

(2020) 12 KL CK 0250

In the High Court Of Kerala

Case No : Criminal Miscellaneous Case No. 4670 Of 2020 (C)

Midhun K.V. And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 482

Kerala Police Act, 2011 — Section 57(a)

Indian Penal Code, 1860 — Section 376

Kerala Registration Of Marriages (Common) Rules, 2008 — Rule 11(1)

Citation : (2020) 12 KL CK 0250

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : Ameer. K.M., Saigi Jacob Palatty, E. Adithyan

Final Decision : Disposed Of

Judgement

1. The prayer in the above Criminal Miscellaneous Case filed under Sec.482 of the Cr.P.C. is as follows:

â??.....quash Annexure-A1 final report and all further proceedings pursuant to it in Crime No.20/2019 of Cherupuzha Police Station, pending on

the files of Additional District and Sessions Court (ADC 1), Thalassery as SC No.663/2019, now made over to Fast Track Special Court, Taliparamba

as against the petitioner, so as to secure the ends of justice.â??

2. Heard Sri.K.M.Ameer, learned counsel appearing for the petitioners (A1 to A4), Sri.Saigi Jacob Palatty, learned Public Prosecutor appearing for

R-1 (State) and Sri.E.Adithyan, learned counsel appearing for respondents 2 & 3 (mother of the victim and the lady victim respectively).

3. This case arose initially out of Anx.A2 FIR in Crime No.20/2019 of Cherupuzha Police Station, Kannur district, which was initially registered on

16.1.2019 under Sec.57(a) of the Kerala Police Act, 2011, as a "person missing case" in pursuance of the first information conveyed by the 2nd

respondent mother of lady victim stating that, the 3rd respondent, who is her minor daughter, was found missing from home since that day, and that the

2nd respondent has reasons to believe that the 3rd respondent would have gone away with the 1st petitioner (A1) as they were having a love affair,

and as the marriage of the 3rd respondent was fixed to be conducted with another person subsequently.

4. It appears that, the police after investigation could trace out the 3rd respondent minor victim girl along with the 1st petitioner, and the investigation

conducted by the police revealed that date of birth of the 3rd respondent victim girl is 26.4.2001, and that she had not completed the majority age of 18

years at that time, and that she had gone along with the 1st petitioner (A1) and that, the said process of abduction was aided and assisted by 2nd to 4th

petitioners (A2 to A4) and that later, the 1st petitioner (A1) and the 3rd respondent had stayed together in the residence of A4 and that at that time,

the 1st petitioner had sexual intercourse with the 3rd respondent who was then a minor girl. After tracing out the 3rd respondent along with the 1st

petitioner, it appears that after completing necessary formalities of medical examination, recording of statement of the 3rd respondent before the

Police under Sec.161 Cr.P.C., as well as before the learned Magistrate as per Sec.164 Cr.P.C. etc the police have altered the offences alleged in

abovesaid FIR in Crime No.20/2019 of Cherupuzha Police Station, by including in the accused array the 4 petitioners herein and the offences as per

the relevant provisions thereof were also included in the said altered FIR. Thereafter, the police has completed the investigation and has filed Anx.A1

final report/charge sheet in Crime No.20/2019 of Cherupuzha Police Station, and since as offences as per the POCSO Act are also disclosed since

the 3rd respondent was a minor at the time of alleged incidents, Anx.A1 final report was filed before the Additional Sessions Court (ADC 1),

Thalassery, and after taking cognizance, the Sessions Case is now pending as S.C. No. 663/2019 and the case was later made over to the Fast Track

Special Court, Taliparamba, Kannur district. It is this proceedings at Anx.A1 final report which has led to the pendency of Sessions Case S.C. No.

663/2019 on the file of the Fast Track Special Court, Taliparamba, Kannur district, which is now under challenge in this proceedings.

5. It appears that the minor victim girl had completed the majority age of 18 years on 26.4.2019. It also appears from the submissions of the learned

Advocate appearing for the petitioners as well as the Advocate appearing for respondents 2 & 3 that, thereafter, with the blessings and consent of

families on both sides, the marriage of the 3rd respondent with the 1st petitioner (A1) was solemnized in accordance with the Hindu marriage

customary rites in the Payyanur Sree Nambiathra Kovval Siva Temple, on 23.5.2019, and Anx.A3 is the marriage certified issued by the Local

Registrar of Marriages in terms of the provisions contained in Rule 11(1) of the Kerala Registration of Marriages (Common) Rules, 2008, wherein it

has been certified that the marriage between the 1st petitioner (whose date of birth is 11.4.1994) and the 3rd respondent (whose date of birth is

26.4.2001) has been solemnized in the said temple in accordance with the Hindu customary rites on 23.5.2019. Further it is pointed out that, now the

1st petitioner (A1) and the 3rd respondent are living together as husband and wife, and a child has also been born to them on 5.2.2020 as certified as

per Anx.A4 Birth Certificate dated 24.9.2020 issued by the statutory Registrar of Births & Deaths. Further it is pointed out that, 2nd respondent who

is the mother of the lady victim and the 3rd respondent lady victim has now separately sworn to affidavits dated 12.10.2020 as per Anxs.A5 & A6

respectively before this Court in this case, wherein they have stated that the entire issues have been settled with the 1st petitioner, and that the

marriage of the 3rd respondent has been duly solemnized lawfully with the 1st petitioner after the 3rd respondent had completed the majority age of 18

years. That, the 3rd and 2nd respondents do not wish to continue the impugned criminal proceedings in this case any longer, and that though the 3rd

respondent was then a minor, she had voluntarily gone along with the 1st petitioner out of her own choice, etc. Further it is stated in Anxs.A5 & A6

affidavits, that the respondents 2 & 3 do not have any objections for quashment of impugned criminal proceedings, and further that, it will be better in

the interest of the 3rd respondent that the impugned criminal proceedings be quashed, as otherwise the 1st petitioner herein is now none other than her

husband and therefore the continuance of impugned criminal proceedings may detrimentally affect the 3rd respondent's future marital life.

6. The learned Public Prosecutor was requested to get instructions in the matter. Today when the matter has been taken up for consideration, Sri.Saigi

Jacob Palatty, learned Public Prosecutor would submit on the basis of instructions that the Investigating Officer has conducted an enquiry in this case

and has also recorded the statements of respondents 2 & 3, wherein they have reiterated that they have voluntarily executed Anxs.A5 & A6

affidavits, and the facts stated therein are true, and that it has also verified that the marriage of the 3rd respondent with the 1st petitioner (A1) was

solemnized in accordance with the Hindu marriage customary rites on 23.5.2019 as evident from Anx.A3 Marriage Certificate, and that a child has

also been born to them on 5.2.2020 as certified as per Anx.A4 Birth Certificate.

7. It is by now well settled that it may not be right and proper for this Court to ordinarily quash serious and grave offence of rape as per Sec.376 of

the IPC solely on the ground of settlement between the parties {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, it has been held by this Court in decisions as in Freddy @ Antony Francis & Ors. v. State of Kerala & Anr.[2017 KHC

344 = 2018 (1) KLD 558], Denu P.Thampi v. Ms.X, [2019 (3) KHC 199], that an exception could be made in cases where the accused has

subsequently married the lady victim and they have decided to settle all the disputes and for the predominant purpose of welfare of the defacto

complainant/victim to ensure her a better marital life, it may be only just and proper for this Court in exercising extra ordinary discretionary inherent

powers conferred under Sec.482 of the Cr.P.C. may quash the impugned criminal proceedings on the basis of such extenuating factors, after verifying

that the marriage between the parties was entered into voluntarily by the lady victim, etc.

8. In this case, it can be seen from the narration of allegations in Anx.A2 FIR itself that, even going by the case of prosecution the 3rd respondent

who was then a minor girl was in love with the 1st petitioner, and she had gone along with the 1st petitioner at a time when her marriage with another

person was fixed by her family members and further that, after completion of majority age of 18 years, her marriage with the 1st petitioner has been

lawfully solemnized etc. Therefore, the abovesaid exceptional approach made by this Court in the afore cited decisions could be befittingly invoked in

the facts and circumstances of this case. The 3rd respondent has completed the majority age of 18 years on 26.4.2019 even going by the case of prosecution, and marriage has also now solemnized on 23.5.2019 and a child is also born to her on 5.2.2020. Therefore, it may be better for the future marital life of the 3rd respondent that the impugned criminal proceedings be quashed, as A1 is now none other than her husband. The allegations against 2nd to 4th petitioners (A2 to A4) are to the effect that they have aided and abetted the 1st petitioner in taking away the 3rd respondent, and that later the 1st petitioner and the 3rd respondent was given facility to stay in the residence of the 4th respondent, etc. The 2nd to 4th petitioners appear to be close friends of the 1st petitioner.

9. Taking note of the totality of the facts and circumstances of the case, and also taking note of the details now borne out from the enquiry conducted by the Investigating Officer about the facts verified about the solemnization of marriage, etc this Court is inclined to take the view that the inherent extra ordinary discretionary powers saved in terms of Sec.482 of the Cr.P.C. could be invoked the facts and circumstances of this case taking into consideration the extenuating circumstances. In that view of the matter it is ordered that the impugned Anx.A1 final report/charge sheet filed in Crime No.20/2019 of Cherupuzha Police Station, Kannur, which has now led to the pendency of Sessions Case S.C. No. 663/2019 now presently on the file of the Fast Track Special Court, Taliparamba, Kannur, as against the petitioners (accused persons) and all other proceedings emanating therefrom as against the petitioners (accused persons) will stand quashed and set aside.

10. The petitioners will produce a certified copy of this order before the Investigating Officer concerned, as well as before Fast Track Special Court, Taliparamba, Kannur, who is dealing with S.C. No. 663/2019 for necessary information.

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