

# Binoy George vs State Of Kerala on 3 April, 2018

**Author: V Raja Vijayaraghavan**

**Bench: V Raja Vijayaraghavan**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 3RD DAY OF APRIL 2018 / 13TH CHAITHRA, 1940

Bail Appl..No. 1961 of 2018

CRIME NO. 429/2018 OF KOOHATTUKULAM POLICE STATION , ERNAKULAM  
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PETITIONER(S)/ACCUSED NO.1 TO 3:

- 1     BINOY GEORGE,  
      S/O.LATE GEORGE, AGED 42 YEARS,  
      MULANJANANIYIL HOUSE, VENGALLOOR KARA,  
      VAZHITHALA P.O., MANAKKADU VILLAGE,  
      THODUPUZHA TALUK, IDUKKI DISTRICT, PIN- 685 583.
- 2     TEENA PHILIP,  
      W/O.BINOY GEORGE, AGED 34 YEARS,  
      MULANJANANIYIL HOUSE, VENGALLOOR KARA,  
      VAZHITHALA P.O., MANAKKADU VILLAGE,  
      THODUPUZHA TALUK, IDUKKI DISTRICT,  
      PIN- 685 583.
- 3     CHINNAMMA VARKEY,  
      W/O.LATE GEORGE, AGED 75 YEARS,  
      MULANJANANIYIL HOUSE, VENGALLOOR KARA,  
      VAZHITHALA P.O., MANAKKADU VILLAGE,  
      THODUPUZHA TALUK, IDUKKI DISTRICT,  
      PIN- 685 583.

BY ADVS.SRI.K.GOPALAKRISHNA KURUP (SR.)

SRI .K .S .ARUNDAS  
SRI .ABHISHEK KURIAN  
SMT .DEEPTHI S .MENON

RESPONDENT(S) :

STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI- 682 031.

R BY PUBLIC PROSECUTOR SRI.AJITH MURALI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03-04-2018,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AD

RAJA VIJAYARAGHAVAN V, J

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B.A No.1961 of 2018  
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Dated this the 3rd day of April, 2018

ORDER

1.This petition is filed under Section 438 of the Code of Criminal Procedure.

2.The 1st petitioner is the husband of the 2nd petitioner and the 3rd petitioner is his mother. They have been arrayed as accused Nos.1 to 3 in Crime No.429 of 2018 of Koothattukulam Police Station, registered under Sections 323, 354, 506, 294(b), 341 read with Sec.34 of the IPC and under Sec.31 of the Protection of Women from Domestic Violence Act, 2005.

3.According to the de facto complainant, on 9.3.2018, the petitioners entered Building No.3/153 in which she was residing and the 1st petitioner twisted her hand and assaulted her. The 2nd petitioner pulled her hair and the 3rd petitioner hurled abuses. According to the victim, she sustained injuries and her modesty was outraged.

4.The learned counsel appearing for the petitioner submitted that earlier a Crime was registered against the 1st petitioner at the instance of the de facto complainant wherein she had alleged that the 1st petitioner had committed rape on her. This Court by order dated 22.2.2018 had granted anticipatory bail to the 1st petitioner. In the meanwhile, the de facto complainant had filed an application invoking the provisions of the Protection of Women from Domestic Violence Act, 2005 and obtained an interim order. However, by Annexure-A6 order, the learned Magistrate, after considering the facts and circumstances in its entirety, held that the intention of the de facto complainant is to misuse the provisions of the Act. Holding so, the de facto complainant was ordered to vacate the premises on or before 17.3.2018. According to the learned Senior counsel, the intention of getting the Crime registered on 10.3.2018 is to create an impression that the petitioners

herein had violated the orders of the learned Magistrate. It is further submitted that at the instance of the 2nd petitioner herein Crime No.231 of 2018 was registered by the Koothattukulam Police against the de facto complainant inter alia under Sections 457 and 380 of the IPC. Reference is made to Annexure-A4 FIR to substantiate his contentions.

5.The learned Public Prosecutor has made available the case diary. I have considered the submissions advanced and have gone through the materials on record. It appears that the case of the de facto complainant was that she had a live-in relationship with the 1st petitioner herein. She had earlier alleged that on a false promise of marriage, the 1 st petitioner herein had subjected her to sexual intercourse. After filing the petition invoking the provisions of the Domestic Violence Act, the de facto complainant was staying in the alleged shared household. It appears from Annexure-A6 order that the de facto complainant has been ordered to remove herself from the house on or before 17.3.2018. It does not appear that any serious injuries were sustained by the informant. I am of the view that the custodial interrogation of the petitioners are not necessitous for an effective investigation.

6. In the result, this petition will stand allowed. The petitioners shall appear before the investigation officer within ten days from today and shall undergo interrogation. Thereafter, if they are proposed to be arrested, they shall be released on bail on their executing a bond for a sum of Rs.40,000/- (Rupees forty thousand only) each with two solvent sureties each for the like sum. The above order shall be subject to the following conditions:

i)The petitioners shall co-operate with the investigation and shall appear before the Investigating Officer as and when ordered to do so.

ii)The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or to any police officer.

iii)The petitioners shall not commit any offence while on bail.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law.

SD/-

RAJA VIJAYARAGHAVAN. V, JUDGE //TRUE COPY// P.A. TO JUDGE AD