



2024:KER:62688

Cr1.M.C.No.401/2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 12TH DAY OF AUGUST 2024 / 21ST SRAVANA, 1946

CRL.MC NO. 401 OF 2020

CRIME NO.828/2018 OF Irinjalakuda Police Station, Thrissur

PETITIONER/ACCUSED:

ABDUL JALEEL, AGED 54 YEARS
S/O. MUHAMMED, NADUVILAKATH HOUSE,
ERİYAD DESOM, IRINJALAKUDA, THRISSUR RURAL.

BY ADVS.
A.RANJITH NARAYANAN
SMT.A.SIMI

RESPONDENTS/STATE AND VICTIM:

1 STATE OF KERALA,
REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, REPRESENTING THE SHO, IRINJALAKUDA
POLICE STATION, THRISSUR - 680 125.

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BY ADV K.K.RAZIA FOR R2
PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
01.08.2024, THE COURT ON 12.08.2024 PASSED THE FOLLOWING:

**“C.R”****A. BADHARUDEEN, J.**=====
Crl.M.C No.401 of 2020
=====*Dated this the 12th day of August, 2024***ORDER**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C' for short), by the sole accused in Crime No.828/2018 of Irinjalakuda Police Station seeking the following reliefs:

(1) *Call for the original of Annexure A3 Final Report in Crime No.828/2018 of Irinjalakkuda Police Station and all further records leading to it and pursuant thereto, peruse the same hear the petitioner and quash the said Annexure A3 Final Report, Annexure A1 F.I.R and all further proceedings in the same crime.*

(2) *To pass such orders and directions as may be necessary to secure the interest of justice and to prevent abuse of process of law.*

(3) *To grant such other and appropriate relief/reliefs as the petitioner may pray for from time to time and which this Hon'ble Court deems fit and proper to grant in the interest of justice*



(4) *To effectively mould the remedy and grant such relief/reliefs as the ends of justice demands..”*

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

3. The prosecution allegation is that at about 11 a.m on 13.03.2016, the accused herein, who was the Assistant Secretary of Vellangallur Grama Panchayat, subjected the defacto complainant, who also was an employee of the said Panchayat, to rape when she reached the office. On this background prosecution alleges commission of offence punishable under Section 376(2)(b)(n) of IPC, by the accused.

4. The learned counsel for the petitioner argued that the allegations are false. According to him, if at all the allegation in the matter of sexual intercourse is found to be having force, the same is the outcome of consent. He has placed Annexures A4 and A5, copy of agreements entered into between the parties, to contend that the petitioner was implicated in this crime to get money from him. It is submitted fervently that the prosecution case herein is manifestly attended with *mala fides* and is intended to wreak vengeance against the petitioner and, therefore, the same is liable to be quashed.



5. The learned Public Prosecutor vehemently opposed quashment of the crime merely on the basis of Annexure-A4 and A5 agreements on the submission that those agreements would in no way efface the allegations of the prosecution, so as to quash the proceedings where prosecution materials would *prima facie* show that the accused herein committed offence punishable under Section 376(2)(b)(n) of the Indian Penal Code ('IPC' for short)

6. In view of the rival submissions, I have gone through the FIS given by the defacto complainant which led to registration of this crime. The defacto complainant would say that she was married and living separately from her husband for the last 23 years. While she was working as an employee of the Vellangallur Panchayat office, the accused compelled her to do job along with him and disturbed her from doing her assigned job. Accordingly, she lodged complaint to the Secretary and the Secretary responded that in an office all works to be done. At 11 a.m on 13.03.2016 on a Sunday, she was brought to the office to clear some urgent work. When she reached the office, the accused taken her to the office room forcefully and subjected her to sexual intercourse despite her



resistance and she escaped therefrom. She did not disclose the same due to fear and when she felt pain she met Doctor at K.J.Hospital, Kodungalloor, and the accused therein offered to marry her. Thereafter, on the promise of marriage, he continued the sexual assault.

7. In so far as the incident on 13.03.2016, the same could not be held as one arose out of consent, *prima facie*, as rightly pointed out by the learned Public Prosecutor. Therefore, this is a matter where trial is necessary so as to permit the prosecution to adduce evidence.

8. Coming to Annexures-A4 and A5, pointed out as aid to quash the proceedings, its legality is a matter of discussion. That is to say, what is the stature of an agreement executed to settle public offence/offences such as murder, rape and atrocities against children?

9. In this context it is relevant to refer Section 23 of the Contract Act, which reads as under:

“Section 23 says that the consideration or object of the agreement is unlawful if it “is fraudulent”. If the plaintiff cannot make out his case except through an immoral transaction to which he was a party, he must fail. An agreement to pay a certain sum of money to a prostitute for cohabitation is void.”

10. In the decision reported in [1991 KHC 1046], ***Union Carbide Corporation and Ors. v. Union of India & Ors.***, the Constitution



Bench of the Apex Court dealt with the nature of contract with unlawful consideration in paragraph 60 and held specifically as under, after referring to earlier decisions of the Apex Court on this point:

“60. Besides as pointed out by this court in **Narasimha Raju v. V.Gurumurthy Raju** [1963 (3) SCR 687 : AIR 1963 SC 107], the consequence of doctrine of stifling of prosecution is attracted, and its consequences follow where a “person sets the machinery of criminal law into action on the allegation that the opponent has committed a non compoundable offence and by the use of this coercive criminal process he compels the opponent to enter into an agreement, that agreement would be treated as invalid for the reason that its consideration is opposed to public policy.” (See page 692 (of SCR) : (at p.109 of AIR) of the report). In that case this court further held that the doctrine applies “when as a consideration for not proceeding with a criminal complaint, an agreement is made, in substance it really means that the complainant has taken upon himself to deal with his complaint and on the bargaining counter he has used his non prosecution of the complaint as a consideration for the agreement which his opponent has been induced or coerced to enter into.” (Emphasis added). These are not the features of the present case.”

11. In the decision reported in [1967 KHC 38 : 1965 KLT 19 : 1966 KLJ 730 : AIR 1967 Ker. 51 : 1967 KLR 323], **Parameswaran Pillai v. Kudamanoor Regional Service Cooperative Society**, this Court considered the essential requirement of an agreement to stifle prosecution



and the required factors, in order for Section 23 of the Contract. In paragraphs 8 and 9, this Court held as under:

“8. *The revisional authority, it is said, proceeded on the basis that the agreement to stifle prosecution must be seen from the face of the agreement. This also, it is said, is a clear mis-conception of law. I am inclined to accept this argument and I am supported by very high authority in coming to the conclusion that there is mis-conception of law. The Judicial Committee of the Privy Council had occasion to consider both these aspects as to whether at the time of the execution of an agreement there should have been a prosecution in existence in order that the mischief of S.23 of the Contract Act may be attracted and also the further question as to whether it must be seen from the agreement itself that it was for stifling prosecution. The decision is in **Kamini Kumar Basu and others v. Birendra Nath Basu and another** (reported in AIR 1930 Privy Council 100) and the relevant passage is this:*

*“It may quite well be that a prosecution only commences after a summons is issued, and that before that stage is reached a complainant cannot be said to have dropped a prosecution under Code: see **Golap Jan v. Bholanath** (1911 38 Cal 380). Their Lordship are not called upon to express any opinion on this point, nor are they doing so. The real question involved in this appeal on this part of the case is whether any part of the consideration of the reference or the ekrawama was unlawful, and not whether any prosecution within the meaning of the Criminal Procedure Code had been started or dropped. If it was an implied term of the reference or the ekrarnama*



*that the complaint would not be further proceeded with, then in their Lordships' opinion the consideration of the reference or the ekrarnama as the case may be, is unlawful: see **Jones v. Merionethshire Permanent Benefit Building Society (1892) 1 Ch. 173**) and the award or the ekrarnama was invalid, quite irrespective of the fact whether any prosecution in law had been started."*

9. *In regard to the other aspect as to whether an agreement to compound a non compoundable offence or an agreement to stifle prosecution must be seen from the face of the agreement, Their Lordship observed:*

"In a case of this description it is unlikely that it would be expressly stated in the ekrarnama that a part of its consideration was an agreement to settle the criminal proceedings. It is enough for the defendants to give evidence from which the inference necessarily arises that part of the consideration is unlawful."

*To the same effect is the observation of this Court in **Catholic Union Bank Ltd. v. Poulo** (reported in 1959 KLT 777).*

"Remembering that such an agreement will seldom be set out on paper and perhaps will more often than not be only an implied one, the Court will always have a difficult task in arriving at a decision on the point."

Justice Raman Nayar termed a case in which such an agreement is seen on the face of the document 'a very rare one'.

"This is one of those very rare cases where an agreement to stifle prosecution is set out on paper, for, the very mortgage deed on which the claim is based expressly



states that the mortgage was executed by the 1st respondent for the sum or Rupees 2,400/- misappropriated by his son, the 3rd respondent, and as a compromise of the police prosecution pending against the latter.” (1960 KLJ 111).”

Thus it is well settled law that any agreement or contract would be void for the reason that if its consideration is opposed to public policy. In the same manner, contract or agreement for withdrawing from prosecution is nothing but stifling the prosecution involving public offence and the same also is opposed to public policy.

12. Having gone through Annexures A4 and A5 agreements placed to support the settlement in between the defacto complainant and the accused, the same are intended for stifling the prosecution in a serious offence of rape. Therefore, the same are illegal and cannot be considered as the sole basis to quash the proceedings.

13. In view of the above discussion, the prayer in this petition is liable to be dismissed. Hence this Crl.MC stands dismissed.

14. Interim order, if any, granted, shall stand vacated.



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

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



APPENDIX OF CRL.MC 401/2020

PETITIONER' S ANNEXURES

- ANNEXURE A1** CERTIFIED COPY OF THE FIR DATED 23.11.2018 ALONG WITH THE FIS IN CRIME NO.828/2018 OF IRINJALAKUDA POLICE STATION.
- ANNEXURE A2** TRUE COPY OF THE ORDER IN B.A.NO.8146/2018 DATED 11.12.2018 PASSED BY THIS HONOURABLE COURT.
- ANNEXURE A3** CERTIFIED COPY OF THE FINAL REPORT.
- ANNEXURE A4** TRUE COPY OF THE AGREEMENT DATED 25.6.2018 ENTERED INTO BETWEEN THE PETITIONER AS THE SECOND PARTY AND THE HUSBAND OF THE DE FACTO COMPLAINANT AS THE FIRST PARTY.
- ANNEXURE A5** TRUE COPY OF THE AGREEMENT DATED 22.10.2018 ENTERED INTO BETWEEN THE 2ND RESPONDENT/VICTIM AS THE FIRST PARTY AND THE PETITIONER/ACCUSED AS THE SECOND PARTY.
- ANNEXURE A6** TRUE COPY OF THE F.I.R DATED 16.6.2018 IN CRIME NO.428/2018 OF MATHILAKAM POLICE STATION.