



2026:KER:67526

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2026 / 16TH BHADRA, 1948CRL.MC NO. 4652 OF 2026

CRIME NO.219/2026 OF Vazhakulam Police Station, Ernakulam

PETITIONER/ACCUSED:

ZAHID SHANAVAS
AGED 35 YEARS
S/O SHANAVAS P.A., PRESENTLY RESIDING IN NADAKKAL,
VENGALLOOR P.O., THODUPUZHA, IDUKKI, PIN - 685584

BY ADVS.
SRI.RAMEEZ NOOH
SMT.FATHIMA K.
SMT.ANJANA S. RAJ
SMT.KRISHNENDU K.V.
SMT.JENNA SUSAN BAJI
SHRI.MUHAMMED SAVAD

RESPONDENTS/STATE AND DE FACTO COMPLAINANT:

- 1 STATE OF KERALA
THROUGH THE STATION HOUSE OFFICER,
VAZHAKKULAM POLICE STATION, ERNAKULAM
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX

BY ADVS.
SRI.K.N.MUHAMMED THANVEER
SRI.P.RAFTHAS
SMT. MEGHA K.XAVIER, SR. PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
01.09.2026, THE COURT ON 07.09.2023 PASSED THE FOLLOWING:

**“C.R.”****ORDER**

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “the BNSS”) by the sole accused in Crime No.219 of 2026 of Vazhakkulam Police Station, registered alleging commission of offences punishable under Sections 69 and 316(2) of the Bharatiya Nyaya Sanhita, 2023 (for short, “the BNS”), seeking an order quashing the First Information Report and all further proceedings arising therefrom.

2. The prosecution case, in brief, is that during the first week of February 2026, at a hotel at Kothamangalam and, on another day during the same month, inside a room at Munnar, and thereafter at the house of the accused at Vengalloor and at the house of the de facto complainant, the accused had sexual intercourse with the de facto complainant after promising to marry her. Subsequently, on 11.03.2026, the marriage engagement ceremony of the de facto complainant with the accused was solemnized, and thereafter both of them started living together as husband and wife. It is further alleged that, after the accused came to know that the de facto complainant was two months pregnant, he asked her to abort the child and thereby cheated her.

3. Heard Sri. Rameez Nooh, the learned counsel appearing for the



petitioner, Sri.Raftas P., the learned counsel appearing for the 2nd respondent and Smt. Megha K. Xavier, the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner submitted that Annexure A1 FIR was registered by the police in a mechanical manner, though the allegations contained therein do not disclose the essential ingredients of the offences alleged. According to the learned counsel, even from the First Information Statement (for short, "the FIS") itself, it is evident that the sexual intercourse was taken place with the consent of the de facto complainant and that such consent cannot, on the allegations as they stand, be said to have been obtained by employing any deceitful means or by making promise to marry the de facto complainant without any intention of fulfilling the same. It was further submitted that, at the time when the relationship between the petitioner and the de facto complainant developed and when the alleged sexual intercourse initially took place, the de facto complainant was a married woman, and her husband was alive. On these premises, the learned counsel for the petitioner contended that the allegations in the FIR, even if accepted in their entirety, do not constitute the offences alleged and that the proceedings are therefore liable to be quashed.

5. Per contra, the learned counsel appearing for the 2nd respondent/de facto complainant submitted that the accused had obtained the consent of the survivor for sexual intercourse by making a promise to



marry her, without any intention of fulfilling such promise, and therefore the ingredients of an offence under Section 69 of the BNS are clearly attracted. It was further submitted that, although the survivor was a married woman when she initially came into contact with the petitioner and when the sexual relationship commenced, she subsequently obtained a divorce from her husband. According to the learned counsel, in the circumstances, the survivor had sufficient reason to believe the promise made by the petitioner that he would marry her.

6. The learned Public Prosecutor also supported the submissions made by the learned counsel appearing for the second respondent/survivor and submitted that the present case is not one warranting exercise of the inherent jurisdiction of this Court for quashing the FIR and the further proceedings pursuant thereto.

7. Before considering the rival submissions, it is necessary to bear in mind the scope of the inherent jurisdiction of this Court under Section 528 of the BNSS. The said provision corresponds to Section 482 of the Code of Criminal Procedure, 1973. The inherent power of the High Court to quash criminal proceedings is extraordinary in nature and is required to be exercised sparingly, cautiously and in appropriate cases, particularly where such exercise is necessary to prevent abuse of the process of law or otherwise to secure the ends of justice.



8. One of the well-recognised grounds for exercising such jurisdiction is where, even if the allegations contained in the complaint or the First Information Statement are taken at their face value and accepted in their entirety, they do not disclose the commission of any offence or do not make out a case against the accused. At the same time, while exercising jurisdiction under Section 528 of the BNSS, this Court is not expected to undertake a meticulous examination of the evidence, assess its probative value, or conduct a mini-trial.

9. The scope of enquiry in a petition seeking quashing of criminal proceedings is, therefore, limited to examining whether the allegations, on a plain reading and in conjunction with the materials available on record, disclose the essential ingredients of the offences alleged. If the allegations give rise to disputed questions of fact which require appreciation of evidence, such matters are ordinarily to be left for determination by the competent trial court after a full-fledged trial.

10. Keeping the above principles in mind, while reverting to the case at hand, it can be seen that the crime was registered on the basis of the statement given by the de facto complainant to the police on 07.05.2026. A bare perusal of the FIS given by the de facto complainant, which led to the registration of the said case, itself reveals that the earlier instances of alleged sexual intercourse between the petitioner and the de facto complainant



occurred in February 2026. The FIS further states that thereafter they repeatedly engaged in sexual intercourse, both inside the house of the accused and inside the house of the de facto complainant. It is also specifically stated that the de facto complainant consented to the sexual intercourse on the premise that the accused had promised to marry her. However, a significant aspect emerging from the FIS itself is that the de facto complainant obtained a divorce from her legally wedded husband only in March 2026. Thus, at the time when the relationship between the petitioner and the de facto complainant developed and when the sexual relationship initially commenced, the de facto complainant was admittedly a married woman and her marriage had not been dissolved by a decree of a competent court.

11. In the aforesaid factual background, the allegation that the de facto complainant consented to the sexual relationship solely on the basis of a promise of marriage made by the petitioner cannot be believed. The FIS does not contain any specific allegation that, at the time of the initial sexual relationship, the petitioner was aware that the de facto complainant had already instituted proceedings for divorce before the Family Court. Equally, there is no allegation in the FIS that the petitioner had promised to marry the de facto complainant after she obtained a divorce from her then legally wedded husband. The mere existence of a promise to marry, without the



necessary factual foundation to establish that such promise was false from its inception and that it had a direct nexus with the consent for the sexual act, would not, by itself, be sufficient to attract Section 69 of the BNS.

12. In the present case, the circumstances narrated in the FIS indicate that the relationship between the petitioner and the de facto complainant developed while she was still married and while her husband was alive. The alleged sexual relationship was not confined to a single isolated occurrence. The FIS itself refers to their repeated sexual intercourse at different places, including a hotel at Kothamangalam, a room at Munnar, the house of the accused and the house of the de facto complainant.

13. The allegations, therefore, prima facie indicate a continuing relationship between two consenting adults. The fact that the de facto complainant subsequently obtained a divorce from her husband and thereafter became engaged to the petitioner on 11.03.2026 may be relevant to the subsequent course of their relationship; however, such subsequent events cannot, by themselves, establish that the consent allegedly given at the initial stage of the relationship was obtained by deceitful means or pursuant to a false promise of marriage made without any intention to fulfil it.

14. The distinction between a false promise to marry and a subsequent failure to fulfil a promise to marry is well settled. For the purpose



of attracting criminal liability on the ground that consent was vitiated by a false promise of marriage, there must be a foundational allegation and material indicating that the promise was false at the very inception and that the promise had a direct nexus with the woman's decision to engage in the sexual relationship. A subsequent failure to marry, by itself, cannot retrospectively render consensual sexual intercourse an offence.

15. In ***Mahesh Damu Khare v. State of Maharashtra*** (2024 (7) KHC 460), the Hon'ble Supreme Court held, inter alia, that where a physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the relationship was purely on account of the alleged promise of marriage. Unless it is shown that the physical relationship was entered into purely because of the promise of marriage and that there was a direct nexus between the promise and the sexual relationship, it cannot be said that the consent stood vitiated on account of a misconception of fact.

16. In the case at hand, the de facto complainant was a married, mature woman when the relationship with the petitioner commenced. At that stage, her husband was alive, and no decree of divorce had been obtained from a competent court. The FIS itself discloses that she travelled with the petitioner to different places, including Munnar, and that the sexual relationship continued on several occasions and at different locations. She



also visited the house of the accused, while the accused visited her house, and sexual intercourse is alleged to have taken place at both places.

17. In such circumstances, and in the absence of any specific allegation that the petitioner knew about the pending divorce proceedings or had promised to marry the de facto complainant after the dissolution of her existing marriage, it is difficult to accept, even on a prima facie reading of the FIS, that the consent for the alleged sexual relationship was obtained by the petitioner by employing deceitful means or by making a false promise of marriage without any intention of fulfilling the same.

18. It is also relevant that the exercise of jurisdiction under Section 528 of the BNSS does not require this Court to determine whether the allegations are ultimately true or false. The question is whether, assuming the allegations in the FIS to be true in their entirety, the essential ingredients of the offences alleged are made out. On such an examination, the allegations in the present case do not disclose ingredients to attract an offence under Section 69 of the BNS.

19. The same reasoning applies to the allegation under Section 316(2) of the BNS. The allegation that, after learning about the pregnancy, the accused asked the de facto complainant to abort the child, coupled with the allegation that he thereby cheated her, does not, in the absence of the necessary factual ingredients, disclose the commission of the offence alleged



under the said provision. The mere use of the expression "cheated" in the FIS cannot, by itself, constitute the offence unless the essential statutory ingredients are disclosed by the factual allegations.

20. Thus, even if the allegations contained in the FIS are taken at their face value and accepted in their entirety, the same do not disclose the essential ingredients necessary to attract the offences punishable under Sections 69 and 316(2) of the BNS. Continuation of the criminal proceedings in such circumstances would not serve any useful purpose and would amount to permitting a prosecution to continue notwithstanding the absence of the foundational ingredients of the alleged offences.

21. In the result, this Court is of the view that the present case falls within the parameters warranting exercise of the inherent jurisdiction under Section 528 of the BNSS. Accordingly, all further proceedings in Crime No.219 of 2026 of Vazhakkulam Police Station, including the FIR and the proceedings pursuant thereto, are hereby quashed.

Accordingly, this Criminal Miscellaneous Case is allowed.

Sd/-
JOBIN SEBASTIAN
JUDGE

ANS