

P.V.KUNHIKRISHNAN, J

B.A.No.7754 of 2020

Dated this the 22nd day of February 2021

O R D E R

The petitioner in B.A. No. 7754/2020 is a Junior Health Inspector, Community Health Centre, Kulathupuzha. Crime No.1438/2020 was registered against him under Sections 323, 506(i), 376, 376(2)(n), 376C(b) of IPC based on a complaint from a lady aged 44. The petitioner was arrested in connection with the above case on 7.9.2020 and he was in custody for 77 days. Subsequently, the defacto complainant took U-turn and filed an affidavit before this Court saying that it was a consensual sexual intercourse. Surprised with the above affidavit, this Court allowed the bail with the following observations.

"5. The petitioner filed two bail applications before this Court. The first bail application was dismissed by this Court on 17.9.2020. Actually on that date I was not inclined to grant bail to the petitioner because of the serious averments in the first information statement given by the victim against the petitioner. In such a situation, the learned counsel for the petitioner requested for withdrawing the bail application. That prayer was allowed.

Thereafter, again the petitioner filed a bail application before this Court and that was also withdrawn on 9.11.2020. On that day also I was not inclined to grant bail because of the seriousness of the case.

6. Now the petitioner produced an affidavit of the victim, which is produced as Annexure A4. It is an affidavit attested by a notary. In the affidavit it is stated like this:

"3. ടി നമ്പർ കേസ് ബന്ധുക്കളുടെ പ്രേരണയെ തുടർന്ന് അപ്പോഴത്തെ മന്നിക്വന്റലിൽ പ്രതികെന്തിരെ കൊടുക്കബൻ ഇടയയിട്ടുള്ളൂ, ഞാൻ പ്രതിയു തമ്മിൽ പരസ്പര സമ്മതപ്രകാരമാണ് ഷെഖികമായി ബന്ധപ്പെട്ടിട്ടുള്ളൂ. ടി നമ്പർ കേസ് പ്രതികെന്തിരെ എനിക്ക് തുടമ്പൻ തൽപ്പര്യമില്ലാത്തതും ആയതിൽ യതെത്വിയ പരപ്രേരണയെ മറ്റു ഇല്ലാത്തതാണ് ടി നമ്പർ കേസിൽ പ്രതികജമ്യം നൽകുന്നതിനും, ടി നമ്പർ കേസ് ഒത്തുതീർപ്പുകുന്നതിനും എനിക്ക് യതെത് വിയ തസ്സങ്ങളും ഇല്ലാത്തതുകുന്നു."

7. I am surprised, after reading this affidavit. The registration of the above case was widely covered by the media in the State. Almost all the people in Kerala knows about this case. The allegation is that a Health Inspector committed rape on a lady when she approached him for getting certificate for Covid-19 negative. After reading the first information statement given by the victim, this Court also refused bail to the petitioner because the allegation in the statement was so serious. She even stated that her both hands were tied at her back and the mouth was blocked with a dothi. Thereafter there was a forceful rape. Now this victim is deposing before this Court in a notary attested affidavit that there is no such incident and it was a consensual sexual intercourse. It is stated in the affidavit that she gave such a statement to the police because of the pressure from her relatives.

8. It is an admitted fact that the petitioner is in custody for the last 77 days. If the averments in the affidavit of the victim is accepted, the petitioner is in illegal custody for the last 77 days. This should be taken very seriously. Nobody should make such false complaint against a person. The petitioner was working as a Junior Health Inspector. Hundreds and hundreds of

health workers are working in the State against the pandemic Covid-19. In such a situation, this particular incident gave a black mark to the health workers in the State. It even affected their morale. Now this victim is coming before this Court and saying that it was a consensual sexual intercourse and there was no forceful sex as stated in the FI statement. The personal liberty of a citizen is his fundamental right under Article 21 of the Constitution of India. This is a fit case in which the petitioner should be released on bail forthwith. Not only that, according to me, the contents of the affidavit is to be looked into by the Director General of Police of the State and take appropriate action in accordance to law against the alleged victim or relatives of the victim in accordance to law. If sexual intercourse was with the consent of a lady, no prima facie case is made out. Admittedly the victim in this case is major. Of course, the action of the petitioner may not be acceptable morally but that is not a reason to punish him like this. The allegation in the first information statement in this case tarnished the image of health workers in the state. If anybody is responsible for the same, the law of the land should act swiftly."

2. After granting bail, this Court issued the following directions.

"Registry will forward a copy of this order to the Director General of Police. The Director General of Police will authorise a senior officer to conduct an enquiry on Annexure A4 affidavit. Thereafter, the Director General of Police will take appropriate action based on that report in accordance to law. I don't want to make any observation about the merit of the case. The criminal justice delivery system cannot go like this. Based on a false complaint, a person is in jail for about 77 days. This Court cannot shut its eye in such situations. The Director General of

Police should take this case very seriously and do the needful and file a report based on the enquiry before the Registrar General of this Court within three months. I make it clear that, the enquiry officer will conduct the enquiry untrammelled by any observations in this order. "

3. Now the State Police Chief filed an enquiry report. The relevant portion of the enquiry report is extracted here under.

"On verifying the statements given by the complainant of this case, it can be seen that the facts stated before Sub Inspectors of Police, Vellarada and Pangod police station are the same. These statements also match with the Sec 164 CrPC statement. In all these statements, she stated that the accused called her to his residence to gave the quarantine certificate. He tied her hands at her back, blocked her mouth with a dhoti, both her legs were tied together and that he had raped her. She, however changed her story drastically in an affidavit submitted before the Honourable High Court during the time when the Hon'ble Court was considering the bail plea of the accused. The Court then directed that her statement should be once again recorded. So, on 18.10.2020, she was examined. Then, she confirmed in the changed statement and said that it was a consensual sexual intercourse. She had lodged the complaint against the accused due to the persuasion of her relatives and her state of mind at that time. She had no interest in following up on the matter and that she is ready to compromise. The Hon'ble High Court again directed the IO to record her statement. As she was in Malappuram at the time, her statement was recorded over phone. Then, she stated that the FIS statement given by her was true, but she has no interest in continuing with the case.

On verifying the scene mahazar, it is clear that place of occurrence is a double storied building. The ground floor is occupied by shops. It is a crowded junction. The statement of Sri.

Harilal, the owner of the building, is living right in front of that building was recorded by the IO during investigation. He stated that his wife and he had seen the complainant on the date of occurrence. He had enquired about the matter to the accused then who had stated that she was his sister. The lady could have contradicted the accused on the spot and could have stated that she was not his sister and that she had only come on professional reasons to obtain a certificate. Also, the statement of Sri Vijay Kumar, the owner of a shop which is functioning in the ground floor of the scene of occurrence was recorded. He stated that he had seen the complainant leaving the place of occurrence by her motor cycle. He did not feel that there was anything to remark on her behaviour. This shows that there are several people around the scene of occurrence who did not hear anything. Also, they were not approached by the lady for help.

The medical examination of the complainant did not reveal any injuries to her person. If the kind of brutality that she spoke about in the FIS occurred, there would at least have some injury to the person of the complainant.

The CDRs of the accused were verified. It can be seen the conversation between the complainant and the accused began on 30.08.20. On that day, there was a call from the complainant to the accused and lasted for 40 seconds. On 02.09.20 and on 03.09.20, the accused called the complainant 9 times and the complainant called the accused 12 times: amounting a total of 21 calls. The duration is around 3500 seconds. This shows that there was continuous conversation between these persons. Later, there is one call from the mobile phone of the complainant to the accused on 4.9.20, the next day of the incident. The call was at 19.53 hrs and lasted for a duration of 111 seconds.

In the above circumstances, it is clear that the statement given on 18.10.2020 and the affidavit filed before the high court reflect the true story. The act of the complainant has tarnished the image of the entire Health

department. Hence, report recommends legal action against the complainant u/s.182 IPC.”

4. A reading of the enquiry report revealed that it is a false case and the police decided to take legal action against the defacto complainant under Section 182 IPC. I don't want to make any further observation in it because a case is going to be registered against the defacto complainant and the same is to be investigated by the investigating officer. The officer concerned will investigate the case , untrammelled by any observation in this order. But I make it clear that the State Police Chief will entrust the investigation of this case to a competent officer and the officer will expedite the investigation in accordance to law.

5. In this case, I have to make an observation about the sensationalising a criminal case even at the time of registering First Information Report. The details of this case was there in the front page of print media and there were flash news in visual media. The morale of the health workers in the State was affected because of this sensational news. Now the enquiry report came. The action of the petitioner who is a Junior Health Inspector may be morally bad. But in the light of the enquiry report no criminal offence will attract because the lady is aged 44 years and she says that she had sex with the petitioner and it was with her consent. But the damage caused to the poor health workers in the State who were working day and night

against the Covid 19 pandemic is irreparable. I expect that the Print and Visual media will publish the above enquiry report also in its letter and spirit to give a moral boost to the health workers in the State. I leave it to the wisdom of the Print and Visual media.

I record the report submitted by the State Police Chief and close this proceedings.

P.V.KUNHIKRISHNAN

JUDGE

al/-