



2024:KER:62875

CRL.MC No. 8788 of 2022

-1-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 14TH DAY OF AUGUST 2024 / 23RD SRAVANA, 1946

CRL.MC NO. 8788 OF 2022

CRIME NO.696/2017 OF PATHANAMTHITTA POLICE STATION,
PATHANAMTHITTA IN SC NO.31 OF 2021 OF ADDITIONAL DISTRICT
COURT & SESSIONS COURT-IV, PATHANAMTHITTA.

PETITIONER/ACCUSED:

BIJU P.VIDYA @ MONAI,
AGED 43 YEARS, S/O. VIDHYADHARAN,
PULIKKANTHOTTAYIL HOUSE,
MEKKOZHOOOR.P.O, MYLAPRA VILLAGE, KONNI TALUK,
PATHANAMTHITTA DISTRICT, PIN-689678

BY ADV V.SETHUNATH

RESPONDENTS/DEFACTO COMPLAINANT/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN-682031
- 2 THE SUB INSPECTOR OF POLICE,
PATHANAMTHITTA POLICE STATION, PIN-689645
- 3 XXXXX
XXXXX

R1&R2 SRI.RENJIT GEORGE, SENIOR PUBLIC PROSECUTOR

R3 ADV.OBEID ABDUL MAJEED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 14.08.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



2024:KER:62875

CRL.MC No. 8788 of 2022

-2-

'C.R.'

ORDER

Dated this the 14th day of August, 2024

This Crl.M.C has been filed under Section 482 of the Code of Criminal Procedure by the petitioner, who is the sole accused in Crime No.696/2017 of Pathanamthitta Police Station, now pending as S.C. No.31/2021 on the files of Additional Sessions Court-IV, Pathanamthitta, to quash the said case.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the defacto complainant and the learned Public Prosecutor in detail. Perused the entire records.

3. Precisely, prosecution case is that the accused herein subjected the defacto complainant, a married lady having one child, to rape on a day in the month of June-July, 2021. On this premise, the prosecution alleges commission of offences punishable under Sections 323 and 376 of the Indian Penal



Code, by the accused, as per the final report filed, after investigation.

4. The learned counsel for the petitioner sought quashment of the proceedings on the submission that the overt acts, attracting offence under Sections 323 and 376 of IPC allegedly done during the month of June-July in the year 2001 were disclosed after a period of 16 years of delay. It is submitted that the FIS was given on 22.02.2017, pursuant to the same, FIR was registered against four persons. Thereafter, three persons excluded and final report filed against the petitioner alone. It is pointed out that 16 years of delay in disclosing the overt acts, where there is allegation that the accused herein borrowed 20 lakh during the relationship and failed to return the same, indicates that the relationship, if any, is the outcome of consent and the final report filed in relation to an occurrence before 16 years is liable to fail. In addition to that, the learned counsel for the petitioner submitted that now the matter has been settled.



He has given emphasize to two affidavits filed by the defacto complainant in support of settlement while canvassing the quashment.

5. The learned Public Prosecutor conceded that the occurrence was during the month of June-July 2001 and an allegation as on 23.06.2007 also has been disclosed, whereby the accused threatened the defacto complainant to settle the dispute between them.

6. Going by the FI Statement given by the defacto complainant, it is prima facie perceivable that the occurrence of sexual intercourse during the month of June-July 2001 is the base on which the prosecution alleges commission of offence under Sections 323 and 376 of IPC by the accused.

7. The crucial question emerges for consideration is, whether the disclosure of sexual assault which constitutes ingredients of rape, after a period of 16 years, is a fatal and the same would stand in the way of prosecution? Before addressing



the said question, it is noticeable from the statement of the victim that after having sexual intercourse in the year 2001, they continued the relationship. According to the defacto complainant, on various occasions during continuance of the relationship, the accused received money from her and the amount would come to Rs.20 lakh as on the date of lodging the FIS. Law is well settled that delay is having significance and the same is decisive, unless the delay is properly explained. Here no proper explanation for the long delay. When the delay comes to 16 years in disclosing the same, after continuing the relationship for 16 years, the same is fatal and the same would stand in the way of prosecution, since possibility of false implication is very much discernible. Thus the allegation of rape made after 16 years is prima facie not believable because of the long delay and such relationship is to be considered as consensual in nature. That apart, the allegation of rape was raised with ulterior motives, particularly when money from the accused was



allegedly due to the defacto complainant. That apart, now the defacto complainant also has no grievance at present and she filed two affidavits in this regard.

8. In such view of the matter, the quashment sought for is liable to succeed.

9. In the result, this petition stands allowed. All further proceedings in Crime No.696/2017 of Pathanamthitta Police Station, now pending as S.C.No.31/2021 on the files of Additional Sessions Court-IV, Pathanamthitta, stand quashed.

Registry is directed to forward a copy of this order to the trial court for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE



2024:KER:62875

CRL.MC No. 8788 of 2022

-7-

APPENDIX OF CRL.MC 8788/2022

PETITIONER'S ANNEXURES

- Annexure A1** THE CERTIFIED COPY OF THE F.I.R. & FIS
IN CRIME NO.696 OF 2017 OF
PATHANAMTHITTA POLICE STATION.
- Annexure A2** THE CERTIFIED COPY OF THE FINAL REPORT
PREPARED BY THE 2ND RESPONDENT IN
S.C.NO.31 OF 2021 ON THE FILE OF
ADDITIONAL DISTRICT & SESSIONS COURT
NO.IV, PATHANAMTHITTA.
- Annexure A3** NOTARISED AFFIDAVIT FILED BY THE 3RD
RESPONDENT DATED 22.11.2022.