



2024/KER/52808

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 17TH DAY OF JULY 2024 / 26TH ASHADHA, 1946

CRL.MC NO. 946 OF 2024

CRIME NO.794/2018 OF NOORANADU POLICE STATION, ALAPPUZHA

IN S.C. NO.1089 OF 2022 OF FAST TRACK SPECIAL COURT, CHENGANNUR

PETITIONER/2ND ACCUSED:

RAJESH GOPALAKRISHNAN
AGED 50 YEARS
VRINDAVANAM, KEEZHILLAM P.O., ERNAKULAM DIST,
PIN - 683541
BY ADVS.
P.CHANDY JOSEPH
C.K.VIDYASAGAR

RESPONDENTS/STATE & COMPLAINANTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 STATION HOUSE OFFICER
NOORNADU POLICE STATION, ALAPPUZHA DISTRICT, PIN - 690504
- 3 XXXXXXXXXXXX
XXXXXXXXXX

SR PP - RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
02.07.2024, THE COURT ON 17.07.2024 PASSED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 17th day of July, 2024**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’ for easy reference), by the petitioner, who is the 2nd accused in S.C. No.1089/2022 on the files of the Fast Track Special Court, Chengannur, seeking the following relief:

On the grounds enumerated here in above and on other grounds this Hon'ble Court may be pleased to quash annexure 29 (Final Report submitted by the Nooranadu Police pursuant to Crime No.794/2018 and pending trial before the Fast Track Special Judge, Chengannur as Session's Case No. 1089/2022) and Annexure 32 Court Charge therein dated 26-08-2023.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor, in detail. Perused the prosecution records including the court charge framed in this case placed as Annexure-32 and also gone through



the decisions placed by the learned counsel for the petitioner viz. ***Thota Venkateswaralu v. State of A.P. and Another*** [2011 KHC 4798 : 2011 (2) KLD 565 : 2011 (9) SCALE 603 : 2011 (3) KLT 909 : AIR 2011 SC 2900 : 2011 (9) SCC 527 : 2011 CriLJ 4925 : 2011 (3) SCC (Cri) 772] and ***Shajan Theruvath v. State of Kerala and Another*** [2018 KHC 350 : 2018 (2) KLJ 925 : 2018 (3) KLT SN 8].

3. Scanning the genesis of the prosecution case, the same runs on the premise that, during the Month of May, 2005, 1st and 2nd accused after sharing common intention to cheat and defraud the defacto complainant taken her to Muscat with offer to provide a job in Muscat. The specific allegation is that, the 1st accused approached the defacto complainant and offered to provide nursing job to her. Thereafter, she along with the 1st accused went to Surat in this regard. But, she did not participate any interview there. It is alleged that during her stay in Surat, the 1st accused subjected the defacto complainant to rape and ill treated her after threatening her. Later, she left Surat and went to Dubai and Kuwait and was employed



there for about ten years. Though, she had no connection with the 1st accused after 2005, on a day during the month of April, 2018 the 1st accused approached the defacto complainant and offered to provide another job in Muscat. Although, the defacto complainant was not amenable for the suggestion of the 1st accused, since she had no confidence in him, the defacto complainant agreed for the offer as she had loan arrears to be cleared and she faced recovery proceedings during the relevant time. Thus, because of the compulsion of the 1st accused, she agreed to go to Muscat. Accordingly, she was given the job of a house maid at the house of the 2nd accused and she was offered Rs.35,000/- as salary.

4. The statement of the defacto complainant further is that, while the defacto complainant had been working as a house maid at the house of the 2nd accused, the 2nd accused subjected her to rape on two days during night after threatening her that she was brought in Muscat for the said purpose and the endeavor made by the defacto complainant to rescue herself went in vain. She informed the same to the 1st accused, but he did not help her and he



encouraged the defacto complainant to continue there and co-operate with the 2nd accused. But, the defacto complainant could not tolerate the sexual assault and thus she was forced to leave the job. Accordingly, on 12.06.2015 she was sent back to India. This is the basis on which the prosecution alleges commission of offences punishable under Sections 366, 370, 370(A)(2), 354(A)(1)(ii), 354(A)(2), 376(2)(K)(N), 506(1), 420 read with 34 of IPC.

5. The learned counsel for the petitioner raised two specific contentions while seeking quashment of the entire proceedings, inclusive of Annexure.A32 charge. According to the learned counsel for the petitioner, the petitioner, who has been running business and providing employment to many persons in Muscat, bonafidely given employment to the defacto complainant and when the defacto complainant was not satisfied with the job provided, she was eager to return back and in such endeavor she had foisted this case without any iota of truth. He also submitted that, soon after departure from Muscat, the defacto complainant again went abroad within a short period. Thus, it is argued that the story of rape alleged against the petitioner is a cooked



up tale leveled for the purpose of recusal, at the instance of the defacto complainant, to go to another country. Accordingly, it is argued that the entire case as against the petitioner is baseless and the same would require quashment.

6. Secondly, the learned counsel for the petitioner argued that, if at all the entire allegations are taken together, the overt acts alleged at the instance of the petitioner was happened in Muscat and no overt acts could be seen to be committed by the petitioner in India from the prosecution records. Therefore, even though, upto the stage of cognizance, sanction of the Central Government is not necessary, in order to proceed with the trial, sanction of the Central Government as provided under Section 188 of Cr.P.C. is necessary. It is also pointed out that, in this matter, charge framed and trial started without obtaining sanction and in such view of the matter also the entire proceedings are liable to be quashed.

7. Whereas, the learned Public Prosecutor strongly opposed the quashment on two grounds raised by the learned counsel for the petitioner and submitted that going



by the prosecution allegations, the genesis of the prosecution case itself is inside India and therefore sanction provided under Section 188 of Cr.P.C. is not necessary. Decision reported in ***Sartaj Khan v. State of Uttarakhand*** [2022 LiveLaw (SC) 321] has been placed in support of this plea.

8. He also pointed out the decision of this Court rendered thereafter reported in ***Darvin Dominic v. State of Kerala*** [2024 KHC OnLine 482].

9. In **Thota Venkateswaralu's** case (supra) cited by the learned counsel for the petitioner, it is held that, *the language of S. 188 CrPC is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal's case (supra), it was held that sanction under S.188 CrPC is not a condition precedent for taking cognizance of an offence and, if need be, it could be*



obtained before the trial begins. Upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to S. 188 CrPC. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required. It may also be indicated that the provisions of the Indian Penal Code have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of S.4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the Indian Penal Code, subject to the limitation imposed under the proviso to S.188 CrPC.

10. In paragraph No.8 of the said decision, the Apex Court considered another question, as extracted hereunder:



8. The question which we have been called upon to consider in this case is whether in respect of a series of offences arising out of the same transaction, some of which were committed within India and some outside India, such offences could be tried together, without the previous sanction of the Central Government, as envisaged in the proviso to S.188 CrPC ?

11. While answering the said question, the Apex Court observed in paragraph No.9 as under:

From the complaint made by the Respondent No.2 in the present case, it is clear that the cases relating to alleged offences under S.498 - A and 506 IPC had been committed outside India in Botswana, where the Petitioner and the Respondent No.2 were residing. At best it may be said that the alleged offences under S.3 and S.4 of the Dowry Prohibition Act occurred within the territorial jurisdiction of the Criminal Courts in India and could, therefore, be tried by the Courts in India without having to obtain the previous sanction of the Central Government. However, we are still left with the question as to whether in cases where



the offences are alleged to have been committed outside India, any previous sanction is required to be taken by the prosecuting agency, before the trial can commence.

12. Anyhow, the legal position as regards to the necessity of sanction for an offence committed fully outside India is concerned, the same is now well settled. In **Sartaj Khan's** case (supra) [Three Bench decision], the Apex Court considered the requirement under Section 188 of Cr.P.C. While answering the question, the Apex Court held in paragraph Nos.13 and 14 as under:

13. In terms of Section 188, even if an offence is committed outside India, (a) by a citizen whether on the high seas or anywhere else or (b) by a non-citizen on a ship or aircraft registered in India, the offence can still be tried in India provided the conditions mentioned in said Section are satisfied. The Section gets attracted when the entirety of the offence is committed outside India; and the grant of sanction would enable such offence to be enquired into or tried in India.

14. As the facts and circumstances of



the case indicate, a part of the offence was definitely committed on the soil of this country and as such going by the normal principles the offence could be looked into and tried by Indian courts. Since the offence was not committed in its entirety, outside India, the matter would not come within the scope of Section 188 of the Code and there was no necessity of any sanction as mandated by the proviso to Section 188. We, therefore, reject the first submission advanced by Mr. Sharma.

13. Adverting to the ratio in **Sartaj Khan's** case (supra), the ratio in **Shajan Theruvath's** case (supra) rendered by this Court, holding the view that, *even if the transaction was effected partially in India and partially outside India, sanction under S.188 of the Cr.P.C. is required*, runs contra to the ratio in **Sartaj Khan's** case (supra) and the same is not a good law to be followed.

14. On analysing the allegations in this case, it is emphatically clear that the prosecution has a definite case that, after sharing common intention between the 1st and 2nd accused, to cheat and defraud the defacto complainant,



so as to make her available to have forceful sexual intercourse with the 2nd accused, the 2nd accused arranged visa through the 1st accused and accordingly she was taken to Muscat on the guise of providing a job of a house maid. It was thereafter she came to know about the fact that she was cheated and brought at the house of the 2nd accused with intention to have sexual intercourse with the 2nd accused after sharing common intention to do so by the 1st and 2nd accused. Thus, it appears that, as per the prosecution allegations and as per the charge framed by the Court against accused Nos. 1 and 2, offences punishable under Sections 366, 370, 370(A)(2), 354(A)(1) (ii), 354(A)(2), 376(2)(K)(N), 506(1), 420 read with 34 of IPC have been partly committed in India and partly abroad. If so, applying the ratio in **Sartaj Khan's** case (supra) in order to proceed with the trial, sanction provided under Section 188 of Cr.P.C. is not necessary in the facts of this particular case. Therefore, the challenge in this regard on the ground of want of sanction would not yield.

15. Though, it is argued by the learned counsel for the petitioner further that, the allegations against the



petitioner is a cooked up tale leveled for the purpose of refusal of the defacto complainant from the job provided by the 2nd accused and to go in search of a profitable job, the prosecution materials no way disclose such a case. Therefore, the said contention can be taken in aid by the petitioner during trial.

16. Overall evaluation of the materials as discussed herein above would indicate that this is a matter where quashment cannot be considered restraining the prosecution from adducing evidence in support of the allegations, since the allegations positing commission of very serious offences are made out, *prima facie*. Further, sanction provided under Section 188 of Cr.P.C. is not necessary to proceed with the trial of this matter.

17. Therefore, this is not a fit case for quashment. Accordingly, this petition stands dismissed.

Registry is directed to forward a copy of this order to the trial court, within three days, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE



APPENDIX OF CRL.MC 946/2024

PETITIONER ANNEXURES :

- Annexure 27** TRUE PHOTO OF THE ORDER DATED 03.09.2019
IN BAIL APPLICATION NO.6351/2019 OF THIS
HON'BLE HIGH COURT OF KERALA
- Annexure 30** TRUE PHOTO COPY OF THE CRL.MP NO.
102/2023 IN S C NO.1089/2022 FILED UNDER
SECTION 227 OF CR.P.C DATED 24/02/2023
OF THE FAST TRACK, SPECIAL JUDGE,
CHENGANNUR
- Annexure 31** TRUE PHOTO COPY OF ORDER IN CRL.M.P
NO.102/2023 IN S C NO.1089/2023 DATED ON
21/06/2023 OF THE FAST TRACK, SPECIAL
JUDGE, CHENGANNUR

RESPONDENTS' ANNEXURES : NIL