IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

CRL.MC NO. 2031 OF 2024

CRIME NO.311/2021 OF CHENGAMANAD POLICE STATION, ERNAKULAM

IN S.C. NO.837 OF 2021 OF FAST TRACK SPECIAL COURT, PERUMBAVOOR

PETITIONER/ACCUSED:

1 XXXXXXXXXX
AGED XXXXXXXXXX YEARS
XXXXXXXXXX

2 XXXXXXXXXX
AGED XXXXXXXXXX YEARS
XXXXXXXXXX

BY ADV P.L.MARY TREASA

RESPONDENTS/STATE & VICTIM:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

2 XXXXXXXXXX
AGED XXXXXXXXXX YEARS
XXXXXXXXXX

PP - M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

“C.R.”

ORDER

Dated this the 22nd day of July, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings pursuant to Annexure.A2 FIR and Annexure.A3 Final Report in Crime No.311 of 2021 of Chengamanad Police Station, Ernakulam, now pending as S.C. No.837 of 2021 on the files of the Fast Track Special Court, Perumbavoor. The petitioners herein are the accused in the above case.

2. Heard the learned counsel for the petitioners, the learned Public Prosecutor and the learned counsel appearing for the defacto complainant, in detail. Perused the relevant materials available.

3. In this matter, the prosecution case is that, at about 10.30 am on 21.02.2021, the 1st accused herein kidnapped the victim aged 17 years from the lawful custody of her guardians/parents and subjected her to sexual intercourse, after detaining her under his illegal custody

and as a result of the sexual assault at the instance of the 1st accused, the minor victim became pregnant. The prosecution allegation against the 2nd accused is that, the 2nd accused, who is the mother of the victim failed to inform the matter to the Police. On this premise, the prosecution alleges commission of offences punishable under Sections 366, 342, 370, 370A, 376(2)(n) of Indian Penal Code and Sections 5(l)(j)(ii) read with 6, 4 read with 3(a) of the Protection of Children from Sexual Offences Act (hereinafter referred as 'POCSO Act' for short) as against the 1st accused and Section 21(1) of the POCSO Act as against the 2nd accused.

4. The learned counsel for the petitioners submitted that, now the matter has been settled and the victim filed an affidavit supporting settlement, stating that the 1st accused married her on 25.08.2021 and they have been living happily as husband and wife. Copy of the marriage certificate also has been produced. In view of the settlement, the matter is liable to be quashed is the submission of the learned counsel for the petitioners.

5. The learned counsel appearing for the victim also

supported the settlement.

6. The learned Public Prosecutor also submitted that the 1st accused and the victim got married and two children also born to them and they are living happily.

7. Adverting to the power of this Court to quash criminal proceedings restoring to Section 482 of the Cr.P.C. is concerned, indubitably, in respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. In a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of

her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. Such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such

cases is founded on the overriding element of public interest in punishing persons for serious offences. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community, but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a “settlement” through duress, threats, social boycotts, bribes or other dubious means. It is well said that “let no guilty man escape, if it can be avoided.”

8. Thus, the law as it stands is that although High Court can invoke its jurisdiction u/s.482 Cr.P.C. even in non-compoundable offence and can quash the proceedings on the basis of settlement arrived at between the parties even in the cases of non-compoundable offences but while exercising its jurisdiction this Court must consider the fact that whether the proceeding relates to any serious and

heinous offences and whether the crime in question has impact over the society. In cases of serious nature which affects the society at large this Court should not exercise its jurisdiction under Section 482 Cr.P.C. for quashing the proceedings on the basis of compromise executed between the parties. (See decisions in ***Gian Singh*** *v.* ***State of Punjab and Another*** reported in **[(2012) 10 SCC 303],** ***Narinder Singh and Others v. State of Punjab and Another*** reported in **[(2014) 9 SCC 466],** ***Shimbhu*** *v.* ***State of Haryana*** reported in **[AIR 2014 Supreme Court 739]**(three Bench)**,** ***State of Madhya Pradesh*** *v.* ***Madanlal*** reported in **[AIR 2015 Supreme Court 3003]** (two Bench), ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Others*** *v.* ***State of Gujarat and Another*** reported in **[(2017) 9 SCC 641],** ***State of Madhya Pradesh*** *v.* ***Laxmi Narayan & Ors****.* reported in **[(2019) 5 SCC 688],** ***Arun Singh and Others*** *v.* ***State of Uttar Pradesh Through its Secretary and Another*** reported in **[(2020) (3) SCC 736],** ***Ram Gopal & Another*** *v.* ***State of Madhya Pradesh*** reported in **[(2021 0 Supreme (SC) 529)],** ***Daxaben*** *v.* ***The State of Gujarat***

& others reported in **[2022 LiveLaw (SC) 642], *P.Dharmraj*** *v.* ***Shanmugam and others*** decided on 8th September 2022 in Crl.Appeal Nos.1515-1516 of 2022).

9. Thus, settlement of cases including offence of rape and POCSO Act offences is not permissible under law. However, in the instant case, though the 1st accused after maintaining relationship with the minor victim subjected her to sexual molestation and she became pregnant, as of now, the 1st accused married the victim and now, they have been living happily with two children. In such cases, the tough nut stand in the way of settlement shall be crushed with humanitarian consideration as the hammer, so as to ensure the peaceful family living of the parties and most importantly to ensure the well being of the children born to them. Hence, there is no necessity to continue criminal proceedings so as to retain them in the hazards of litigation and to collapse their married life and the well being of the children. In view of the matter, in deviation from the general principle, this is a fit case, where quashment is liable to be allowed. Therefore, I am inclined to allow the prayer for quashment.

Accordingly, this petition stands allowed and all

further proceedings pursuant to Annexure.A2 FIR and Annexure.A3 Final Report in Crime No.311 of 2021 of Chengamanad Police Station, Ernakulam, now pending as S.C. No.837 of 2021 on the files of the Fast Track Special Court, Perumbavoor stand quashed.

Sd/-
A. BADHARUDEEN
JUDGE

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