**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE A. BADHARUDEEN**

**WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946**

**CRL.MC NO. 6034 OF 2024**

**CRIME NO.0370/2023 OF KUDIYANMALA POLICE STATION, KANNUR IN S.C. NO.822/2023 ON THE FILES OF FAST TRACK COURT, KANNUR.**

**PETITIONER/PETITIONER/ACCUSED:**

**XXX**
**XXXXXX, PIN-670631**

**BY ADVS.**
**P.T.ABHILASH**
**P.V.MIDHUN**

**RESPONDENTS/RESPONDENTS/DEFACTO COMPLAINANT:**

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

2 **STATION HOUSE OFFICER,**
**KUDIYANMALA POLICE STATION,**
**KUDIYANMALA, KANNUR DISTRICT, PIN-670582**

3 **XXXX**
**XXXXX, PIN-670622**

R1&R2 **SRI.RENJIT GEORGE, SENIOR PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**ORDER**

**Dated this the 24th day of July, 2024**

This petition is filed under Section 482 of the Code of Criminal Procedure by the petitioner, who is the sole accused in Crime No.370/2023 of Kudiyanmala Police Station, Kannur, now pending as S.C. No.822/2023 on the files of the Fast Track Court, Kannur. He seeks quashment of Annexure A1 FIR and Annexure A2 Final Report in the above said Crime.

2. Heard the learned counsel for the petitioner, the learned counsel for the defacto complainant and the learned Public Prosecutor in detail. Perused the relevant records.

3. In this matter, the prosecution alleges commission of offences punishable under Section 376(1), 376(2)(f) and 362 of the Indian Penal Code.

4. In this case, the prosecution allegation is that the marriage between the defacto complainant and the accused was fixed at her residential house in Kilaloor on 14.03.2021 in the

presence of relatives of both parties and pursuant to the fixation of marriage, on 01.09.2021, the accused informed the defacto complainant that he along with his family was going to 'Paithalmala' and brought the defacto complainant along with him on this premise. Later, he brought the defacto complainant to Irikoor and took her in a Car bearing registration No. DL-12-CG-0105. Then the defacto complainant was taken to Green Palace Home Stay owned by the 8th witness in Paithalmala, and subjected her to sexual intercourse against her will on the promise of marriage, in view of the marriage already fixed. Later, the accused left to Delhi in connection with his employment, but thereafter, he deviated from the marriage fixed. Even though the defacto complainant attempted to contact the accused to solemnise the marriage, the said attempt not materialised. During March 2023, the defacto complainant reached the residence of the accused and demanded to marry her, as offered and fixed. But the accused retracted from the marriage. This is

the base on which the prosecution alleges commission of the above offences.

5. While pursuing the relief for quashment of this Crime, it is argued by the learned counsel for the petitioner that the relationship between the accused and the defacto complainant is purely consensual and the defacto complainant/3rd respondent herein demands Rs.30,00,000/- to settle the dispute and Annexure A9 notice also was sent on 06.05.2023 in this regard. Accordingly, it is submitted that there are no materials to see commission of the above offences and in view of the matter, the entire proceedings are liable to be quashed.

6. The learned Public Prosecutor fervently opposed the quashment of this case on the submission that in this matter, the marriage between the defacto complainant and the accused was fixed and while waiting for marriage, the accused subjected the defacto complainant to sexual intercourse on the assurance of marriage and thereafter he wilfully retracted from the same.

7. It is also submitted by the learned Public Prosecutor that, in view of the above, the defacto complainant issued a legal notice as Annexure A9, claiming compensation for breach of contract, but the same in no way efface the criminal culpability, where the sexual intercourse is the outcome of misconception of fact on the promise of marriage, that too after fixing the marriage.

8. Going by the prosecution allegations, the marriage between the defacto complainant and the accused was fixed at her residential house in Kilaloor on 14.03.2021 in the presence of relatives of both parties and pursuant to the fixation of marriage, on 01.09.2021, the accused informed the defacto complainant that he along with his family was going to 'Paithalmala' and brought the defacto complainant along with him on this premise. Later, he brought the defacto complainant to Irikoor and took her in a Car bearing registration No. DL-12-CG-0105. Then the defacto complainant was taken to

Green Palace Home Stay owned by the 8th witness in Paithalmala, and subjected her to sexual intercourse against her will on the promise of marriage, in view of the marriage already fixed. Later, the accused left to Delhi in connection with his employment, but thereafter, he deviated from the marriage fixed. Even though the defacto complainant attempted to contact the accused to solemnise the marriage, the said attempt not materialised. During March 2023, the defacto complainant reached the residence of the accused and demanded to marry her, as offered and fixed. But the accused retracted from the marriage.

9. Here it is emphatically evident prima facie that the relationship between the petitioner and the defacto complainant started in pursuance of marriage fixation ceremony held on 14.03.2021 and while waiting for marriage, the petitioner subjected her to sexual intercourse on the assurance of marriage which has already been fixed and thereafter deviated from the marriage. Therefore, prima facie, the sexual intercourse is the

outcome of misconception of facts on the promise of marriage and in such a case, quashment of the proceedings cannot be considered. In view of the matter, this petition must fail.

10. Accordingly, this petition stands dismissed.

Registry is directed to forward a copy of this order to the trial court for information and compliance.

Sd/-
**A. BADHARUDEEN**
**JUDGE**

bpr

**APPENDIX OF CRL.MC 6034/2024**

**PETITIONER'S ANNEXURES**

| | |
|---|---|
| **Annexure A1** | **CERTIFIED COPY OF THE FIR NO.0370/2023 OF KUDIYANMALA POLICE STATION, KANNUR DISTRICT DATED 06-05-2023.** |
| **Annexure A2** | **CERTIFIED COPY OF THE STATEMENT DATED 05-05-2023 GIVEN BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT.** |
| **Annexure A3** | **CERTIFIED COPY OF THE 161 STATEMENT SUBMITTED BEFORE THE 2ND RESPONDENT.** |
| **Annexure A4** | **CERTIFIED COPY OF THE STATEMENT DATED 06-05-2023 GIVEN BY THE 3RD RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THALIPARAMABA.** |
| **Annexure A5** | **CERTIFIED COPY OF THE SEIZURE MAHAZAR SUBMITTED BY THE 2ND RESPONDENT BEFORE THE JFCM-THALIPARAMABA.** |
| **Annexure A6** | **CERTIFIED COPY OF THE SCENE MAHAZAR DATED 07-05-2023 PREPARED BY THE 2ND RESPONDENT AND SUBMITTED BEFORE THE JFCM, THALIPARAMABA.** |
| **Annexure A7** | **CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BY THE 2ND RESPONDENT BEFORE THE LEARNED JFCM, THALIPARAMABA DATED 01-08-2023.** |
| **Annexure A8** | **TRUE COPY OF THE MEMO OF EVIDENCE DATED 01-08-2023 SUBMITTED BY THE 3RD RESPONDENT BEFORE THE LEARNED JFCM, THALIPARAMBA.** |
| **Annexure A9** | **TRUE COPY OF THE LEGAL NOTICE DATED 06-05-2023 SENT BY THE 3RD RESPONDENT THROUGH HER COUNSEL TO THE PETITIONER.** |
| **Annexure A10** | **PHOTO COPY OF THE CRL. M.C. NO.860/2023 DATED 24-05-2023 OF THE LEARNED SESSIONS COURT, THALASSERY.** |