



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 7TH DAY OF OCTOBER 2024 / 15TH ASWINA, 1946

CRL.MC NO. 7147 OF 2024

CRIME NO.194/2024 OF Kalluorkadu Police Station, Ernakulam

PETITIONER/ACCUSED:

FR. JOSE MATHAI MYLADATH,
AGED 59 YEARS,
S/O MATHAI, MYLADATH HOUSE, KOTHAMANGALAM P.O,
ERNAKULAM DISTRICT, PIN - 686691.

BY ADVS.

P.T.SHEEJISH

P.SREERAM

HARIKIRAN

A.ABDUL RAHMAN (A-1917)

PARVATHY S. MANOJ

AMRITA SAFAL M.

YOOSUF SAFWAN T. AJMAL

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

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

2 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX

BY ADVS.

RAMEEZ NOOH

K.N.MUHAMMED THANVEER(K/529/2014)

AMIN ALI ASHRAF(K/589/2024)

KANDAMPULLY RAHUL(K/927/2009)

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
09.09.2024, THE COURT ON 07.10.2024 PASSED THE FOLLOWING:



“C.R”

A. BADHARUDEEN, J.

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Crl.M.C.No.7147 of 2024
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Dated this the 7th day of October, 2024

O R D E R

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking quashment of Annexure A2 charge sheet in Crime No.194/2024 of Kalloorkad Police Station and all further proceedings.

2. Heard the learned counsel for the petitioner, the learned counsel for the defacto complainant and the learned Public Prosecutor in detail. Perused the relevant documents.

3. In this matter it is alleged that the petitioner herein committed offences punishable under Section 376, 376(2)(n) and 342 of the Indian Penal Code ('IPC' for short). While seeking quashment of the proceedings it is argued by the learned counsel for the petitioner that the petitioner is innocent and the allegations are false. According to the



learned counsel for the petitioner, even though crime was registered, the defacto complainant/victim herself filed Crl.M.C.No.4084/2024 to quash the FIR on the submission that she lodged a complaint on sheer misunderstanding and there was no sexual harassment, as alleged. Though later the said Crl.M.C was withdrawn, even according to the defacto complainant none of the offences are made out. It is also pointed out that as per Annexure A5, the defacto complainant herself posted a public notice/message on social media stating that the entire rumours and defamatory messages associating her and the accused shared through social media were fake and there was no truth in it. That apart, FIR was registered after a delay of 3 ½ months. According to the learned counsel for the petitioner, for the above reasons, the quashment prayer is liable to succeed.

4. Repelling this contention, the learned counsel for the defacto complainant would submit that Crl.M.C.No.4084/2024 was filed by the defacto complaint on offer of settlement at the instance of the petitioner on the promise that the accused would look after her. But the petitioner being a Priest deviated from the settlement and the defacto



complaint was forced to withdraw the CrI.M.C. According to the learned counsel for the defacto complainant, Annexure A5 social media public notice, was not authored by the defacto complainant and its genuineness is a matter of proof. It is pointed out that the allegations raised in the FIS and in the final report as to commission of repeated sexual intercourse by the accused with an offer to marry the defacto complainant after leaving his priesthood could be noticed, *prima facie*, and in such a case quashment of the proceedings cannot be resorted and the matter would require trial by adducing evidence.

5. The learned Public Prosecutor also supported the stand of the defacto complainant after reading the recitals in the FIS and the statements of the witnesses to assert that the defacto complainant was subjected to sexual intercourse on the promise of marriage.

6. In order to address the rival contentions, I have gone through the FIS given by the defacto complainant on 24.04.2024 whereby FIR was registered alleging commission of the above offences. The FIS would recite that the accused, who is the Priest of St.Johns Baptist Church, Kaloor, subjected the defacto complainant to sexual molestation.



According to the defacto complainant, her marriage (not legal marriage) with one Madathattu Shyam Sasi was solemnised on 29.06.2020 and on 17.01.2022 Shyam Sasi abandoned her and a child born to them and he married another lady. According to the defacto complainant, the marriage was not a legal marriage or a marriage as per religious custom since Shyam Sasi was not a member of Christian community. Since she married a man from other caste, holy sacrament and baptism pertaining to her and her child were discussed with the accused. During this discussion, the accused collected her telephone number. Accordingly, the accused, on a Friday during the month of November, 2023, requested her to reach the Church at 11 a.m. When she reached as directed, the accused directed her to go inside the office room. While she was sitting outside the office room, he brought her to the nearby bed room and he locked the room. Then she was forcefully laid in the bed, her dresses were removed and subjected her to forceful sexual intercourse after closing her mouth forcefully, to avoid her cry of resistance. At the time of sexual intercourse, the accused assured that he would look after the affairs of the defacto complainant and he would marry her. He also stated that he was ready to



give up the Priesthood for the said purpose. She believed the assurance and there was sexual intercourse on a Thursday during the month of November, repeating the promise of marriage and continued the same till 12.01.2024. Later the accused deviated from the marriage and thereafter the video calls in between the defacto complainant and the accused were leaked. Later when she visited the accused at the Church, he assured that nothing to fear. This is the base on which the prosecution alleges commission of the above offences.

7. Going by the prosecution allegations, it is discernible that the defacto complainant is a lady, who, in fact, not effected any legal marriage though she had a relationship with one Shyam Sasi and delivered a child. She was given offer of marriage by the accused and on the promise of marriage she was subjected to sexual intercourse and thereafter the accused deviated therefrom. It is true that the defacto complainant filed CrI.M.C.No. 4084/2024 during crime stage with prayer to withdraw the same, but according to the defacto complainant the said petition had been filed believing the words of the accused that he would look after her. Since the accused deviated from the promise, she had withdrawn this



CrI.M.C. According to the learned counsel for the petitioner, as per Annexure A5, copy of a WhatsApp message published by the defacto complainant, she stated that the allegations connecting the defacto complainant and the accused were false. But the genuineness of Annexure A5 was disputed by the defacto complainant and the authenticity of Annexure A5 WhatsApp message is a matter of evidence, which would require proof by the mode known to law.

8. Adverting to the facts of the case, as discussed, it is perceivable that the defacto complainant, who is legally eligible to solemnise marriage as there was no legal marriage at any point of time, was given promise of marriage by the accused after expressing his readiness to give up his Priesthood, after subjecting the defacto complainant to repeated sexual intercourse promising to marry her, retracted from the marriage. Since the relationship continued on the promise of marriage, there is no delay in lodging the FIR. Thus, *prima facie*, allegations are made out warranting trial of the matter and in such a case, there is no reason to close the proceedings merely on the fact that earlier the defacto complainant filed a petition to quash the crime.



9. In view of the above, this CrI.M.C must fail and is liable to be dismissed. Accordingly, the same stands dismissed.

10. Interim order, if any, already granted shall stand vacated.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



PETITIONER'S EXHIBITS

ANNEXURE A1 : TRUE COPY OF FIR ALONG WITH THE FIS IN CRIME NO.194/2024 OF KALLOORKAD POLICE STATION, ERNAKULAM DISTRICT.

ANNEXURE A2 : THE CERTIFIED COPY OF THE CHARGE SHEET ALONG WITH THE MEMORANDUM OF EVIDENCE IN CRIME NO.194/2024 OF KALLOORKAD POLICE STATION, ERNAKULAM DISTRICT.

ANNEXURE A3 : TRUE COPY OF THE PETITION IN CRL.M.C.NO.4084/2024 FILED BY THE DEFACTO COMPLAINANT BEFORE THIS HON'BLE COURT.

ANNEXURE A4 : TRUE COPY OF THE NOTARIZED AFFIDAVIT SOLEMNLY AFFIRMED BY THE DEFACTO COMPLAINANT/VICTIM DT.09.05.2024 FILED IN CRL.M.C.NO.4084/2024.

ANNEXURE A5 : TRUE COPY OF THE SCREENSHOT OF THE PUBLIC NOTICE/MESSAGE POSTED BY THE DEFACTO COMPLAINANT ON HER SOCIAL MEDIA HANDLE.

RESPONDENTS' EXHIBITS

NIL.