

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 6TH DAY OF FEBRUARY 2017/17TH MAGHA, 1938

Cr1.MC.No. 723 of 2017 ()

SC 659/2011 OF DISTRICT & SESSIONS COURT, THRISSUR.
CRIME NO.229/2011 OF IRINJALAKUDA POLICE STATION, THRISSUR.

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PETITIONER(S)/ACCUSED & DEFACTO COMPLAINANTS:

1. FREDDY @ ANTONY FRANCIS,
VADAKKUMCHERI (H), P.O,
CHERUVATHOOR, HOUSEDURG TALUK,
KASARAGOD, NOW RESIDING AT
VADKKUMCHERI (H), AVITTATHUR DESOM,
KADUPPASSERI, MUKUNDAPURAM.
2. NISA, AGED 19 YEARS,
W/O.FREDDY @ ANTONY FRANCIS,
VADKKUMCHERI (H), AVITTATHUR DESOM,
KADUPPASSERI, MUKUNDAPURAM.

BY ADVS.SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.VIVEK V. KANNANKERI
SMT.J.KASTHURI
SRI.RAFEEK. V.K.
SRI.U.M.HASSAN
SRI.VISHNU BHUVANENDRAN
SMT.P.PARVATHY

RESPONDENT(S)/COMPLAINANTS:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE,
IRINJALAKUDA POLICE STATION,
IRINJALAKUDA, THRISSUR DISTRICT.

BY PUBLIC PROSECUTOR SRI.E.C.BINEESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06-02-2017, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

mbr/

Cr1.MC.No. 723 of 2017 ()

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE I : TRUE COPY OF THE FIR ALONG WITH FINAL REPORT.

ANNEXURE 2 : TRUE COPY OF THE MARRIAGE CERTIFICATE
DATED 25.6.2015.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

RAJA VIJAYARAGHAVAN.V., J

Crl.M.C. No. 723 of 2017

Dated 6th February, 2017

ORDER

- 1.This petition is filed under S.482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') with a prayer to invoke the extraordinary inherent powers and to quash the pending criminal proceedings.
- 2.On the basis of a information lodged by the 2nd petitioner, Crime No. 229 of 2011 was registered and investigation was taken up for offences punishable under Section 376 of the IPC and under Section 3(1) (XII) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and on its completion final report was laid against the 1st petitioner. The case is now pending as SC. No 659 of 2011 on the file of the Sessions Court , Thrissur .
- 3.The petitioners were in love with each other. According to

the prosecution, the 1st petitioner induced the 2nd petitioner to have sexual intercourse with him on the assurance that he would marry her .

4.The learned counsel appearing for the petitioners submits that the crime was registered when the 2nd petitioner apprehended that the 1st petitioner would go back on his word and not marry her . It is submitted that during the pendency of the criminal proceedings, the 1st petitioner married the 2nd petitioner on 25.6.2015 and they are living as husband and wife. It is in the aforesaid circumstance that this petition is filed jointly seeking to quash the proceedings on the ground that continuance of proceedings against the 1st petitioner is an abuse of process of court.

5.The learned Public Prosecutor on instructions submits that the statement of the 2nd petitioner has been recorded and she has stated that the marriage has been solemnized as

submitted above and they are living together as husband and wife.

6.I have considered the submissions and have perused the materials on record.

7.The legal position with regard to quashing of proceedings on the basis of compromise between the parties is by now well settled. It has been held that the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal Court for compounding the offences under S.320 of the Code. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the Court will have to give due regard to the nature and

gravity of the crime. It is also settled that heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc., cannot quashed even though the victim or victim's family and the offender have settled the dispute. Such offenses are not private in nature and have serious impact on society. The directions of the Apex Court in **Gian singh v. State of Punjab** [(2012) 10 SCC 303] and in **Narinder singh v. State of Punjab** [(2014) 6 SCC 466] serve as guiding lights.

8. In so far as the offence of rape is concerned, there cannot be any doubt that the same cannot be settled on the strength of a compromise arrived at between the victim and the accused. The Apex Court in **State of M.P. V Madan Lal** (2015 (7) SCC 681), relying on the decision in **Shimbhu and Another v. State of Haryana** (2014 (13) SCC 318) has clearly reminded the Courts that rape is a non-compoundable offence and it is an offence against the

society and is not a matter to be left for the parties to compromise and settle. This was because of the fact that the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent. There is every chance that the victim might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In such cases, the accused may use all his influence to pressurise the victim for a compromise. It was taking note of this aspect that it was held that it would not be safe in considering the compromise arrived at between the parties in rape cases. In **Madan Lal** (supra) the Apex Court was hearing an appeal filed by the State against the Judgement of the High Court by which the conviction arrived at by the Trial Court was set aside on the basis of a compromise arrived at between the victim and the accused.

9.It is borne out from the statement recorded by the Sub Inspector of Police of the 2nd petitioner that the parties were in love and the Crime was registered when the 2nd petitioner was under the impression that the 1st petitioner would resile from his earlier promise. However, in view of the subsequent turn of events, she has realized that her apprehension was baseless . The parties are living together as husband and wife . There is no case for anyone that the dignity of the 2nd petitioner was violated by a wanton act of the 1st petitioner. This is not one of those cases wherein the allegations reek of extreme depravity, perversity or cruelty. It cannot be said that the offence in the instant case would fall in the category of offences that have a serious impact on society. In the peculiar facts of the instant case, grave hardship and inconvenience will be caused to the 2nd petitioner, if the prosecution is permitted to continue. When the 2nd

petitioner has asserted that she is not desirous of prosecuting her husband any further, the prospects of an ultimate conviction is remote and bleak. Further more, the 2nd petitioner can continue with her life with dignity and respect. Having considered all the relevant circumstances, I am of the considered view that this is a fit case in which this Court will be well justified in invoking its extra ordinary powers under Section 482 of the Code to quash the proceedings.

In the result this petition will stand allowed. Annexure-A final report and all proceedings pursuant thereto against the petitioners now pending as S.C.No.659 of 2011 on the file of the Principal Sessions Court, Thrissur are quashed.

sd/-

**RAJA VIJAYARAGHAVAN.V.,
JUDGE**