

**Promise Of Marriage Made To A Married Woman Cannot Become A Basis For Rape Case: Kerala High Court**

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**KAUSER EDAPPAGATH; J.**

**CRL.MC NO. 1819 OF 2019; 22 November 2022**

**TINO THANKACHAN versus STATE OF KERALA**

*(Against the proceedings in Crime No.37/2018 of the Punaloor Police Station – Kollam District)*

*Petitioner / Accused by Adv Mahesh V Ramakrishnan;*

*Respondent / State & Defacto Complainant: Sangeetha Raj-PP*

**ORDER**

This Crl.M.C.has been filed to quash all further proceedings in Crime No.37/2018 of Punaloor Police Station, Kollam District.

2. The petitioner is the sole accused. The 2<sup>nd</sup> respondent is the victim.
3. The offences alleged are punishable under Sections 376, 417 and 493 of IPC.
4. The prosecution case in short is that, the petitioner after giving false promise of marriage sexually assaulted the victim on several occasions at Australia and thereby committed the offence.
5. I have heard Sri. Mahesh V. Ramakrishnan, the learned counsel for the petitioner and Sri.Sangeetha Raj, the learned Public Prosecutor. Even though notice has been served to the 2<sup>nd</sup> respondent, there is no appearance.
6. The learned counsel for the petitioner submitted that even if the entire allegations in the First Information Statement are taken at its face value, no offence under Sections 376, 417 and 493 of IPC had been made out. I went through the First Information Statement. There is absolutely nothing therein to attract the basic ingredients of Sections 376, 417 and 493 of IPC.
7. A reading of the F.I.S. would show that, both the petitioner and the victim are natives of India and they went to Australia. They met through facebook at Australia. The said relationship developed into a love affair and they decided to marry also. But the marriage did not take place. In the meanwhile, on two occasions they had consensual sexual intercourse. According to the 2<sup>nd</sup> respondent, she consented to sex on the promise given by the petitioner that he would marry her. Admittedly, the 2<sup>nd</sup> respondent is a married woman. Of course, she was separated from her husband, but divorce proceedings were going on. Two incidents of sexual act between the petitioner and the 2<sup>nd</sup> respondent are mentioned in the F.I.S. Though in the F.I.S. it is stated that the petitioner forced her to have sexual intercourse with him, on the entire reading of the F.I.S., it is evident that the sexual intercourse was consensual in nature. As stated already, her case is that she consented for sex persuaded by the promise of marriage given by the petitioner. It is settled that, if a man retracts his promise to marry a woman, consensual sex they had would not constitute an offence under Section 376 of IPC unless it is established that 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 [**See Ranjith Vs. State of Kerala, 2022(1) KHC 195**]. It is a case where the victim who is a married woman voluntarily had sex with her lover. She knew pretty well that she cannot enter into a lawful marriage with the petitioner, in as much as she is a married woman.

Recently this Court in **XXX Vs. State of Kerala [2022 KHC 296]** has held that the promise alleged to have been made by the accused to a married woman that he could marry her is a promise which is not enforceable in law. Such an unenforceable and illegal promise cannot be a basis for the prosecution under Section 376 of IPC. Here, no question of promise to marry arise, since, the victim is a married woman and she knew that legal marriage with the petitioner was not possible under the law.

8. Hence, I am of the view that the basic ingredients of Section 376 of IPC are not attracted. There is also nothing on record to attract the ingredients of Sections 417 and 493 of the IPC. There are no ingredients to attract the offence of cheating. There is no case for the 2<sup>nd</sup> respondent that the sex they had was after inducing a belief of lawful marriage.

For the reasons stated above, I am of the view that no purpose will be served in proceeding further with the matter. Hence, all further proceedings in Crime No.37/2018 of Punaloor Police Station, Kollam District stands hereby quashed. The CrI.M.C. is allowed.

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