

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 6TH DAY OF OCTOBER 2022 / 14TH ASWINA, 1944

CRL.MC NO. 9201 OF 2019

(FIR NO.401/2019 OF PERAMANGALAM POLICE STATION ON THE FILE
OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMKULAM)

PETITIONER:

SREEKANTH SASIDHARAN
AGED 33 YEARS
S/O. SASIDHARAN NAIR, HAVING ADDRESS AT ASHIAMI,
28/1136A, VIVEK NAGAR, KADAVANTHRA P O, ERNAKULAM.

BY ADVS.
LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.SURESH SUKUMAR
SRI.V.S.SHIRAZ BAVA
SRI.P.VIJAYA BHANU (SR.)

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM, PIN-682031.
- 2 STATION HOUSE OFFICER,
PERAMANGALAM POLICE STATION,
THRISSUR, PIN-680545.
- 3 STATION HOUSE OFFICER,
KADAVANTHRA POLICE STATION,
MARKET ROAD, KADAVANTHRA, , PIN-682020.

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4 VICTIM

BY ADVS.
SR GOVERNMENT PLEADER SMT.T.V.NEEMA
SRI.S.SREEKUMAR (SR.)
SMT.M.B.SHYNI
SRI.DEEPAK RAJ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27.9.2022, THE COURT ON 6.10.2022 PASSED THE FOLLOWING:

O R D E R

Dated this the 6th day of October, 2022

This Cr1.M.C has been filed to quash Annexure A1 FIR in Crime No.401/2019 of Peramangalam Police Station u/s 482 of the Code of Criminal Procedure (Cr.P.C.).

2. The petitioner is the accused. The 4th respondent is the victim/defacto complainant. The offences alleged against the petitioner are punishable under Sections 406, 420 and 376 of IPC.

3. The prosecution case, in short, is that during the period between 2010 to 31st March 2019, the petitioner, by giving a false promise of marriage to the 4th respondent, had sexual intercourse with her in several places in India and abroad and thereby committed the offence of rape. It is further alleged that during the period of their good relationship, the petitioner dishonestly induced the 4th respondent to deliver an amount of ₹15,00,000/- and five sovereigns of gold and committed the offence of cheating and criminal breach by not returning the money and gold.

4. I have heard Sri.Lal K.Joseph, the learned counsel for the petitioner, Sri.S.Sreekumar, the learned Senior Counsel for the 4th respondent and Smt.T.V.Neema, the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner Sri.Lal K.Joseph submitted that the criminal proceedings in Annexure A1 FIR has been initiated against the petitioner falsely and maliciously with an ulterior motive and not based on real facts. The counsel further submitted that the allegations made in Annexure A1(a) FI statement together with the materials collected during investigation, even if taken at their face value, do not *prima facie* constitute any offence or did not make any case against the petitioner. Per contra, Sri.S.Sreekumar, the learned Senior Counsel for the 4th respondent submitted that Annexure A1(a) FI statement discloses serious allegations of sexual assault against the petitioner and that it is impermissible to quash criminal proceedings u/s 482 of Cr.P.C when there are serious triable allegations in the complaint. The learned Senior Public Prosecutor Smt.T.V.Neema submitted that the ingredients of the offences alleged are attracted and when a *prima facie* case is made out,

the jurisdiction vested with this court u/s 482 of Cr.P.C cannot be invoked.

6. The scope and ambit of the power by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/investigation has been expounded by the Apex Court in a catena of decisions. In ***Kurukshetra University v. State of Haryana*** (1977 KHC 711), the Apex Court observed and held that inherent powers under Section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. In ***State of Karnataka v. L. Muniswamy and Others*** [(1977) 2 SCC 699], considering the scope of inherent power of quashing under S.482, the Apex Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it concludes that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in

the interest of justice and that the ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. In ***Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others*** [(1988) 1 SCC 692], it was held that while exercising inherent power of quashing under S.482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where in the opinion of the Court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings. In the celebrated decision ***State of Haryana v. Bhajan Lal*** (1992 KHC 600), the Apex Court considered in detail the scope of the High Court's powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the

proceedings without allowing the investigating agency to complete its task. At the same time, the Court identified the following cases in which FIR/complaint can be quashed:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or

complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In ***Rukmini Narvekar v. Vijaya Satardekar and Others*** (2009 KHC 240), it was observed that the width of the powers of the High Court under S.482 of the Cr.P.C and under Art.226 of the Constitution of India was unlimited and that the High Court could make such orders as may be necessary to prevent abuse of the process of any Court, or otherwise to secure the ends of justice. It was further observed that under S.482 of the Cr.P.C, the High

Court was free to consider even material that may be produced on behalf of the accused to arrive at a decision. Recently in ***M/s.Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra & Others*** (AIR 2021 SC 1918), it was held that when a prayer for quashing the FIR is made by the alleged accused, the court, when it exercises power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose the commission of a cognizable offence or not. It was further observed that the court is not required to consider on merits whether the merits of the allegations make out a cognizable offence, and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

7. A careful reading of the above-noted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution. However, when it is convinced beyond any manner of doubt that FIR does not disclose the commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law or where a

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criminal proceeding is manifestly attended with *malafides* or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance or that it is necessary to interfere to prevent abuse of the process of the Court, the High Court is entitled to quash the FIR/investigation under the exercise of its wholesome power u/s 482 of Cr.P.C.

8. The learned Senior Public Prosecutor made available to me the entire case diary. A perusal of the case diary would show that the investigation has reached a fair stage. Almost all the material witnesses were questioned, and their statements were recorded. The statement of the 4th respondent u/s 164 of Cr.P.C was also recorded. Annexure A1(a) FI statement, the statements of the 4th respondent recorded under Section 161 of Cr.P.C as well as under Section 164 of Cr.P.C would show that the petitioner was known to her since August 2010 while she was working as a dance artist in Abu Dhabi Marine Club, UAE. The statement would further show that their relationship continued till 2019, and they had consensual sexual intercourse several times both in Abu Dhabi and at Chennai. According to her, she came to know about the fact that the petitioner was married five to six years before

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(i.e., in 2013-14) from one Mr. Praveen. It was alleged that the petitioner told her that he was separately living for the last more than four months and was moving for divorce, and she continued the relationship, and the petitioner used to visit her residence in Chennai and assured her that he would make a proposal for marriage after some time. Thereafter, she got information from Abu Dhabi that the petitioner was maintaining relationship with some other girls, and hence she backed from the proposal. It was further alleged that thereafter the petitioner threatened her that he would commit suicide and blocked her marriage proposals. It was also alleged that the petitioner came to her aunt's house in Chennai on 29/3/2019 to register the marriage and to tie the knot at the temple. On 30/3/2019, they went to Rajeswari studio and took photos for conducting the marriage on 01/04/2019. On 31/3/2019, she got the photos of the petitioner with other girls from her friends and on knowing about the same, he left for UAE by cheating her. Thus, the statement given by the 4th respondent clearly reveals that she has had a relationship with the petitioner since 2010, and in 2013-14, she came to know that the petitioner was married and fully knowing the same; she continued the

relationship and had sex with him. The statement further reveals that both have decided to marry, and the petitioner's parents had proposed to her as well. She specifically admitted that she withdrew from the marriage as she doubted his morality.

9. Section 375 of IPC, *inter alia*, states that a man commits rape if he has had any form of sexual intercourse with a woman without her consent. Consent is at the centre of the offence of rape. Explanation 2 to Section 375 refers to the form of 'consent'. If we analyze Section 375 of IPC, there is no such mention of the consent obtained under the false promise of marriage. Section 90 of IPC refers to the expression 'consent'. Section 90, though, does not define 'consent', describes what is not consent. It says that 'consent' is not consent if it is given by a person under a misconception of fact and if the person doing the act knows or has reason to believe that the consent was given in consequence of such misconception. Relying on this, the courts have interpreted the word 'consent' in the description 'secondly' under Section 375, i.e., 'without her consent', and held that any consent given under a misconception of fact is vitiated and, therefore, the act becomes an act without consent, thereby

making it rape.

10. In **Uday v. State of Karnataka** {(2003) 4 SCC 46} - which was the first in the line of judgments - the Apex Court held that a false promise to marry cannot come within the ambit of 'misconception of fact' and that the consent given by the woman to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. It was further held that there is no straitjacket formula for determining whether consent given by the woman to sexual intercourse is voluntary or whether it is given under a misconception of fact and that the court needs to look at surrounding circumstances and weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them. However, later, in **Deelip Singh v. State of Bihar** {(2005) 1 SCC 88}, the Apex Court, for the first time, unequivocally held that a false promise to marry falls within the ambit of the description "secondly" of Section 375 i.e. "without her consent". It was held that a representation deliberately made by the accused with a view to elicit the assent

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of the victim without having the intention or inclination to marry her will vitiate the consent given. In ***Pradeep Kumar v. State of Bihar*** {(2007) 7 SCC 413} while reiterating that a promise to marry without anything more will not give rise to the 'misconception of fact' within the meaning of Section 90 of the Evidence Act, clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her will vitiate the consent. The Apex court qualified the proposition that it stated earlier by adding the qualification at the end unless the court can be assured that from the very inception, the accused never really intended to marry her. In ***Deepak Gulati v. State of Haryana*** {(2013) 7 SCC 675} and in ***Dhruvaram Murlidhar Sonar (Dr) v. State of Maharashtra*** (AIR 2019 SC 327), the Apex Court drawing a distinction between rape and consensual sex, observed that the Court must very carefully examine whether the complainant had actually wanted to marry the victim or had *mala fide* motives and had made a false promise to this effect only to satisfy his lust. Drawing distinction between mere breach of a promise and not fulfilling a false promise, it was further observed

that if the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act will not amount to rape and that if the accused had any *mala fide* intention or had clandestine motives, it is a clear case of rape. Again in ***Pramod Suryabhan Pawar v. State of Maharashtra and Another*** {(2019) 9 SCC 608}, the Apex Court held that not every failed promise to marry could lead to a rape charge. The Bench made a distinction between breach of a promise and a false promise, which would lead to 'misconception of fact' vitiating a women's 'consent' in law. It was held that where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a 'misconception of fact' that vitiates the woman's 'consent' under Section 375 (rape) of IPC, on the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it, said the judgment. It emphasized that the 'consent' of a woman with respect to Section 375 must involve an active and

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reasoned deliberation towards the proposed action and to establish whether the 'consent' was vitiated by a 'misconception of fact' arising out of a promise to marry, two propositions must be established, (i) the promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. (ii) the false promise itself must be of immediate relevance or bear a direct nexus to the woman's decision to engage in the sexual act. The Court added that an individual, who makes a reasoned choice to act after evaluating various alternative actions as well as the various possible consequences flowing from such action or inaction, consents to such action. In **Sonu alias Subhash Kumar v. State of Uttar Pradesh** (AIR 2021 SC 1405), while quashing a charge sheet alleging an offence under Section 376 of IPC, the Apex Court observed that if there is no allegation to the effect that the promise to marry given to the victim was false at the inception, no offence of rape has been attracted. Recently in **Shambhu Karwar v. State of Uttar Pradesh** (AIR 2022 SC 3901), the Apex Court held that in a prosecution for rape on the false promise of marriage, the crucial issue to be considered is whether

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the allegations indicate that the accused had given a promise to the victim to marry which at the inception was false and based on which the victim was induced into a sexual relationship. It was further held that the test to exercise power under Section 482 of Cr.P.C is whether the allegation in the FIR discloses the commission of a cognizable offence.

11. The legal position which can be culled out from the judicial pronouncements referred above is that if a man retracts his promise to marry a woman, consensual sex they had will not constitute an offence of rape under Section 376 of the IPC unless it is established that the consent for such sexual act was obtained by him by giving false promise of marriage with no intention of being adhered to and that promise made was false to his knowledge. The prosecution must lead positive evidence to give rise to inference beyond reasonable doubt that the accused had no intention to marry the prosecutrix at all from the very inception.

12. The crucial issue to be considered is whether the allegations indicate that the petitioner had given a promise to the 4th respondent to marry, which at the inception was false and

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based on which the 4th respondent was induced into a sexual relationship. A close reading of Annexure A1(a) FI statement, the statements of the 4th respondent recorded under Section 161 of Cr.P.C and under Section 164 of Cr.P.C would show that the allegation of sexual intercourse allegedly had between the petitioner and the 4th respondent is so vague. According to the 4th respondent, the petitioner committed sexual assault on her at his house in Abu Dhabi, at Radha Park hotel in Chennai and at his residence in Chennai. There is no specific mention of the date, time, and other details of those alleged sexual acts under the pretext of marriage. The materials on record would show that the 4th respondent, upon interrogation, could not identify the hotel Radha Park or the room to support her version. In the report filed by the investigating officer before this court on 18th November 2020, in paragraph 6, it is stated that the investigation team went to Chennai for investigation and to prepare the mahazar of the place of occurrence at Radha Park, Chennai, along with the victim, but could not prepare it as the victim could not remember the date of occurrence, room number where the crime occurred nor could she identify the room at Radha Park. It is further stated

that though available particulars of the accused's stay at Radha Park were collected, she denied the occurrence on those dates for other reasons.

13. As stated already, admittedly, the petitioner and the 4th respondent were in a consensual relationship right from 2010 until 2019. The 4th respondent has also admitted that in the year 2013-14, she came to know that the petitioner was married. Still, she continued the relationship and had sexual intercourse with him. It is stated in Annexure A1(a) that the parents of the petitioner went to the parents of the 4th respondent and made a proposal. It is also revealed that the 4th respondent, after coming to know of some other relationships of the petitioner with other women, decided to withdraw from the marriage. Annexure A1(a) or the statement of the 4th respondent recorded under Sections 161 and 164 would not reveal that the petitioner made any promise with the sole intention to seduce her to indulge in sexual acts. On a perusal of Annexure A1(a) statement, it is apparent that the petitioner had no *mala fide* intention or clandestine motives to conduct the alleged rape under the pretext of marriage. Further, even as per the allegations, it is evident that

the marriage could not be materialised as the 4th respondent withdrew from the marriage, doubting the petitioner's morality and on account of other unforeseen circumstances beyond the control of the petitioner

14. Annexure A6 is the extract of the post uploaded by the 4th respondent on her Facebook account, raising so many allegations against the petitioner. A perusal of the same would show that there is no allegation of any sexual assault or rape against the petitioner. Annexures A7, A7(a) and A8 would show that the petitioner had preferred complaints regarding the said post as early as 12/4/2019, 16/4/2019 and 18/4/2019 against the 4th respondent. It was thereafter that Annexure A1 FIR was registered.

15. Against this backdrop and taking note of the allegations in the FIS as they stand, it is impossible to find the essential ingredients of an offence u/s 376 of IPC. The relationship between the petitioner and the 4th respondent appears to be purely consensual in nature. The relationship, as noted above, was in existence prior to the marriage of the petitioner and continued to subsist thereafter and even after the

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petitioner obtained the divorce. There is no allegation in the FIS that when the petitioner promised to marry the 4th respondent, it was done in bad faith or with the intention to deceive her. The admitted fact that the 4th respondent is having a relationship with the petitioner since 2010 and she continued the relationship knowing about his marriage from 2013 onwards would nullify the story regarding the sexual intercourse on the false pretext of marrying her. The alleged sex can only be termed as one on account of love and passion for the petitioner and not on account of misrepresentation made to her by the petitioner. Therefore, even if the facts set out in the FIS are accepted in totality, no offence u/s 375 of IPC has been made out.

16. With reference to the offence under Section 406 or 420 of IPC, the allegations are so vague. There are absolutely no allegations to attract the ingredients of Sections 406 and 420 of IPC. The only allegation in the FIS is that the petitioner has obtained a total sum of ₹15,00,000/- and five sovereigns of gold ornaments giving a false promise of marriage. There is no allegation that there was an intention to deceive on the part of the petitioner at the time of handing over the money and gold

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ornaments. No fraudulent or dishonest inducement under the pretext of marriage can be revealed to attract the offence under Section 406 or 420 of IPC. Annexure A1(a) statement would reveal that no exploitation had taken place under the pretext of marriage, and there was no fraudulent or dishonest inducement of the 4th respondent by the petitioner to constitute the offence of cheating. In the report submitted by the investigating officer on 30/8/2019, in WP(C) No.22564/2019, it is stated that on investigation, it was found that there was no solid evidence with the victim of the offence of cheating and breach of trust. Hence, offences under Sections 406 and 420 of IPC are also not attracted.

Considering the above findings, I am of the view that no useful purpose will be served by allowing the criminal prosecution against the petitioner to continue. Hence, all further proceedings in Annexure A1 FIR in Crime No.401/2019 of Peramangalam Police Station hereby stand quashed. Cr1.M.C. is allowed as above.

SD/-

DR. KAUSER EDAPPAGATH

JUDGE

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APPENDIX OF CRL.MC 9201/2019

PETITIONER ANNEXURES

- ANNEXURE A1 CERTIFIED COPY OF THE F.I.R 401/2019 OF ERAMANGALAM POLICE STATION, ALONG WITH THE F.I. STATEMENT.
- ANNEXURE A1 (A) CERTIFIED COPY OF THE F.I. STATEMENT.
- ANNEXURE A2 TRUE COPY OF THE PRINT OUT OF THE EVENT LICENSING SYSTEM REVEALING THE 4TH RESPONDENT IS A DANCE ARTIST IN BAR HOTELS AT U.A.E.
- ANNEXURE A3 TRUE COPY OF THE JUDGMENT DATED 15.5.2018 IN OP 942/2018.
- ANNEXURE A3 (A) TRUE COPY OF THE DECREE DATED 15.5.2018 IN OP 942/2018.
- ANNEXURE A4 TRUE COPY OF THE DEPOSIT RECEIPT DATED 4.3.2019.
- ANNEXURE A5 TRUE COPY OF THE RECEIPT DATED 7.12.2018 EVIDENCING THE DEPOSIT OF THE AMOUNT TO K.U. UDISH FOR PROCURING THE DANCE ARTIST.
- ANNEXURE 5 (A) TRUE COPY OF THE RECEIPT DATED 12.12.2018 EVIDENCING THE DEPOSIT OF THE AMOUNT TO K.U. UDISH FOR PROCURING THE DANCE ARTIST.
- ANNEXURE A6 TRUE COPY OF THE EXTRACT OF THE LIBELOUS FACE BOOK POST UPLOADED IN THE WEB BY THE 4TH RESPONDENT.
- ANNEXURE A7 TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT THROUGH EMAIL DATED 12.04.2019.

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ANNEXURE A7 (A)

TRUE COPY OF THE RECEIPT EVIDENCING
ANNEXURE-A7.

ANNEXURE A8

TRUE COPY OF THE EMAIL COMPLIANT DATED
18.4.2019 SENT TO THE 1ST AND 2ND
RESPONDENT.

ANNEXURE A9

TRUE COPY OF THE JUDGMENT DATED 7.5.2019
IN WP (C) 12641/2019.