

## Basheer Vs Kerala State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 20, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 82, 83

Indian Penal Code, 1860 â€” Section 376

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3(1)(xii), 3(2)(v)

**Hon'ble Judges:** G.Girish, J

**Bench:** Single Bench

**Advocate:** R.Sudhish, M.Manju, Sangeetharaj N R

**Final Decision:** Dismissed

### Judgement

G.Girish, J

1. The petitioner is the accused in L.P.No.27/2017 on the files of the Judicial First Class Magistrate Court, Mannarkad. The above case was re-

numbered from C.P.No.130/2013 which was registered on the basis of the final report filed by the Deputy Superintendent of Police, Agali, in Crime

No.19/2011 of Agali Police Station. The offence alleged against the petitioner are under Section 376 Indian Penal Code, 1860, and Sections 3(1)(xii),

3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The accusation against the petitioner is that by offering the false promise of marriage, he indulged in sexual relationship with an Adivasi lady from

01.03.1995 to 01.07.1997 and impregnated her, leading to the birth of a baby girl on 05.04.1997. The offence came to light during the course of the anti

human traffick drive undertaken in Attapadi area of Palakkad District during the year 2011 at the instance of the Rural District Police Chief. The

victim gave a statement to the Sub Inspector of Police, Agali, that the petitioner got acquainted with her when he came to the Adivasi hamlet where

she was residing, for the collection of medicinal herbs. It was stated by the victim that she used to travel along with the petitioner who was closely

associated with her cousin in the collection of medicinal herbs. According to the victim, the petitioner had indulged in sexual intercourse with her under

the promise of marriage from 1995 onwards. It is also stated that the petitioner and the victim had resided together at the place called Tirur in

Malappuram District for a period of more than 1½ years. According to the victim, she was brought back to her residence by the petitioner during the

seventh month of pregnancy, and that the petitioner had met the expenses of the treatments related to her delivery. However, according to the victim,

the petitioner who left her after three months from the date of her delivery, did not return or take care of her and her baby. It is on the basis of the

above statement of the victim that the crime was registered. The investigation was taken over by the Deputy Superintendent of Police, Agali, who

later on laid the final report alleging the commission of the aforesaid offences. As the petitioner did not appear before the learned Magistrate, coercive

steps were initiated against him. Finding that the presence of the petitioner could not be procured even after steps under Sections 82 & 83 of Code of

Criminal Procedure, 1973, the case was transferred to the Long Pending Register.

3. In the present petition, the petitioner would contend that the inordinate delay in the registration of the crime has not been explained by the

prosecution, and that the victim failed to identify the house where she is said to have resided along with the petitioner, for about 1½ years. It is also

stated that the petitioner is bedridden due to paralysis for the past several years and that he is not able to stand, walk or speak. It is the further

contention of the petitioner that he was found to be incapable of performing sexual act in the potency test conducted at General Hospital,

Changanacherry on 23.08.2013. Another challenge raised by the petitioner against the maintainability of the prosecution is that there is no legal

sanctity for the identification of the petitioner by the victim.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

5. It is true that there had been inordinate delay exceeding 16 years in the registration of this crime. But, the background of the case about the

circumstances under which the case has been registered would go to show that the aforesaid delay which occasioned in the registration of the crime

cannot be considered as a fatal aspect vitiating the procedures initiated in this regard. It is to be borne in mind that the victim in this case come from

the marginalised sections of the society from a remote Adivasi hamlet of Attapadi in Palakkad District, and that it was only at the time when the anti

human traffick drive initiated by the District Rural Police reached the place of residence of the victim that she got the opportunity, for the first time, to

reveal the crime perpetrated upon her, to the authorities concerned. Having regard to the above peculiar facts and circumstances of the case, the

delayed registration of the crime cannot be taken as a ground to terminate the proceedings against the petitioner.

6. The failure of the victim to identify the house where she resided for about 1½ years along with the petitioner at the place called Tirur, also cannot

be pointed out as a reason to disbelieve her version. It is seen from the case records that the victim had given additional statements to the Investigating

Officer that she was not able to identify the above house since numerous other buildings had come up there during the past 15 years. So also, the

challenge raised by the petitioner against his identification by the victim cannot be considered as sustainable since it cannot be expected that the victim

might have concocted a false story and wrongly implicated the petitioner herein as the person who gave false promise of marriage to her and indulged

in sexual relationship for a prolonged period giving rise to the birth of a girl child.

7. As regards the negative finding in the potency test conducted on the petitioner on 23.08.2013, it cannot be stated as a circumstance disproving the

accusations against him since the sexual acts leading to the registration of this crime took place during the period from 1995 to 1997. Since the

petitioner is admittedly suffering from paralysis and related ailments, there is absolutely nothing unusual in getting a negative result in the potency test

conducted upon him in the year 2013.

8. It is true that the Investigating Officer has reported in obedience to the directions of this Court in the orders passed on 29.05.2019 & 26.06.2019

that the petitioner is bedridden due to paralysis and that he is not in a position to stand up or perform his basic needs. However, the above physical

condition of the petitioner cannot be taken as a ground to quash the proceedings against him in a crime of this nature. It is for the Trial Court to decide

the course to be adopted to proceed with the trial, in view of the physical condition of the petitioner who is reported to be unable to stand up or walk.

As a conclusion to the above discussion, I find that the prayer in this petition to quash the proceedings pending before the Judicial First Class

Magistrate Court, Mannarkad, in L.P.No.27/2017, cannot be allowed.

In the result, the petition is hereby dismissed. It is made clear that the observations in this order are made solely for the purpose of this petition, and

that it cannot be considered in any other proceedings of this case as findings against the petitioner.