

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Crl.MC.No. 4573 of 2015 (C)

CC 1195/2013 of J.M.F.C., RANNI, PATHANAMTHITTA

CRIME NO. 491/2013 OF RANNI POLICE STATION, PATHANAMTHITTA

PETITIONER(S)/COMPLAINANT :-

**AMBILI, AGED 32 YEARS, W/O.SASEENDRAN,
VENGATTOOR HOUSE, IDATHARAMUKKU,
VADASSERIKKARA P.O., RANNI TALUK,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.N.N.SASI

RESPONDENT(S)/STATE & ACCUSED :-

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-31.**
- 2. ABRAHAM VARGHESE, AGED 42 YEARS,
KARUKAPATHALIL HOUSE, IDATHARAMUKKU,
VADASSERIKKARA P.O., RANNI TALUK,
PATHANAMTHITTA DISTRICT.**
- 3. THE DISTRICT POLICE CHIEF,
PATHANAMTHITTA-689645.**
- 4. THE SUB INSPECTOR OF POLICE,
RANNI POLICE STATION, PATHANAMTHITTA-689672.**

**R2 BY ADVS. SRI.M.T.SURESHKUMAR
SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SMT.SMITHA PHILIPOSE
R BY SMT.SHEEBA M.T., PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-11-2015, ALONG WITH CRMC. 4574/2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**

rkj

APPENDIX

PETITIONER(S)' ANNEXURES :-

- ANNEXURE-A1 : TRUE COPY OF THE DISCHARGE CARD ISSUED FROM THE GENERAL HOSPITAL, PATHANAMTHITTA.**
- ANNEXURE-A2 : CERTIFIED COPY OF THE F.I.R. IN CRIME NO.491/13 OF RANNI POLICE STATION.**
- ANNEXURE-A3 : CERTIFIED COPY OF THE CHARGE SHEET IN C.C.NO.1195/2013 OF JFMC, RANNI.**
- ANNEXURE-A4 : TRUE COPY OF THE COMPLAINT DATED 31.05.2013 SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT POLICE CHIEF, THE 3RD RESPONDENT.**
- ANNEXURE-A5 : TRUE COPY OF THE COMPLAINT OF THE PETITIONER GIVEN TO THE CHIEF MINISTER DATED 08.11.2013.**
- ANNEXURE-A6 : TRUE COPY OF THE COMPLAINT DATED 20.06.2013 FILED BEFORE THE KERALA STATE WOMEN'S COMMISSION.**
- ANNEXURE-A7 : TRUE COPY OF REPRESENTATION DATED 26.08.2013 TO KERALA STATE HUMAN RIGHTS COMMISSION.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

P.UBAID, J.

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Crl.M.C.Nos.4573 and 4574 of 2015
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Dated this the 12th day of November, 2015

ORDER

The petitioner in these two applications is the same. She is the accused in C.C.No.1194 of 2013 before the Judicial First Class Magistrate Court, Ranni. She is also the defacto complainant in C.C.No.1195 of 2013 of the same court. The offences involved in C.C.No.1195 of 2013 are under Sections 447, 323 and 324 IPC. The offence involved in C.C.No.1194 of 2013 wherein the petitioner is the accused are under Sections 323 and 294(B) IPC. In Crl.M.C.4574 of 2015, the petitioner seeks orders quashing the prosecution against her on the ground that it is brought as a counterblast to the other prosecution wherein she is a defacto complainant. In Crl.M.C.4573 of 2015, the petitioner seeks orders directing further investigation, on the ground that in her complaint she has alleged even the offence of rape. She wants the

offences under Sections 354 and 376 IPC to be incorporated on the basis of her complaint allegations.

2. On hearing both sides, and on a perusal of the materials, I find that both these petitions are liable to be dismissed. The petitioner's grievance that C.C.No.1194 of 2013 is a counterblast to the other prosecution wherein she is the defacto complainant, is a matter to be looked into and decided by the trial court. Decision on this issue depends on evidence. This Court cannot, under Section 482 Cr.P.C., decide whether one case is a counterblast to the other. So also, in Crl.M.C.No.4573 of 2015, the petitioner's request for further investigation cannot be entertained by this Court under Section 482 Cr.P.C. She has no explanation why she did not approach the learned Magistrate for the relief. Without approaching the proper court for the proper course, the petitioner has rushed to this Court directly. It is well settled that when remedies otherwise are possible, and such remedies are not exhausted, or resorted to, it would be illegal and inappropriate for the High Court to act under Section 482 Cr.P.C., and interfere in the process of

investigation or trial.

3. On a perusal of the complaint made by the petitioner in Crime No.491 of 2013, I find that there is absolutely nothing therein to make out the offence of rape under Section 376 IPC. The other grievance of the petitioner is that her modesty was outraged by the respondents. Her complaint is that a portion of her churidhar was torn off. There is nothing to show that it was done, if at all believable, with the required intent under Section 354 IPC. There is also nothing to show that it was done to disrobe her. It is well settled that a mere assault on a lady will not come under Section 354 IPC. Anyway, the police report in C.C.No.1195 of 2013 shows that the petitioner had no consistent versions during investigation. Once she alleged outrage of modesty, and later she alleged the offence of rape. There is police report that such statements were falsely made by the petitioner during investigation. On a perusal of the materials including complaint of the petitioner, I find no scope or reason to entertain the grievance regarding further investigation. It is not known why the petitioner did not

approach the learned Magistrate with necessary application, if at all there is any scope for such further investigation. I find that both these petitions are liable to be dismissed.

In the result, both the Crl.M.Cs. are dismissed, without being admitted to files.

rkj

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.UBAID
JUDGE