

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

Crl.MC.No. 126 of 2015 ()

SC 908/2011 of ASSISTANT SESSIONS COURT, CHERTHALA
CRIME NO. 243/2011 OF MUHAMMA POLICE STATION, ALAPPUZHA

PETITIONER/ACCUSED :

C.C.ALEXANDER, AGED 52 YEARS,
S/O. CHACKO, PALAKKATHADATHIL HOUSE,
NEAR ST. THOMAS CHURCH, ARUNOOTTIMANGALAM.P.O.,
KADUTHURUTHY, KOTTAYAM DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN
SRI.JOSE JOSEPH (MANNAR)

RESPONDENTS/DEFACTO COMPLAINANT AND STATE :

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1. OMANA KUNJAMMA, AGED 35 YEARS,
D/O. THANKAMMA, RESIDING AT H. NO. KNRA-12
KOYIPARAMBIL HOUSE, BTC ROAD,
MARADU VILLAGE DESOM
MARADU, ERNAKULAM PIN-682304.
 2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM. PIN-682031.

R1 BY ADVS. SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-03-2015, ALONG WITH CRMC. 127/2015, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**ANX.A: TRUE COPY OF THE FINAL REPORT IN CRIME NO. 243/2011 OF MUHAMMA
POLICE STATION, ALAPPUZHA DISTRICT.**

**ANX.B: TRUE COPY OF THE ORDER IN S.L.P. (CIVIL) NO. 18965/2012 PASSED BY THE
HONOURABLE SUPREME COURT OF INDIA DATED 26-4-2013.**

**ANX.C: TRUE COPY OF THE MEDIATION REPORT SUBMITTED BY HONOURABLE MR.
JUSTICE K.T. THOMAS IN THE MATTER BEFORE THE HONOURABLE
SUPREME COURT, WHICH FORMS PART OF RECORD IN THE PROCEEDING.**

**ANX.D: TRUE COPY OF THE ORDER DATED 23-8-2013 IN S.L.P. (CIVIL) NO. 18965/2012
PASSED BY THE HONOURABLE SUPREME COURT OF INDIA.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B.KEMAL PASHA, J.

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CRL.M.C. No.126 of 2015

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Dated this the 3rd day of March, 2015

ORDER

Petitioner in S.C.No.908 of 2011 of the Assistant Sessions Court, Cherthala, which has arisen from Crime No.243 of 2011 of the Muhamma Police Station for the offence under Section 376 of the Indian Penal Code, has come up under Section 482 Cr.P.C. for getting Annexure A Final Report and all further proceedings pursuant there to in S.C.No.908 of 2011 of the Assistant Sessions Court, Cherthala, quashed.

2. The prosecution case is that on 13.01.2011, the petitioner along with the defacto complainant woman, who is the 1st respondent herein, were staying together in a room at a lodge, and during night, the petitioner forcibly

administered liquor to the 1st respondent and thereafter committed rape on her. It is alleged that the defacto complainant become pregnant and gave birth to two sons, who are twins. After the birth of the children, an Original Petition was filed by the 1st respondent before the Family Court, Ernakulam for getting the paternity of the children declared. A request was put forwarded for the conduct of DNA test of the petitioner and it was challenged by the petitioner before the Division Bench of this Court. This Court also concurred with the order passed by the Family Court. The order of this Court was challenged before the Supreme Court through Special Leave to Appeal (Civil) No.18965 of 2012. When the matter came up for hearing, the parties expressed their willingness to get the matter settled through a mediation. Honourable Mr. Justice K.T. Thomas was engaged by the Supreme Court as mediator in the matter.

3. The matter has been mediated by the Honourable Mr. Justice K.T. Thomas and a Mediation Settlement

Agreement has been arrived at as per the settlement in mediation. The petitioner has accepted the paternity of the children and made fixed deposits of Rs.25,00,000/- each in favour of those two children. All the other cases between the parties are also agreed to be settled based on the Mediation Settlement Agreement. The amounts have been deposited with interest for the delayed payment.

4. Presently all the matters have been settled between the parties. It seems that a consensual sexual intercourse has been unfortunately categorized as a rape because of the differences of opinion between the parties and presently, they have sorted out the problems between them and through the intervention of Honourable Mr. Justice K.T. Thomas, the matters have been settled and the amounts have been deposited.

5. The 1st respondent has filed a detailed affidavit affirming that the matter is settled out of Court in terms of the settlement arrived at between the parties as per the

directions of the Apex Court. When the matter has been amicably settled between the parties as per the direction of the Apex Court, it will be a futile exercise to continue with the matter. The parties have performed the agreement arrived at in the mediation. Matters being so, Annexure A Final Report and all further proceedings pursuant thereto in S.C.No.908 of 2011 pending before the Assistant Sessions Court, Cherthala based on it in Crime No.243 of 2011 of the Muhamma Police Station can be quashed.

6. The learned counsel for the 1st respondent has pointed out that as per Clause 3 of the Memorandum of Settlement Agreement, the Family Court will permit the 1st respondent herein to draw the interest accrued on the fixed deposits for making use of the amount for the maintenance of each child till they are attaining the age of majority. The Family Court shall take immediate necessary steps to get the said interest disbursed.

In the result, this CRL.M.C. is allowed and Annexure A

Final Report and all further proceedings pursuant thereto in S.C.No.908 of 2011 pending before the Assistant Sessions Court, Cherthala based on it in Crime No.243 of 2011 of the Muhamma Police Station, are hereby quashed.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/4/3/15

// True Copy //

P.A. To Judge