

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 23RD DAY OF NOVEMBER 2022 / 2ND AGRAHAYANA, 1944

CRL.MC NO. 7676 OF 2022

CRIME NO.831/2021 OF Eloor Police Station, Ernakulam

PETITIONER/ACCUSED:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX
BY ADVS.
P.A.MOHAMMED ASLAM
SHAHIN BADUSHA
KIRAN NARAYANAN
SARATH SASI
JIJI C. BABY
S.RAJEEV(K/000249/1993)

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 XXXXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX
BY ADVS.
R1 BY SRI.P.G.MANU-PUBLIC PROSECUTOR
R2 BY SRI.REMIN RAJAN
K.P.ARUN (CHERTHALA)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
23.11.2022, 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.831/2021 of Eloor Police Station.

2. The petitioner is the accused and the 2nd respondent is the victim/de facto complainant.

3. The offences alleged against the petitioner are punishable under Sections 376 and 506 of IPC, Section 3(2)(v) of the Scheduled caste and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the SC/ST (PA) Act') and Section 66E of the Information Technology Act, 2000 (for short 'IT Act').

4. The petitioner as well as the victim are lawyers by profession. The prosecution case in short is that the petitioner by giving a false promise of marriage to the victim had sexual intercourse with her at a lodge at Kalamassery on 15.4.2021. It is further alleged that the petitioner captured the image of the private area of the victim without her consent in his mobile phone. The

petitioner is a Muslim. The victim belongs to Scheduled Caste.

5. I have heard Sri.S.Rajeev, the learned counsel for the petitioner, Sri.Remin Rajan, the learned counsel for the 2nd respondent and Sri.P.G.Manu, the learned Senior Public Prosecutor.

6. The learned counsel for the petitioner submitted that even if the entire allegations in the first information statement together with the materials collected during investigation are believed in its entirety, no offence under Section 376 of IPC or Section 66E of the Information Technology Act are made out. The counsel further submitted that the first information statement given by the victim would show that the petitioner and the victim 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 has been settled and the 2nd respondent has already sworn in an affidavit that she has no objection in quashing the proceedings. The counsel further submitted that in fact the

alleged rape has not taken place.

7. The learned Public Prosecutor submitted that the first information statement given by the victim would show that the ingredients of offence of rape as well as the offence under Section 66E of IT Act have been attracted and when a 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.

8. I went through the first information statement in detail. A reading of the first information statement would show that both the petitioner and the 2nd respondent are practicing lawyers. It would also show that they studied together in the Law College and from there they fell in love and they were in the relationship for the last four years. The statement would further show that both of them voluntarily went to a lodge at Kalamassery on the date of the incident and they had sex. Thereafter, on 25.6.2021, the 2nd respondent came to know that the marriage of the petitioner with

another lady was fixed and it was in these circumstances the complaint was filed by the 2nd respondent and consequently, the crime was registered.

9. 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.

10. Admittedly, the petitioner and the 2nd respondent were in consensual relationship for the last four years. It is also not in dispute that voluntarily they went together to a hotel at Kalamassery on 15.4.2021 and had consensual sex. There is absolutely no specific allegation in the first information statement that the petitioner had given a promise to marry her which at the very inception was false and based on which the victim was induced to sexual relationship. There is also no allegation in the first information statement that the promise of the petitioner to marry

the victim was done with bad faith and with the intention to deceive her. The relationship between the petitioner and the victim was strained when the victim came to know that the marriage of the petitioner with another lady was fixed. In short, the alleged sex between the petitioner and the victim can only be treated as one on account of the love and passion of the petitioner and not on account of misrepresentation made by the petitioner. That apart, a reading of the first information statement would disclose the consent on the part of the victim as defined in Explanation 2 of Section 375 of IPC. Therefore, I am of the view that even if the facts set out in the first information statement are accepted in its totality, no offence under Section 376 of IPC or Section 3(2)(v) of SC/ST(PA) Act is made out. There is no case for the 2nd respondent that the petitioner captured the private area in his mobile phone without her consent. Hence, Section 66E of the IT Act is also not attracted. That apart, the affidavit sworn in by the 2nd respondent would show that the entire matter has been settled between the parties and she does not want to proceed with the case further. In the affidavit, it is specifically

stated that the case was registered on the basis of misunderstanding of the facts.

In the light of the above findings, I am of the view that no purpose will be served in allowing the criminal prosecution against the petitioner to continue. Hence, all further proceedings pursuant to Annexure A1 FIR in Crime No.831/2021 of Eloor Police Station stands hereby quashed.

The Crl.M.C is allowed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

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APPENDIX

PETITIONERS ANNEXURES:

ANNEXURES A1: COPY OF THE FIR

ANNEXURE A2: COPY OF THE AFFIDAVIT GIVEN BY THE 2ND RESPONDENTS

RESPONDENTS ANNEXURES: NIL