

ALEXANDER THOMAS, J.

CrI.M.C. No. 381 of 2018

Dated this the 23rd day of May, 2019

ORDER

The petitioner is the sole accused in S.C.No.533/2015 on the file of the Additional Sessions Court (For the trial of cases relating to atrocities and sexual violation against women and children), Ernakulam, which has been instituted alleging offences punishable under Secs.366A, 376 and Secs.3(a) r/w 4 of the POCSO Act, 2012. The 2nd respondent is CW2 in the charge sheet filed by the Police (Anx.A-1).

2. It is now stated that the petitioner and the 2nd respondent have settled the disputes amicably and that she has no grievance against the petitioner. The petitioner (accused) and the 2nd respondent (victim) have solemnized their marriage on 3.8.2016 as per the provisions of the Special Marriage Act, 1954, as evident from Anx.A-2 Marriage Certificate dated 3.8.2016 issued by the statutory Marriage Officer. Now they have a daughter aged 4 months in the said wedlock. It is in the light of these aspects that the petitioner and the 2nd respondent urge that

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the impugned criminal proceedings may be quashed. Learned counsel appearing for contesting respondent No.2 (victim) points out that, since she has already married the petitioner (accused) it will be more in her interest that the impugned criminal proceedings be quashed, as otherwise their marital life will be put into jeopardy, and there will be no one to take care of her as well as her young child hardly aged 4 months.

3. Heard Sri.C.S.Manu, learned counsel appearing for the petitioner (accused), Sri.Saigi Jacob Palatty, learned Prosecutor, appearing for R-1 (State) and Sri.Anoop Joseph, learned counsel appearing for R-2 (victim).

4. It is by now well settled that grave and serious offences as the one under Sec.376 (rape) of the I.P.C. cannot be the subject matter of quashment of the impugned criminal proceedings on the ground of settlement between the accused and the victim. **{see *Shimbhu & Anr. v. State of Haryana [(2014) 13 SCC 318]*, *Parbatbhai Aahir v. State of Gujarat [(2017) 9 SCC 641]*, *Anita Maria Dias v. State of Maharashtra [(2018) 3 SCC 290]*, *Sebastian @ Solly v. State of Kerala [(2015) 1 KLJ 384, etc.}*}. However, this Court has held in various decisions**

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including the one as in ***Freddy @ Antony Francis & Ors. v. State of Kerala & Anr. [2017 KHC 344 = 2018 (1) KLD 558]*** that the exception to the above approach could be in cases where the accused has married the defacto complainant and they have decided to settle all the disputes and for the predominant purpose of the welfare of the defacto complainant/ victim, to ensure her better future life, it is only just and proper that this Court in exercise of the extra ordinary inherent powers under Sec.482 of the Cr.P.C. could quash the impugned criminal proceedings on the ground of settlement between the parties in cases where the accused has married the defacto complainant and the defacto complainant is insisting for quashment of the impugned criminal proceedings, etc.

5. In the light of the abovesaid aspects, more particularly in the light of the submission made by the 2nd respondent, this Court is inclined to consider the plea for quashment of impugned criminal proceedings as otherwise it will detrimentally affect the family life of 2nd respondent (victim), and even the balance and harmony that could be achieved by them in the resolution of disputes that again be irrecoverably lost . It is in the light of these

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aspects that all further proceedings in the impugned Anx.A-1 final report/charge sheet filed in Crime No.734/2014 of Binanipuram Police Station, which has now led to the institution of S.C.No.533/2015 on the file of the Addl.Sessions Court (For the trial of cases relating to atrocities and sexual violation against women and children), Ernakulam, and all further proceedings taken in pursuance thereof against the petitioner (accused) will stand quashed. The petitioner will produce a certified copy of this order before the Sessions Court concerned and before the Investigating Officer concerned for necessary information.

With these observations and directions, the above Criminal Miscellaneous Case will stand disposed of.

**Sd/-
ALEXANDER THOMAS,
JUDGE**

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APPENDIX

PETITIONER'S EXHIBITS:

- ANNEXURE A1** **CERTIFIED COPY OF THE FINAL REPORT/CHARGE SHEET IN CRIME NO.734 OF 2014 OF BINANIPURAM POLICE STATION, TAKEN ON FILE AS SC.NO.533 OF 2015 ON THE FILES OF THE ADDITIONAL SESSIONS COURT (FOR THE TRIAL OF CASES RELATING TO ATROCITIES AND SEXUAL VIOLATION AGAINST WOMAN AND CHILDREN)**
- ANNEXURE A2** **TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 03/08/2016 ISSUED BY THE MARRIAGE OFFICER, ALUVA AS PER THE PROVISIONS OF SPECIAL MARRIAGE ACT, 1954.**