

HIGH COURT OF KERALA**Bench: The Honorable Mr. Justice Gopinath P.****Date of Decision: December 21, 2023**

CRL.MC NO. 10966 OF 2023

CRIME NO.622/2023 OF Cheruthuruthy Police Station'

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vs

STATE OF KERALA**Sections, Acts, Rules, and Articles mentioned in the judgment:**

Sections 354, 354A(1)(i), 354-D(1)(i), 376, 376(2)(n) of the Indian Penal Code
Sections 4(2), 3(a), 6, 51, 8, 7, 10, 91, 12, and 11(iv) of the Protection of
Children from Sexual Offences Act (Amended), 2012, 2019
Section 482 of the Code of Criminal Procedure (Cr.P.C.)

Subject of the Judgment:

The judgment pertains to the quashing of criminal proceedings against the petitioner who was charged with multiple offenses under the Indian Penal Code and the Protection of Children from Sexual Offences Act. The case involves allegations of sexual abuse and withdrawal from a proposed marriage, with subsequent developments including the grant of interim bail and the solemnization of the marriage.

Headnotes

Criminal Proceedings – Quashing of charges – Accused charged with offenses under Sections 354, 354A(1)(i), 354-D(1)(i), 376, 376(2)(n) of the Indian Penal Code and Sections 4(2), 3(a), 6, 51, 8, 7, 10, 91, 12 and 11(iv) of the Protection of Children from Sexual Offences Act (Amended), 2012, 2019 – Allegations of sexual abuse and withdrawal from a proposed marriage – Grant of interim bail during the previous proceedings [Para 3-5]

Marriage After Arrest – Marriage solemnized between the petitioner and the defacto complainant/2nd respondent/victim during the course of proceedings – Marriage certificate presented as evidence [Para 5]

Quashing of Proceedings – Considering the settlement between the accused and the victim and the subsequent marriage, the court exercises its jurisdiction under Section 482 of Cr.P.C. to quash all further proceedings against the petitioner in Crime No.622 of 2023 [Para 7]

Conclusion – Criminal Misc. Case allowed, and all further proceedings quashed [Para 7]

Referred Cases:

- Vishnu v. State of Kerala [2023 (4) KHC 1]

Representing Advocates:

For the petitioner/accused: Anand Kalyanakrishnan, C. Dheeraj Rajan

For the respondents/state & defacto complainant: Sri G. Sudheer, PP, Sri Abraham Mathan

ORDER

The petitioner is the accused in Crime No.622 of 2023 of Cheruthuruthy Police Station, Thrissur District, which is registered alleging commission of offences under Sections 354, 354A(1)(i), 354-D(1)(i), 376, 376(2)(n) of the Indian Penal Code and Sections 4(2), 3(a), 6, 51, 8, 7, 10, 91, 12 and 11(iv) of the Protection of Children from Sexual Offences Act (Amended), 2012, 2019.

2. The allegation against the petitioner is that the petitioner developed an intimacy with the defacto complainant/2nd respondent/victim and sexually abused her on several occasions and also engaged in sexual intercourse with her. It is further alleged that though an engagement ceremony was conducted regarding the marriage between the petitioner and the defacto complainant/2nd respondent/victim, the petitioner subsequently withdrew from the marriage proposal and thereby he committed the offences alleged against him.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is absolutely innocent in the matter. It is submitted that following the arrest of the petitioner in connection with the crime registered against him, the petitioner had approached this Court by filing Bail Application No.10223 of 2023, in which this Court through order dated 21.11.2023 had granted interim bail to the petitioner, finding as follows:

“Petitioner is the accused in Crime No.622/2023 of Cheruthuruthy police station, Thrissur district, alleging commission of offences under Sections 354, 354A(1)(i), 376 and 376(2)(n) of the Indian Penal Code and Sections 4(2) r/w5(l), Section 8 r/w Section 7, Section 10 r/w section 9(1), Section 12 r/w. Section 11(iv) of Protection of Children from Sexual Offences Act. 2. Allegation against the petitioner is that, on the false promise of marriage, the petitioner had sexual relationships with the de facto complainant/victim (at a time when the victim was a minor) and thereafter, withdrew from the promise of marriage and thereby, he committed the offences alleged against him. 3. When this matter is taken up for consideration today, learned counsel appearing for the petitioner would submit that actually the petitioner got engaged with the de facto complainant/victim and thereafter, on account of some differences of opinion, the petitioner had withdrawn from the promise of marriage. It is submitted that this prompted the de facto complainant to file a complaint leading to registration of Crime No.622/2023 of Cheruthuruthy police station, containing the above allegations against the petitioner. It is submitted that the petitioner and the de facto complainant/ victim have decided to get married and reference is made in this regard to Annexure 1 affidavit executed by the de facto complainant/victim. 4. Heard the learned Public Prosecutor and the learned counsel appearing for the de facto complainant/victim. Learned counsel appearing for the de facto complainant/victim submits that the petitioner and the victim have decided to

get married to each other and the de facto complainant/victim stands by the contents of Annexure 1 affidavit executed by her on 08.11.2023.

5. Having considering the submissions as above, I am of the view that the petitioner can be granted interim bail till 21.12.2023. The petitioner has been in custody from 27.10.2023. Accordingly, the petitioner is granted interim bail in Crime No.622 of 2023 of Cheruthuruthy police station, Thrissur District till 21.12.2023, subject to the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional court;

(ii) The petitioner shall report before the Investigating Officer in Crime No.622 of 2023 of Cheruthuruthy Police Station as and when called upon to do so; (iii) The petitioner shall not interfere with the investigation, influence or intimidate the de facto complainant/victim or any witness in Crime No.622 of 2023 of Cheruthuruthy Police Station;

(iv) The petitioner shall not involve in any other crime while on bail;

(v) The petitioner shall not leave the State of Kerala during the currency of interim bail and he shall surrender his passport before the court concerned on the date of execution of the interim bail bond. If the petitioner has no passport, he shall file an affidavit to that effect, instead of surrendering passport, on the same day.

If any of the aforesaid conditions are violated, the Investigating officer in Crime No.622 of 2023 of Cheruthuruthy, may file an application before this Court for cancellation of bail.”

It is submitted that following the grant of interim bail, the petitioner was released from custody and the marriage between the petitioner and the de facto complainant/2nd respondent/victim was solemnized on

29.11.2023. It is submitted that Annexure-2 is the marriage certificate issued by the Desamangalam Grama Panchayath on 08.12.2023, evidencing the marriage between the petitioner and the de facto complainant/2nd respondent/victim. It is submitted that in such circumstances, further proceedings against

the petitioner in Crime No.622 of 2023 may be quashed, following the law laid down by this Court in **Vishnu v. State of Kerala** [2023 (4) KHC 1].

4. The learned Public Prosecutor submits that, no statement has been recorded from the defacto complainant/2nd respondent/victim and she has stated that she has no subsisting grievance against the petitioner.

5. The learned Counsel appearing for the defactocomplainant/2nd respondent/victim would submit that marriage has been solemnized between the petitioner and the 2nd respondent/defacto complainant/victim and the 2nd respondent/defacto complainant/victim has no further grievance in the matter.

6. Having heard the learned counsel for the petitioner, learned Public Prosecutor and the learned Counsel appearing for the 2nd respondent/defacto complainant/victim, I am of the opinion that, the proceedings against the petitioner can be quashed, following the law laid down in **Vishnu** (Supra). This Court in **Vishnu** (Supra) held as follows:-

“19. There is yet another category of cases where though the victim alleged that the sexual assault or rape was forceful or against her will, later, they settled the dispute, got married and led a peaceful life. In most of those cases, the victim admits that the allegation of rape was levelled only because the accused refused to marry her. Allowing prosecution to continue in those cases would only result in the disturbance of their happy family life. On the contrary, the closure of such a case would promote their family life. In such cases, the ends of justice demand that the parties be allowed to compromise. However, the Court must ensure that the marriage is not a camouflage to escape punishment and the consent given by the victim for compromise was voluntary. The Court must also be satisfied after considering all the facts and circumstances of the case that quashing the proceedings would promote justice for the victim and the continuation of the proceedings would cause injustice to her.

22. The High Court of Madras [Vijayalakshmi &Anr. V. State & Anr. (Crl.O.P.232/21 decided on 27.01.2021)], while quashing a criminal proceeding initiated under the POCSO Act on the ground of settlement between the accused and the victim held that punishing an adolescent boy for entering a relationship with a girl below 18

years of age was never an objective of this act. “What came to be a law to protect and render justice to victims and survivors of child abuse can become a tool in the hands of certain sections of the society to abuse the process of law.”, it added. The High Court of Calcutta [Ranjit Rajbanshi V. The State of West Bengal and Others (C.R.A No.458 of 2018, decided on 17/9/2021] acquitted an accused, holding that a voluntary joint act of sexual union would not attract offence under the POCSO Act. The court held that “penetration” as defined under the POCSO Act must mean a “positive, unilateral act” on the part of the accused, and consensual participatory intercourse, in view of the passion involved, need not always make penetration by itself, a unilateral positive act of the accused but might also be a union between two persons out of their own volition. The Court was considering an appeal where the accused, aged 22, was convicted under Section 376(1) of the IPC and Section 4 of the POCSO Act by the trial Court. The accused took the defence that the victim, aged 16½ years, gave her consent for the act and had admitted her relationship with him. The High Court of Allahabad [Atul Mishra V. State of Uttar Pradesh (CrI.Misc.Bail Application No.53947 of 2021 decided on 25.01.2022] while granting bail to a man booked under the POCSO Act for impregnating a 14-year-old girl, said that the law didn’t intend to bring cases of dense romantic affairs between adolescents or teenagers under its aegis.

23. It is settled that though a minor is not qualified to enter into a contract, it could be the beneficiary of one. In other words, a parent or guardian is competent to contract on behalf of the minor if it is in its best interest. Section 320(4) of Cr. P.C. says that if the person entitled to compound an offence is minor or lunatic, any person competent to contract on their behalf can compound such an offence on their behalf. Under Rule 7 of Order XXXII of the Code of Civil Procedure, a next friend or guardian of the minor, with the leave of the Court, can enter into an agreement or compromise on behalf of the minor with reference to the suit in which he acts as next friend or guardian. The term ‘best interest of the child’ generally refers to the deliberation courts undertake when deciding what services, actions, and orders best serve a child. Article 3.1 of the United Nations Convention on the Rights of the Child, 1989, states that in all decisions concerning children that are made by public or private

social protection institutions, courts, administrative authorities or legislative branches, the child's best interest must be a vital consideration. 'Best interest' determinations are generally made by considering several factors, with the child's safety and wellbeing as the paramount concern. As per Section 2(9) of the Juvenile Justice (Care and Protection of Children) Act, 2015, 'best interest of the child' means the basis for any decision taken regarding the child to ensure fulfilment of its basic rights and needs, identity, social well-being, and physical, emotional, and intellectual development. Thus, while dealing with the petitions moved by the parent or guardian of the sexual assault victims to quash the criminal proceedings on the ground of compromise, the court must consider whether the allegations prima facie constitute the ingredients of the offence, whether the settlement is in the best interest of the minor victim and whether continuance of the proceedings against the accused and the participation of the minor victim in that proceedings would adversely affect the mental, physical, and emotional well-being of the latter."

26. These are the broad principles to be borne in mind while considering the plea to quash criminal proceedings involving non-compoundable sexual offences based on compromise. However, every case is unique and must be decided based on its peculiar facts. The viability of quashing a criminal proceeding on the ground that the accused and the sexual assault victim settled the dispute revolves ultimately around the facts and circumstances of each case, and no straitjacket formula can be formulated. Apart from the categories of cases discussed above, where the High Court has such facts on record which clearly exhibit that the criminal prosecution involving noncompoundable sexual offences against women and children will result in greater injustice to the victim, its closure would only promote her well-being, and the possibility of a conviction is remote, it can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach and very well decide to quash such proceeding upon a compromise between the accused and the victim after taking into account all the relevant facts and circumstances of the particular case including the nature, magnitude, consequences of the crime and genuineness of the compromise. Needless to emphasize, the

sexual offences which are grave, heinous, and gruesome in nature shall never be the subject matter of compromise.”

This is also a case, where the continuance of proceedings against the petitioner will be prejudicial to the victim as well. Moreover, even going by the First Information Statement of the 2nd respondent/defacto complainant/victim, an engagement ceremony had been conducted in connection with the then proposed marriage between the petitioner and the 2nd respondent/defacto complainant/victim and the complaint came to be filed only on account of the fact that the petitioner had thereafter withdrawn from the marriage proposal. Annexure-2 will show that the marriage between the petitioner and the 2nd respondent/defacto complainant/victim has been solemnized.

7. Taking the above facts cumulatively into consideration and being in respectful agreement with the view taken by this Court in **Vishnu** (Supra), the proceedings against the petitioner in Crime No.622 of 2023 of Cheruthuruthy Police Station, Thrissur District, can be terminated in exercise of the jurisdiction vested with this Court under Section 482 of Cr.P.C.

Accordingly, the CrI.M.C. is allowed. All further proceedings in Crime No.622 of 2023 of Cheruthuruthy Police Station, Thrissur District will stand quashed as against the petitioner.

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APPENDIX OF CRL.MC 10966/2023

PETITIONER ANNEXURES

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| ANNEXURE
1 | CERTIFIED COPY OF FIR IN CRIME NO.622 OF 2023
OF
CHERTHURUTHY POLICE STATION, THRISSUR
DISTRICT
(SEALED COVER) |
| ANNEXURE
2 | TRUE COPY OF CERTIFICATE OF MARRIAGE DATED
18.11.2023 ISSUED BY DESHAMANGALAM GRAMA
PANCHAYATH
(SEALED COVER). |
| ANNEXURE
3 | AFFIDAVIT SWORN IN BY 2ND RESPONDENT
EVIDENCING THE
FACTUM OF SETTLEMENT DATED 10.12.2023
(SEALED COVER). |