

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945

CRL.MC NO. 149 OF 2023

(CRIME NO.865 OF 2011 OF ANGAMALI POLICE STATION, ERNAKULAM)

PETITIONER/ACCUSED:

GREIK XAVIER,
S/O.XAVIER MULAPPAMADOM THOMAS,
36/2552, AZAD ROAD, KALOOR P O,
ERNAKULAM, PIN - 682017.

BY ADVS.K.RAKESH ROSHAN
C.VATHSALAN
THUSHARA.V

RESPONDENTS/STATE/COMPLAINANT:

- 1 SUB INSPECTOR OF POLICE , ANGAMALY POLICE STATION,
ANGAMALY.P.O, ERNAKULAM DISTRICT,, PIN - 683572.
- 2 THE DISTRICT SUPERINTEDENT OF POLICE,
(ERNAKULAM RURAL) , RURAL DISTRICT,
ALUVA, ERNAKULAM, PIN - 683101.
- 3 THE SUPERINTENDENT OF POLICE, UTHARA KANNADA
KARWAR, KARWAR DISTRICT,
KARANATAKA STATE, PIN - 581301.
- 4 MARY, PUTHUSSERIL HOUSE, NAYATHODE, KAVARAPARAMBU,
ANGAMALY, ERNAKULAM, PIN - 683572.
- 5 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031.

BY PP-SRI.N.R.SANGEETHARAJ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25.08.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

"C.R."

ORDER

The petitioner, the accused in FIR No.865 of 2011 of Angamaly Police Station, seeks to quash all further proceedings pursuant to the registration of the crime.

2. The petitioner is alleged to have committed an offence punishable under Section 498-A r/w Section 34 of the Indian Penal Code.

3. Heard both sides.

4. The petitioner was the husband of respondent No.4. A child was born in their wedlock. While they were living together, a difference of opinion arose in 2011. Respondent No.4 filed a complaint against the petitioner and others, which formed the basis of registration of the crime by the Angamaly Police on 9.6.2011. There were other matrimonial cases pending between the petitioner and respondent No.4. They settled the entire dispute in the presence of mediators. They filed a joint petition as O.P.No.283/2014 seeking divorce before the Family Court, Ernakulam. Their marriage was dissolved as per Annexure-3 judgment dated 19.8.2014.

5. Based on the agreement entered into between the parties, payments were made by the petitioner to respondent No.4 and his child towards maintenance and other expenses. All other litigations were closed based on the settlement arrived at between the parties.

6. Respondent No.4 filed a petition before the Station House Officer, Angamaly, requesting to close the matter in view of the settlement. However, it was informed that, as per Annexure-6, the CD file was forwarded to the Superintendent of Police, Karwar, Karnataka, as the place of occurrence is within the territorial limits of Mundgod Police Station, Karnataka.

7. The crime was registered based on a complaint filed by respondent No.4 in June, 2011. Respondent No.1 registered FIR on 9.6.2011. The parties arrived at a settlement and thereby resolved their entire disputes, which is evident from Annexures-1 to 5. The marriage between the petitioner and respondent No.4 was dissolved by a decree of divorce in O.P.No.283 of 2014 on 19.8.2014. Respondent No.4 thereafter filed an application before respondent No.1 requesting to close the entire proceedings. The petitioner and respondent No.4 had no information regarding the further proceedings in the FIR

registered against the petitioner and others. When the petitioner approached the Regional Passport Officer, Cochin, for the issuance of a passport, as per Annexure-8, he was informed that he was the accused in FIR.No.865/2011 of Angamaly Police Station.

8. The learned Public Prosecutor submitted that no final report has so far been submitted against the petitioner in Crime No.865/2011 of Angamaly Police Station.

9. Speedy investigations and trial are mandated by the letter and spirit of the provisions of the Code and the constitutional protection enshrined in Article 21 of the Constitution.

10. The Honourable Apex Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure, but the procedure should be 'reasonable, fair and just'; and therefrom flows, without doubt, the right to speedy trial. It was also observed that no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. The Apex Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the

fundamental right to life and liberty enshrined in Article 21 (See **Maneka Gandhi v. Union of India and Another [(1978) 1 SCC 248]**, **Hussainara Khaton and Others v. Home Secretary, State of Bihar [(1980) 1 SCC 81]**).

11. In **Abdul Rehman Antulay and Others v. R.S.Nayak and Another [(1992) 1 SCC 225]** the Honourable Apex Court again considered the exposition of Article 21 of the Constitution and formulated a comprehensive set of propositions, meant to serve as guidelines, upholding the right to speedy and public trial a constitutional guarantee. Those propositions include the following:

- (i) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;
- (ii) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial;
- (iii) In every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay?;
- (iv) While determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on - what is called, the systemic delays;

- (v) Ultimately, the court has to balance and weigh several relevant factors - 'balancing test' or 'balancing process'- and determine in each case whether the right to speedy trial has been denied;

12. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21 [Vide: **P.Ramachandra Rao v. State of Karnataka (AIR 2002 SC 1856)**].

13. I am of the firm view that no useful purpose is likely to be served by allowing the criminal prosecution based on FIR No.865/2011, the investigation of which commenced twelve years back but reached nowhere, to continue. When the chances of ultimate conviction are very bleak, continuation of prosecution against the accused will result in an abuse of the process of law. (vide: **Manik Taneja v. State of Karnataka [(2015) 7 SCC 423]**). As the parties have settled their entire disputes and the victim does not want to prosecute the matter further, continuation of prosecution against the petitioner will only result in an abuse of the process of law. Therefore,

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the entire proceedings pursuant to the registration of FIR No.865/2011 are liable to be quashed.

In the result, the Crl.M.C. is allowed. All further proceedings against the petitioner pursuant to the registration of FIR No.865/2011 of Angamaly Police Station stand quashed.

Sd/-
K.BABU
Judge

TKS

APPENDIX OF CRL.MC 149/2023

PETITIONER'S ANNEXURES

- Annexure-1 CERTIFIED COPY OF THE COMPLAINT FILED BY 4TH RESPONDENT BEFORE 1ST RESPONDENT.
- Annexure-2 CERTIFIED COPY OF THE FIR REGISTERED BY 1ST RESPONDENT AS CR.865/2011, ON THE BASIS OF ANNEXURE- 1 COMPLAINT.
- Annexure-3 TRUE COPY OF THE JUDGMENT DATED 19/8/2014 IN O.P NO.283/2014 OF FAMILY COURT, ERNAKULAM
- Annexure-4 CERTIFIED COPY OF THE AFFIDAVIT FILED BY PETITIONER HEREIN IN ANNEXURE-3 PROCEEDINGS.
- Annexure-5 CERTIFIED COPY OF THE AFFIDAVIT FILED BY 4TH RESPONDENT HEREIN IN ANNEXURE-3 PROCEEDINGS.
- Annexure-6 TRUE COPY OF THE LETTER DATED 22/6/2011 BY 2ND RESPONDENT TO 3RD RESPONDENT.
- Annexure-7 TRUE COPY OF THE LETTER DATED 2/7/2011 BY 3RD RESPONDENT POLICE INSPECTOR, MUNDOG.
- Annexure 7 (a) ENGLISH TRANSLATION OF ANNEXURE-7.
- Annexure-8 TRUE COPY OF THE LETTER DATED 5/11/2021 CALLING FOR CLARIFICATION RELATING TO ANNEXURE-2 FIR (CR. 865/2011)

TKS