

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. 127 of 2015

**SC 407/2011 of II ADDL.ASSISTANT SESSIONS COURT, (3RD SUB COURT)
ERNAKULAM
CRIME NO. 499/2011 OF PANANGAD POLICE STATION , ERNAKULAM**

PETITIONER(S)/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 & STATE;-:

**1. OMANA KUNJAMMA, AGED 35 YEARS
D/O.THANKAMMA, RESIDING AT H.NO.KNRA-12
KOYIPARAMBIL HOUSE, BTC ROAD, MARADU VILLAGE DESOM
MARADU, ERNAKULAM-682304.**

**2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-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, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE A: TRUE COPY OF THE FINAL REPORT IN CRIME NO.499/2011 OF
PANANGAD POLICE STATION, ERNAKULAM CITY.**

**ANNEXURE B: TRUE COPY OF THE ORDER IN S.L.P.(CIVIL) NO.18965/2012 PASSED BY
THE HONOURABLE SUPREME COURT OF INDIA DATED 26.04.2013.**

**ANNEXURE 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.**

**ANNEXURE D: TRUE COPY OF THE ORDER DATED 23.08.2013 IN S.L.P.(CIVIL)
NO.18965/2012 PASSED BY THE HONOURABLE SUPREME COURT OF
INDIA.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B.KEMAL PASHA, J.

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CRL.M.C. No.127 of 2015

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Dated this the 3rd day of March, 2015

ORDER

Petitioner in S.C.No.407 of 2011 of the 2nd Additional Assistant Sessions Court (3rd Sub Court), Ernakulam, which has arisen from Crime No.499 of 2011 of the Panangad Police Station for the offences under Sections 376, 323, 506 (i) 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 thereto in S.C.No.407 of 2011 of the 2nd Additional Assistant Sessions Court (3rd Sub Court), Ernakulam, quashed.

2. The prosecution case is that on 29.11.2010 at 10.00 p.m., the petitioner committed rape on the defacto complainant woman, who is the 1st respondent herein and voluntarily caused hurt to her and intimidated 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 a 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 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 an intervention of the 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.407 of 2011 pending before the 2nd Additional Assistant Sessions Court (3rd Sub Court), Ernakulam based on it in Crime No.499 of 2011 of the Panangad 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.407 of 2011 pending before the 2nd Additional Assistant Sessions Court (3rd Sub Court), Ernakulam based on it in Crime No.499 of 2011 of the Panangad Police Station are hereby quashed.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/4/3/15

// True Copy //

P.A. To Judge