

(2024) 11 KL CK 0128

High Court Of Kerala

Case No: Criminal Miscellaneous Petition No. 4049 Of 2022

Moosa.M.A

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Nov. 27, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 482
- Indian Penal Code, 1860 - Section 376(2)(n), 420, 427, 506(i)

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: M.Sasindran, M.P.Prasanth

Final Decision: Dismissed

Judgement

A. Badharudeen, J

1. This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash Annexure AII Final Report

in C.P.No.198/2021 on the files of the Judicial First Class Magistrate Court-I, Kasaragod, arose out of Crime No.101/2020 of Kasaragod Police

Station. The petitioner herein is the accused in the above case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor. No representation for the de facto complainant.

3. In this matter, prosecution alleges commission of offences punishable under Sections 376(2)(n), 420, 506(i) and 427 of the Indian Penal Code. The

prosecution allegation is that, the accused, who is a distant relative of the husband of the de facto complainant, offered the de facto complainant an

employment in Dubai and accordingly, she was taken to Dubai on 1.2.2018. Thereafter, he failed to provide a permanent job and finally, a temporary job was provided. When she got salary therefrom, the accused obtained Rs.1 Lakh and failed to return the same. The further allegation is that, while the de facto complainant was employing at a saloon as a temporary staff, the accused brought her to one of his friend's house for taking food. Thereafter, she was given a juice and thereby, she became in a feeble stage, but she was not unconscious. At this stage, she was subjected to rape by the accused and when she cried, he replied that those were normal practices. Again, the accused called her to go out and when she refused, he sent a nude photo of the de facto complainant and threatened her to accompany him, unless the nude photo would be published and accordingly, on threatening her, she was subjected to rape again. As on 20.11.2018, she returned back to native place. Then, she demanded Rs.1 Lakh received by the accused and also Rs.6 Lakh earlier given for starting a saloon shop. The accused did not return the money. Accordingly, on recording the statement of the de facto complainant on 12.2.2020, this crime was registered.

4. While pressing for quashment, it is submitted by the learned counsel for the petitioner that, after reading the statement of the de facto complainant, her husband and her brother, it could be gathered that the de facto complainant accompanied the accused for employment purpose and they stayed there. Thereafter, the de facto complainant returned back and demanded Rs.7 Lakh from the accused. Since the accused did not owe any money, he refused to pay the same and accordingly, this crime was registered. It is also pointed out that, going by the statements of the husband of the de facto complainant and her brother, it has been disclosed that, an illicit relationship in between the de facto complainant and the accused was known to them and accordingly, the wife of the accused left his company. Accordingly, the learned counsel pressed for quashment of this crime for want of primary materials to see commission of the above offences and on the assertion that sexual intercourse, if any, is the outcome of consent.

5. While opposing quashment, the learned Public Prosecutor has given much emphasis to the FIS to contend that, though the de facto complainant

accompanied the accused anticipating a job and resided there by doing a temporary job, the allegation of sexual assault, for the first time, was committed after giving a juice to her and made her in a feeble stage to heed the needs of the accused. Therefore, the offences alleged would attract, prima facie.

6. Going by the facts of this case, the prosecution allegation is that, the accused, who is a distant relative of the husband of the de facto complainant, offered the de facto complainant an employment in Dubai and accordingly, she was taken to Dubai on 1.2.2018. Thereafter, he failed to provide a permanent job and finally, a temporary job was provided. When she got salary therefrom, the accused obtained Rs.1 Lakh and failed to return the same. The further allegation is that, while the de facto complainant was employing at a saloon as a temporary staff, the accused brought her to one of his friend's house for taking food. Thereafter, she was given a juice and thereby, she became in a feeble stage, but she was not unconscious. At this stage, she was subjected to rape by the accused and when she cried, he replied that those were normal practices. Again, the accused called her to go out and when she refused, he sent a nude photo of the de facto complainant and threatened her to accompany him, unless the nude photo would be published and accordingly, on threatening her, she was subjected to rape again. As on 20.11.2018, she returned back to native place. Then, she demanded Rs.1 Lakh received by the accused and also Rs.6 Lakh earlier given for starting a saloon shop. The accused retracted therefrom.

Accordingly, on recording the statement of the de facto complainant on 12.2.2020, this crime was registered.

7. Going by the allegations, the first instance of sexual intercourse is according to the de facto complainant, after giving a juice, which made her in a feeble stage, though not unconscious. Thereafter, the accused continued the same by using nude photo of the de facto complainant by threatening her on stating that the nude photo would be published, if she would not heed the demand of the accused.

8. Here, the accused brought the de facto complainant, offering her a job and when she reached Dubai, she was in dire need of the absolute

assistance of the accused to survive there. It is at this juncture, she was subjected to rape after administering juice, which made her in a feeble stage

and the further allegation of sexual intercourse is the outcome of threat, by using the nude photo of the de facto complainant. That apart, there is

specific allegation that the accused cheated the de facto complainant and failed to provide facilities to start a saloon, though it was agreed upon.

Therefore, prima facie, it could not be held that there is no offence of rape or there is no element of threat made out prima facie and the ingredients to

attract the offences alleged are made out prima facie, warranting trial.

In such view of the matter, quashment sought for is liable to fail. However, the petitioner/accused can prove his innocence by raising his contentions

raised herein before the trial court, as per law.

Holding so, this Crl.M.C. stands dismissed.

The interim order of stay granted by this Court, stands vacated.

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