



2024/KER/44471

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 24TH DAY OF JUNE 2024 / 3RD ASHADHA, 1946

CRL.MC NO. 9720 OF 2023

CRIME NO.519/2022 OF ALUVA WEST POLICE STATION (ALANGAD), ERNAKULAM

SC NO.1207 OF 2023 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT

(VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

PETITIONER/ACCUSED:

SAKEER

AGED 47 YEARS

S/O.HANEEFA, THOPPILPARAMBU HOUSE, VEDIMARA BHAGAM,
PARAVOOTHARA KARA, PARAVOOR, ERNAKULAM (DIST.), PIN -
683520

BY ADVS.

ANIL K.MUHAMED

KRISHNAKUMAR G.

AJIN SALAM

RESPONDENTS/COMPLAINANT & DE FACTO COMPLAINANT:

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

R1 BY SR.PUBLIC PROSECUTOR SRI.RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
13.06.2024, THE COURT ON 24.6.2024 PASSED THE FOLLOWING:

**CR****ORDER**

Dated this the 24th day of June, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, to quash all further proceedings as per Annexure 2 Final Report, now pending as S.C.No.1207/2023 on the files of the Special Court for the Trial of Cases Relating to the Protection of Children from Sexual Offences Act, 2012 (for short, 'the PoCSO Act' hereinafter), Ernakulam, arose out of Crime No.519/2022 of Aluva West Police Station (Alangad), Ernakulam.

2. In this matter, the prosecution alleges commission of offences punishable under Sections 376(2) (n), 420 and 506 of the IPC, by the accused. The prosecution allegation is that, the accused herein, with intention to commit rape on the de facto complainant, so as to satisfy his lust and also with intention to misappropriate



money belonged to the de facto complainant, subjected the de facto complainant to rape in between 1.8.2018 to 17.8.2022, at various places. Further, the accused promised to marry the de facto complainant and borrowed money from her. Thereafter, the accused deviated from marriage and also failed to give money. Further, the de facto complainant was threatened by the accused. On this premise, the prosecution alleges commission of the above offences.

3. While seeking quashment of the proceedings, the learned counsel for the petitioner would submit that, now, the de facto complainant filed affidavit, in view of settlement in between the accused and the de facto complainant, stating that she had no grievance in this matter. Apart from that, the learned counsel also argued that that, going by the prosecution allegation, at par with the materials available, there is nothing available to see that the accused herein committed rape against the de facto complainant and the case itself is generated, when a crime was registered against the de facto complainant at



the instance of the wife of the accused and non-payment of some money alleged to be borrowed by the accused from the de facto complainant in time. In this regard, the learned counsel for the petitioner pointed out Annexure 5 Final Report in Crime No.912/2022 of North Parur Police Station, alleging commission of offences punishable under Sections 451, 324 and 294(b) of the IPC, by the de facto complainant herein, dated 16.8.2022. He also placed Annexure 3 agreement executed in between the de facto complainant and the accused on 23.5.2022, whereby, the accused obtained Rs.25 Lakh for his personal need during 2018-2020 period and for which, the accused agreed to sell his property as stated in Annexure 3 agreement with 1300 sq.ft two storied building therein, after clearing the loan liability subsisting with the Bank.

4. The learned counsel for the petitioner would submit that, this case was foisted after registering crime against the de facto complainant and when she noticed delay in getting back the money or the property, as agreed in Annexure 3 agreement. He also argued that, if at all



there was sexual relationship, the same is absolutely the outcome of consent and therefore, no offence would attract. He also submitted that the accused is a married person, having wife and children and Annexure 2 Final Report is the outcome of complaint lodged by the wife of the accused.

5. Resisting this argument, the learned Public Prosecutor argued that the points argued by the learned counsel for the petitioner are squarely insufficient to quash the prosecution involving offence under Section 376 of the IPC, as the same is impermissible.

6. It is true that offence under Section 376(2)(n) of the IPC, is a serious offence warranting punishment upto life imprisonment and in such cases, merely acting on the affidavit filed by the de facto complainant or on the so-called consent extracted from the circumstances, which would require proof by evidence, case could not be quashed. However, the same is not a hard and fast rule to apply in almost all cases, where offence punishable under Section 376 of the IPC is alleged without support of



sufficient materials and the materials available also would throw light to dubious circumstances to disbelieve the prosecution case in toto.

7. In the decision in **Vineet Kumar & Ors. v. State of U.P & anr.**, reported in **[2017 KHC 6274 : AIR 2017 SC 1884 : 2017 (13) SCC 369]**, the Apex Court held in paragraph 39 that, *inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in [AIR 1960 SC 866], State of Haryana v. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in*



*exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in **State of Haryana v. Bhajan Lal** (supra), which is to the following effect:*

“(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. Similarly, in another decision in **Mahmood Ali v. State of U.P.** reported in [2023 KHC 7029 : 2023 KHC OnLine 7029 : 2023 LiveLaw (SC) 613 : 2023 KLT OnLine 1751 : AIR 2023 SC 3709 : AIR OnLine 2023 SC 602 : 2023 CriLJ 3896], the Apex Court while considering the power under Section 482 Cr.P.C, in paragraph 12 held that, *‘whenever an accused comes before the Court invoking either the inherent powers under S.482 of the Code of Criminal Procedure or extraordinary jurisdiction under Art.226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the*



ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court



while exercising its jurisdiction under S.482 of the Cr.P.C. or Art.226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation / registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.'

9. Therefore, the legal position is clear that quashment of criminal proceedings can be resorted to when the prosecution materials do not constitute materials to attract the offence alleged to be committed. Similarly, the Court owes a duty to look into the other attending circumstances, over and above the averments to see whether there are materials to indicate that a criminal proceeding is manifestly attended with *mala fides* and proceeding instituted maliciously with ulterior motives.



Once it is established that criminal proceedings initiated maliciously with ulterior motives, for the said reason, criminal proceedings are liable to be quashed.

10. In this case, it is discernible that the present crime was registered only on 17.8.2022 and before that, a crime against the de facto complainant was registered as per Annexure 4 as on 16.8.2022, when the de facto complainant trespassed upon the house of the wife of the accused, where the accused and his family have been residing. It could be noticed that there were financial dealings in between the de facto complainant and the accused during the period between 2018-2020, as discernible from Annexure 3 agreement, dated 23.5.2022 and the said fact is admitted by both sides. Further, it is the admitted case of both parties that there was undertaking to sell the property of the accused to discharge the liability towards the de facto complainant after clearing the loan subsisting. So, before registering the present crime alleging commission of offence punishable under Section 376 of the IPC, there was financial dealings in between the de facto complainant and



the accused, as borne out from Annexure 3. Subsequently, crime also was registered against the de facto complainant on 16.8.2022, as per Annexure 4.

11. In this matter, the de facto complainant filed affidavit stating that the entire dispute has been settled between the accused and the de facto complainant. Thus, going by the facts involved, it could be gathered that non-receipt of money by the accused as per Annexure 3 agreement and registration of crime against the de facto complainant as per Annexure 4, are the substratum, wherefrom, the prosecution alleges commission of offence punishable under Section 376 (2)(n), 420 and 506 of the IPC. Thus, going by the materials on merits, false implication for the purpose of getting back the money could be gathered. Even otherwise, the relationship, if any, is to be held as consensual one, since the promise of marriage from a married man, having wife and children, is a matter of serious concern, in the facts of this case. Therefore, by applying the principle holding the view that, in an exceptional case, even criminal proceedings alleging



commission of offence punishable under section 376 of the IPC also to be quashed, I am inclined to allow this petition.

Hence, this Criminal Miscellaneous Case stands allowed. Annexure 2 Final Report and all further proceedings, now pending as S.C.No.1207/2023 on the files of the Special Court for the Trial of Cases Relating to Atrocities and Sexual Violence Against Women and Children (POCSO), Ernakulam, arose out of Crime No.519/2022 of Aluva West Police Station (Alangad), Ernakulam, stand quashed.

Sd/-
A. BADHARUDEEN
JUDGE

Bb



APPENDIX OF CRL.MC NO. 9720 OF 2023

PETITIONER'S ANNEXURES

- ANNEXURE 1 A CERTIFIED COPY OF FIR AND FIS IN
CRIME NO.519/2022 OF ALUVA WEST POLICE
STATION
- ANNEXURE 2 A CERTIFIED COPY OF THE FINAL REPORT IN
S.C.NO.1207 OF 2023
- ANNEXURE 3 A TRUE PHOTOCOPY OF THE AGREEMENT DATED
23.5.2022
- ANNEXURE 4 A CERTIFIED COPY OF FIR IN CRIME
NO.912/2022 OF NORTH PARAVUR POLICE
STATION
- ANNEXURE 5 A CERTIFIED COPY OF FINAL REPORT IN
C.C.NO.461/2022 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, NORTH PARAVUR
- ANNEXURE 6 AN AFFIDAVIT DATED 2.11.2023 SWORN BY
2ND RESPONDENT

RESPONDENTS' ANNEXURES : NIL