

Kishor Nayithur vs State Of Kerala on 30 June, 2025

2025:KER:47140

CrL.M.C.No.9455/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 30TH DAY OF JUNE 2025 / 9TH ASHADHA, 1947

CRL.MC NO. 9455 OF 2024

CRIME NO.23/2021 OF Peringome Police Station, Kannur
SC NO.823 OF 2021 OF (DISTRICT COURT & SESSIONS COURT
THALASSERY)*

*FAST TRACK SPECIAL COURT POCSO, TALIPARAMBA

*Name of the court is corrected as FAST TRACK SPECIAL COURT
POCSO, TALIPARAMBA instead of 'District & Sessions Court,
Thalassery' as per order dated 07.03.2025 in CrL.M.A.2/2025 in
CrL.MC No.9455/2024

PETITIONER/ACCUSED:

KISHOR NAYITHUR, AGED 31 YEARS
S/O. KUNHIKRISHNAN, NAYITHUR HOUSE, THOUWARA,
PERINTHATTA AMSOM, PERINGOME, KANNUR DISTRICT.,
PIN - 670622

BY ADVS.
SRI.M.ANURROOP
SRI.M.DEVESH
SHRI.MURSHID ALI M.
SMT.JYOTHIS MARY

RESPONDENTS/STATE AND DE FACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 XXXXXXXXXXXX
AGED XXX YEARS, XXXXXXXXXXXX

SRI.SUDHEER G.,PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26.06.2025, THE COURT ON 30.06.2025 PASSED THE FOLLOWING:

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ORDER

The accused in S.C.No.823/2021 on the files of the Fast Track Special Court (POCSO), Taliparamba has filed this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to quash the proceedings against him in the said case. The offence alleged against him is under Section 376(2)(n) I.P.C.

2. The prosecution case is that the petitioner subjected the de facto complainant/2nd respondent to rape on various occasions during the year 2018 to 2021 by threatening her that the morphed photograph of the de facto complainant would be circulated among the local people and her husband. It is alleged that the petitioner managed to take a selfie of the de facto complainant with him in the month of May, 2018 when she happened to accept his offer of lift and travelled in the car of the petitioner. Thereafter, on several occasions, the petitioner allegedly subjected the de facto complainant to rape and sexual harassment inside his car parked at various places after coercing the de facto complainant under threat to travel with him. The case has been registered by the Peringome Police of Kannur District on the basis of the first information statement given by the de facto complainant on 21.08.2021. After the completion of the 2025:KER:47140 investigation, the Inspector of Police, Peringome laid the final report before the court.

3. In the present petition, the petitioner would contend that he has married the de facto complainant and they are residing together. It is further contended that the de facto complainant had sworn an affidavit stating that she has no grievances subsisting against the petitioner and no objection in quashing the final report in this case. For the above reason, the petitioner seeks to quash the proceedings against him in the aforesaid case.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

5. The main ground urged by the petitioner for the quashment of the case against him is that he has married the de facto complainant and they are residing together. The above contention of the petitioner is factually incorrect since it is seen that the de facto complainant is the wife of CW6, and there is absolutely nothing on record to show that the marriage of the de facto complainant with CW6 has been dissolved by the procedures established by law. That apart, there is no such contention on the part of the de facto complainant in the two affidavits sworn by her on 15.07.2024 and 2025:KER:47140 10.06.2025. This is not a case where the consent of the de facto complainant has been obtained by the petitioner upon the false promise of marriage. On the other hand, the specific case of the de facto complainant is that the petitioner managed to indulge in sexual relationship with her by subjecting her to emotional blackmailing by saying that the morphed selfie photograph of the de facto complainant would be circulated to her husband and other local people. It is also seen from the prosecution records that due to the above mental trauma suffered by the de facto complainant as a result of the persistent threat and sexual harassment of the petitioner, she attempted to commit suicide on 24.01.2021. It is thereafter that the whole incident came to light. In such a case, it is not possible for this Court to invoke the inherent powers under Section 528 of

BNSS to quash the proceedings even if the accused has managed to win over the victim and to get an affidavit from her to the effect that she has no objection in quashing the criminal proceedings against the accused.

6. In the celebrated decision of the Apex Court in *Gian Singh v. State of Punjab* [(2012) 10 SCC 303], the Hon'ble Supreme Court held in unequivocal terms that there is absolutely no scope for any compromise in serious offences like rape, murder, dacoity etc. The relevant portion of the aforesaid judgment laying down the law in this regard is extracted hereunder:

"xxxx No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. xxxxxxxx"

7. In *Parbatbhai Aahir v. State of Gujarat* [(2017) 9 SCC 641], the Apex Court reiterated the law laid down in *Gian Singh* (supra) and held that heinous and serious offences involving mental depravity or offences such as murder, rape and decoity cannot be appropriately be quashed though the victim or the family of the victim have settled the dispute, and that such offences are not private in nature, but have a serious impact upon society. It is further observed thereunder that the decision to continue with the trial in 2025:KER:47140 such cases is founded on the overriding element of public interest in punishing persons for serious offences.

8. In *State of M.P v. Madanlal* [(2015) 7 SCC 681], the Hon'ble Supreme Court held that in the offence of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of, and those offences are crimes against the body of a woman which is her own temple, and that those are offences which suffocate the breath of life and sully the reputation. It is further observed in the aforesaid decision that the dignity of a woman is part of her non-perishable and immortal self and no one should ever think of painting in clay, and there cannot be a compromise or settlement as it would be against her honour which matters the most. The relevant paragraph in the aforesaid judgment of the Apex Court is extracted hereunder:

18. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be

extinguished.

2025:KER:47140 When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error."

9. In *Ramji Lal Bairwa v. State of Rajasthan* [(2025) 5 SCC 117], the Apex Court has made it clear that heinous and serious offences could not be quashed even though the victim or victim's family and the offender had settled the dispute. The relevant paragraph of the judgment where the law is laid down in the above regard, is extracted hereunder:

"36. Thus, in unambiguous terms this Court held that before exercising the power under Section 482CrPC the High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim's family and the offender had settled the dispute. This Court held that such offences are not private in nature and have a serious 2025:KER:47140 impact on the society. Having understood the position of law on the second question that it is the bounden duty of the court concerned to consider whether the compromise is just and fair besides being free from undue pressure we will proceed to consider the matter further."

10. Very recently, the Hon'ble Apex Court has held in the landmark judgment of the case *In Re: Right to Privacy of Adolescents* [2024 SCC Online SC 2055], that when offences of rape and aggravated penetrative sexual assault are committed, by exercising its jurisdiction under Article 226 of the Constitution of India and/or Section 482 of the Cr.PC, the High Court cannot acquit an accused whose guilt has been proved. It is true that the aforesaid dictum applies to a case where the offence alleged was found to have been proved in the trial. But, the dictum in the aforesaid decision, when taken along with the law laid down by the Apex Court, consistently alerting the High Courts against the exercise of the powers under Section 482 Cr.PC for stifling the prosecution on the ground of minor drawbacks, it has to be taken that quashment cannot be resorted to when the records relied on by the prosecution are prima facie indicative of the commission of offence by the accused.

11. Thus the position of law is now settled that the prosecution of heinous offences like rape and POCSO Act crimes 2025:KER:47140 cannot be terminated by this Court in exercise of its powers under Section 482 Cr.P.C/Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 on the basis of the compromise which would definitely be the consequence of the offenders managing to win over the victims or their relatives by inducement or threat.

12. As far as the present case is concerned, the prayer of the petitioner, to quash the proceedings against him by acting upon the affidavit sworn by the victim that she has no subsisting grievance against him, and nor interested in continuing the prosecution, cannot be entertained since it would be against the settled principles of law in this regard.

13. In view of the discussions aforesaid, I find no merit in the present petition for quashing the criminal prosecution against the petitioner.

In the result, the petition is hereby dismissed.

(sd/-)

G. GIRISH, JUDGE

jsr