than 16 years of age when she came to Ernakulam and indulged into the activities of leading immoral life and further she was not put to force of death or hurt or her consent was obtained by putting her in fear of death or hurt and on the other hand it is she, who exercised her discretion to have sex with those persons whom she liked or got money and willingly submitted herself to the sexual activities and therefore this is a fit case where the High Court would be justified in quashing the criminal proceedings as against those who have approached the court.

Mr. Ramachandran, learned Senior Counsel appearing for the State of Kerala and Ms. Indira Jaisingh, appearing for the Kerala Women's Commission, vehemently argued that in view of the graphic statements of the lady herself, the High Court committed serious error in preventing investigation against the accused respondents, who happened to be very influential people of the society. The learned counsel also urged that the conclusion of the High Court that the lady was more than 16 years of age by shifting the materials and evidence on record at this stage was wholly unwarranted. It was further urged that the allegations made by the lady not only amounts to commission of offence of rape alone but also the offence under lmmoral Traffic Act and the High Court never applied its mind to find out whether the allegations taken at their face value would constitute other offences for which the criminal case had been registered. According to the learned counsel for the appellants in the case in hand to quash the proceedings at the stage of lodging of FIR in case of an offence which is having a cancerous growth in the society is against the interest of justice and cannot be held to be an abuse of process of court as concluded by the High Court.

Mr. UR Lalit, appearing for accused Kuttan and Mohanan, Mr. Ranjit Kumar and Mr. Anam, appearing for other accused respondents however contended with force that if the statements of the alleged victim lady do not make out any offence then the High Court would be fully justified in quashing the FIR so far as those alleged accused persons against whom the allegation do not make out the offence as in such a case allowing the investigation to continue would be an abuse of the

process of court. According to Mr. Lalit, a bare look at the statements made by Seena would make it explicitly clear that these respondents had not even been named in the earliest statement dated 23rd of July, 1996 on the basis of which the case was registered but in course of investigation, she has been examined on 24.8.96 and 25.8.96 wherein she has added the names of several persons including the present respondents which would suggest that the additions of names of persons are nothing but an after-thought made after due deliberations and several people have been unnecessarily added and have been subjected to harassment. Mr. Lalit also further urged that the statements of the lady would further indicate that there was no force, no coercion, no fear of life was exercised by any of these accused persons even if the allegations that they had sexual intercourse with the lady is believed and she being found to be more than 16 years of age when she came to Emakulam, the High Court was fully justified in holding that the allegations do not constitute the offence of rape and therefore, was well within its powers to quash the proceedings so far as these respondents are concerned. According to Mr. Lalit the impugned order of the High Court is a fair and just order and has been passed by the High Court to prevent the abuse of process of court, and therefore, this court should not interfere with the same in exercise of its powers under Article 136 of the Constitution of India. It may be stated at this stage that Shri O C Kuttan was the Assistant Commissioner of Excise and Shri G.Mohanan was the Managing Director of Keral State Beverages Corporation, whereas Shri S.Suresh Kaimal was the Assistant Collector of Customs, Trivandrum Airport and Shri Tony Antony was a businessman and Shri K C Peter was an Advocate and at the relevant point of time was Additional Director General of Prosecution.

At the outset there cannot be any dispute with the proposition that when allegations in the FIR do not disclose prima facie commission of a cognizable offence then the High Court would be justified in interfering with the investigation and quashing the same as has been held by this Court in Sanchaita Investment's case 1982(1)SCC 561. In the case of State of Haryana and Other Vs. Bhajan Lal and Others 1992 Supp.(1)SCC 335, this court considered the question as to when the High Court can quash a criminal proceeding in exercise of its powers under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India and had indicated some instances by way of illustrations, though on facts it was held that the High Court was not justified in quashing the first information report. this Court held that such powers could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. But as an illustration several circumstances were enumerated. Having said so, the court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases, that the court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage it is not possible for the court to shift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of State of UP vs. O.P.Sharma 1996(7) SCC

705, a three Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be and allow the law to take its own course. The same view was reiterated by yet another three Judges Bench of this Court in the case of Rashmi Kumar vs. Mahcsh Kumar Bhada 1997(2) SCC 397, where this court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against the society as a whole. Bearing in mind the parameters laid down in the aforesaid judgments and on a thorough scrutiny of the statement of Senna dated 23rd of July, 1986, which was treated as an FIR and on the basis of which criminal case was registered and her subsequent statements dated 24.8.96 and 25.8.96, we have no hesitation to come to the conclusion that the High Court committed gross error in embarking upon an inquiry by shifting of evidence and coming to a conclusion with regard to the age of the lady on the date of alleged sexual intercourse, she had with the accused persons and also in recording a finding that no offence of rape can be said to have been committed on the allegations made as she was never forced to have sex but on the other hand she willingly had sex with those who paid money. We do not think it appropriate to express any opinion on the materials on record as that would embarrass the investigation as well as the accused persons, but suffice it to say that this cannot be held to be a case where the court should have scuttled investigation by quashing the FIR, particularly when the criminal case had been registered under several provisions of the Penal Code as well as under Immoral Traffic Act. We also do not approve of the uncharitable comments made by the High Court in paragraph (12) of the Judgment against the woman who had given the FIR. It is not possible and it was not necessary to make any comment on the character of the lady at this stage. We also have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction to record a finding that the lady exercised her discretion to have sex with those whom she liked or got money and she willingly submitted herself to most of them who came to her for sex. We refrain from making any further observations in the case as that may affect the investigation or the accused persons but we have no hesitation to come to the conclusion after going through the statements of the victim lady that the High Court certainly exceeded its jurisdiction in quashing the FIR and the investigations to be made pursuant to the same so far as respondents are concerned. We, accordingly set aside the impugned order of the High Court and direct the Investigating Agency to proceed with the investigation and conclude the same as expeditiously as possible in accordance with law. These appeals are accordingly allowed.