

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

Crl.Rev.Pet.No. 642 of 2014 ()

AGAINST THE COURT CHARGE IN SC 280/2008 of THE COURT OF ADDITIONAL
SESSIONS JUDGE (ADHOC)1, MANJERI DATED 21-01-2013

REVISION PETITIONER/RESPONDENT:

SREENIVASAN @ THAMPI,
S/O BALAKRISHNAN NAIR, MADATHIL VALAPPIL VEEDU,
KUTTIPIURAM PAZHOO DESOM, TIRUR TALUK, POST PAZHOO,
KUTTIPIURAM VIA, MALAPPURAM DISTRICT.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SMT.R.LEELA

RESPONDENTS/PETITIONERS AND STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. T.P.SHEEJA,
D/O. T.P.KUTTIKRISHNAN, MANCHERIPARAMBIL VEEDU
PONNANI TALUK, TRIKKANNAPPURAM DESOM
POST TRIKKANNAPPURAM, MALAPPURAM DISTRICT-679 577.

R1 BY PUBLIC PROSECUTOR SMT.M.G.LISHA
R2 BY ADVS. SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 30-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- ANNEXURE A1 TRUE COPY OF THE CHARGE SHEET DATED 31.01.2011 IN C.P.NO.10/2001 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, TIRUR.
- ANNEXURE A2 TRUE COPY OF THE F.I.R. AND COMPLAINT DATED 07.11.2000 IN CRIME NO.217/2000 OF THE KUTTIPPURAM POLICE STATION.
- ANNEXURE A3 TRUE COPY OF THE ORDER IN CRL.M.C.NO.6740 OF 2000 DATED 02.01.2001 OF THE HONOURABLE COURT.
- ANNEXURE A4 TRUE COPY OF THE ORDER DATED 09.06.2008 IN CRL.M.C.NO.2166 OF 2008 OF THIS HONOURABLE COURT.
- ANNEXURE A5 THE TRUE COPY OF THE ORDER DATED 17-6-2008 IN CRL.M.C.NO.2263/08 OF THIS HONOURABLE COURT.
- ANNEXURE A6 THE TRUE COPY OF THE DNA TEST REPORT DATED 27.8.2008 OF RAJIV GANDHI CENTRE FOR BIOTECHNOLOGY.
- ANNEXURE 47 THE TRUE COPY OF THE ORDER DATED 12.6.2012 IN CRL.M.C.NO.3799/08 OF THIS HONOURABLE COURT.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

SUNIL THOMAS, J.

Crl. R. P. No. 642 of 2014

Dated this the 30th day of September, 2015

ORDER

The revision petitioner faces a charge for offence punishable under Section 376 IPC in S.C.No.280/2008. The allegation of the defacto complainant was that, the accused during the period 1988, had offered to marry her and had committed rape on her on several occasions. She claimed to be 13 years old at the time of commission of offence. Ultimately, she gave birth of a child, which according to her was born out of the above act. After investigation, the final report was laid and the Court proceeded to frame the charge. The Court charge dated 21.01.2013 is assailed in this revision on the ground that, the Court ought not have proceeded with framing the charge on the ground that, he was entitled for a discharge especially in the back ground that, the complaint was made by the girl after 13 years. The specific allegation of the defacto complainant was that, the accused is the father of the child. This was negatived by Annexure A6 report of the Rajiv Gandhi Centre for Biotechnology. It was contended that, without considering these facts, the Court proceeded to frame the charge.

2. Heard both sides and examined the records.
3. In spite of persuasive arguments on the learned counsel for

the accused, that the complaint was highly belated and that there was no material before the Court below to frame the charge, I notice that no application was filed before the Court below seeking discharge on these grounds. *Prima facie*, no illegality is patent on the record to conclude that the Court below erred in framing the charge. Definitely his contention of belated complaint, the report of the Rajiv Gandhi Centre for Biotechnology, are matters which he can raise at the time of trial and confront the witnesses on the basis of such documents. I find no reason to interfere with the order of the Court below framing charge.

4. Learned counsel contended that, the accused is abroad and hence he could not appear before the Court below and a warrant is pending. I am not inclined to make any comment on that, except that, if the accused appears before the Court below and files a proper application with notice to the Public Prosecutor, the Court below shall consider, granting bail, if satisfied about ensuring the presence in Court, with appropriate conditions.

The Crl.R.P. is disposed of.

Sd/-

SUNIL THOMAS, JUDGE.