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**(2024) 10 KL CK 0091**

**High Court Of Kerala**

**Case No:** Criminal Miscellaneous Petition No. 3660 Of 2024

Subhash

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision:** Oct. 17, 2024

**Acts Referred:**

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

**Hon'ble Judges:** A. Badharudeen, J

**Bench:** Single Bench

**Advocate:** R.N.Sandeep, B.Muhammed Shaheel, Keerthi Vijayan, Aruvi P.S., Jyothi R. Nair, Renjit George

**Final Decision:** Dismissed

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**Judgement**

A. Badharudeen, J

1. This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure to quash Annexure A1 FIR and all further

proceedings in Crime No.10/2024 of Vellarada Police Station, Thiruvananthapuram. The petitioner herein is the sole accused in the above case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the available documents.

3. The prosecution allegation is that the accused herein, who is a civil police officer and a friend of the husband of the defacto complainant, used to

visit the house of the husband of the defacto complainant during her stay at the matrimonial home and thereafter, he used to send messages through

Instagram and thereby motivated the defacto complainant to call him. Pursuant to that, the accused used to call the defacto complainant from his

mobile phone to her mobile phone. While so, on a day during the last week of July, 2023 at about 4 pm, the accused reached her house, in the absence

of her husband, and subjected her to sexual intercourse and he continued the same as on 26.12.2023. The further case is that when this matter was

detected by her husband, the accused, who was aged 34 years, given assurance to the defacto complainant, aged 22 years, to look-after her.

Accordingly, the prosecution alleges commission of offences punishable under Sections 376, 376(2)(n) and 506(i) of the Indian Penal Code.

4. During investigation, the accused was granted bail by this Court as per order in B.A.No.165/2024. On his surrender, medical examination was

conducted and the matter investigated. As per report dated 07.05.2024, the Investigating Officer, Vellarada Police Station filed final report in this

matter. Since it is revealed during investigation that the petitioner, being a civil police officer, bound to obey the law, intentionally violated the law and

committed rape on the defacto complainant, the learned Public Prosecutor opposed quashment of the FIR on the said ground after filing final report.

5. According to the learned counsel for the petitioner, the allegation as to commission of rape by the accused would not succeed since the relationship

as well as the sexual intercourse are the outcome of consent.

6. The learned Public Prosecutor supported the report of the Investigating Officer and submitted that whether the relationship is consensual or not is a

matter, which would require evidence and therefore quashment cannot be considered.

7. In this matter, offence of rape alleged against the police officer is the subject matter of investigation. The investigation has not completed, so as to

find out whether the same is a consensual relationship or not. Therefore, quashing the FIR at the initial stage of investigation would cause prejudice to

the prosecution as well as to the defacto complainant and in such a case, quashment of FIR could not be considered. Therefore, this petition must fail

and is accordingly dismissed.

Interim order of stay stands vacated.

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