

XXX Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Nov. 22, 2024

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 482
Indian Penal Code, 1860 â€” Section 376, 376(2)(n)

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: K.Siju, S.Abhilash, Anjana Kannath, M P Prasanth, Muhammed Rafi

Final Decision: Allowed

Judgement

A. Badharudeen, J

1. This criminal miscellaneous case has been filed under Section 482 of the Code of Criminal Procedure, by the accused in S.C.No.1069/2022 on the

files of Additional Sessions Court-III, Kollam arising out of Crime No.586 of 2020 of Kulathupuzha Police Station, Kollam, seeking to quash Annexur

A1-FIR, Annexure-A2 final report and all further proceedings pursuant thereto.

2. The prosecution allegation is that the accused with intention to subject the defacto complainant to sexual intercourse and to satisfy his lust had

sexual intercourse with the defacto complainant on a day during March, 2017 at the uncle's house of the accused, against her will. Thereafter

threatening disclosure of the said overt act, he repeated the same and thereby committed offences punishable under Sections 376 and 376(2)(n) of the

Indian Penal Code.

3. While canvassing quashment of the proceedings, the learned counsel for the petitioner pointed out settlement of the case in between the accused

and the defacto complainant referring to Annexure-A3 affidavit sworn by the defacto complainant, dated 19.06.2023. Accordingly it is submitted that

quashment sought for on the ground of settlement is liable to succeed. Apart from that the learned counsel for the petitioner submitted that if the

quashment sought on the ground of settlement could not be allowed, then also the quashment is liable to succeed since the defacto complainant, who is

a married woman having 2 children during the subsistence of her legal marriage had developed relationship with the accused and they had a long

cohabitation as part of consensual relationship where the petitioner also is a married person. It is also submitted that no promise of marriage would

sustain in the facts of this case, since both parties are married during the entire period of their relationship. The learned counsel for the petitioner

placed decisions reported in [2022 ICO 2322 : 2022 (6) KLT 832], Tino Thankachan v. State of Kerala and another; [2022 ICO 526], XXX v.

State of Kerala & another; [2023 ICO 687], Vishnu & others v. State of Kerala and others and [2012 (4) KLT 108 (SC)], Gian Sing v. State of

Punjab to substantiate this contention.

4. Whereas the learned Public Prosecutor vehemently opposed quashment of the proceedings acting on the affidavit filed by the defacto complainant

on the submission that serious offences like rape could not be settled merely acting on the affidavit. The learned Public Prosecutor also submitted that

even otherwise, on merits also the quashment would not succeed since the defacto complainant gave statement that during the month of March, 2017

when she reached the uncle's house of the accused in connection with repair works of the office, the accused forcefully subjected her to sexual

intercourse resisting her attempt to escape. Thereafter when the defcto complainant attempted to inform the same to her son, he restrained the same

offering to look after her. Thereafter, also she had repeated sexual intercourse with the defacto complainant. Therefore, this is a case in which the

offence of rape is fully made out.

5. On perusal of the prosecution records, including the statements of the victim, it is discernible that both parties are married and having spouses at the

time of their relationship as stated by the defacto complainant in her FIS that she made acquaintance with the accused while she was working as

Accountant in Annapoorna poultry farm, Kulappuzha and used to have constant telephone calls and messages.

6. In this case the allegation against the accused is that the accused, with intention to subject the defacto complainant to sexual intercourse and to

satisfy his lust, had sexual intercourse with the defacto complainant on a day during March, 2017 at the uncle's house of the accused against her will.

Thereafter threatening disclosure of the said overt act, he repeated the same and thereby committed offences punishable under Sections 376 and

376(2)(n) of the Indian Penal Code. Thus it is discernible that even though during 2017 the defacto complainant was subjected to sexual intercourse

against her will by the accused, she did not complain the same and continued the relationship considering him in the status of her husband. She also

lived along with the accused for a period of about 2 ½ years and she delivered a child. Thus it appears that the relation is purely consensual, where

the defacto complainant at present has no grievance and Annexure A3 affidavit sworn by her has been filed in support of settlement.

In the result, this Criminal Miscellaneous Case stands allowed. Annexure-A1 FIR in C.rime No.586/2020 of Kulathupuzha Police Station, Kollam

District, against the petitioner stands quashed.