2025:KER:30510

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.MC NO. 4289 OF 2022

CRIME NO.371/2022 OF Infopark Police Station, Ernakulam

PETITIONER/ACCUSED:

ANANTHU SELVARAJ
AGED 27 YEARS
S/O SELVARAJ MUKUNDAN, RESIDING AT PAZHASSI,
MANNANTHURUTHU, VARAPUZHA, ERNAKULAM, PIN - 682027

BY ADV NABIL KHADER

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

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

2 XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXX

BY ADV K.A.SABITHA

OTHER PRESENT:

ADV.SANAL P. RAJ – PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08.04.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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O R D E R

Dated this the 8th day of April, 2025

The petitioner herein is the sole accused in Crime No.371/2022 of the Infopark Police Station, Ernakulam City. The offence alleged is one under Section 376(2)(n) of the Penal Code. The petitioner seeks quashment of Annexure-A1 F.I.R. in the above crime, as also, all further proceedings thereto, on the premise that the matter has been amicably settled by and between the petitioner/accused and the defacto complainant/victim.

2. The prosecution would allege that the petitioner/accused, with the necessary animus, extended a false promise to marry the defacto complainant and committed rape on her on some day in March, 2018, at the house of the petitioner's friend; and thereafter on various days up to 28.12.2021 at various places. The accused had thereafter withdrawn his promise, thus committing the offence enumerated above.

3. Heard the learned counsel for the petitioner, learned counsel for the 2nd respondent/defacto complainant, and the learned Public Prosecutor. Perused the records.

4. It was primarily pointed out by the learned counsel for the petitioner that the petitioner/accused had married the defacto complainant/victim on 02.04.2023, after the registration of the crime and that they are presently leading a happy married life, as husband and wife. The marriage certificate issued by the Panchayath is produced at Annexure-3. Learned counsel invited the attention of this Court to Annexure-A2 affidavit sworn to by the defacto complainant/victim, wherein the factum of settlement between the parties is recorded, besides signifying that the defacto complainant has no objection in quashing all further proceedings in the instant crime against the petitioner. According to the learned counsel, further prosecution of the matter will not create any result in favour of the prosecution. Learned counsel would

also submit that the offence canvassed in the instant crime is not maintainable, inasmuch as the petitioner/accused had no intention, whatsoever, at the time of extending the promise, that the same will not be acted upon. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Shivshankar @ Shiva*** v. ***State of Karnataka and another*** [(2019) 18 SCC 204], ***Pramod Suryabhan Pawar*** v. ***The State of Maharashtra and another*** [(2019) 9 SCC 608] and ***Dr.Dhruvaram Mulidhar Sonar*** v. ***State of Maharashtra and others*** [AIR 2019 SC 327].

5. The factual aspects as regards the marriage between the petitioner and the defacto complainant etc., are not denied by the learned Public Prosecutor. Learned Public Prosecutor would however, caution that serious offences like the one canvassed in the instant case cannot be quashed only on the strength of the settlement between the parties, as held by the three Judges Bench in ***Gian Singh v. State of Punjab and another*** [(2012) 10 SCC 303].

6. Learned counsel for the 2nd respondent/defacto complainant would fully support the petitioner in the matter of quashment.

7. Having heard the learned counsel for the respective parties, this Court notice that there was a relationship between the petitioner and the defacto complainant during the period from 2018 to 2021. The allegation is that the petitioner/accused had extended a promise to marry, based upon which there was physical relationship between the petitioner and the defacto complainant, for the first time in March 2018, which continued till 28.12.2021. They had physical relationship at various places, on multiple occasions. The allegations of rape emerged for the first time, when the petitioner had allegedly withdrawn his promise to marry. In the said facts, it is difficult to believe that the consent of the victim was extracted by giving a false promise to marry. In ***Shivshankar @ Shiva*** (supra), the allegation was of rape on the basis of pretended love and false promise to marry. The Supreme

Court took stock of the intimate relationship between the accused and the defacto complainant for about eight years and held that the sexual intercourse during the course of that relationship cannot be construed as rape. Accordingly, the criminal proceedings were quashed.

8. In ***Pramod Suryabhan Pawar*** v. ***The State of Maharashtra and another*** [2019 9 SCC 608], the Hon'ble Supreme Court distinguished between two different situations of promise to marry. The first is a case where the promise is false at the very inception, in the sense that the intention of the maker of the promise itself was not to abide by it, but to deceive a woman, so as to convenience her to engage her in sexual relation. The second is a case, where a promise to marry was breached later due to other circumstances. In order to establish a false promise, the maker of the promise should have no intention of upholding his word, at the time of giving it. In such circumstances, the consent of a women, for the purpose of Section 375, will stand vitiated on the ground

of misconception of fact, in which occasion, such misconception was the basis for her in choosing to engage in the objectionable act. The Supreme Court enunciated two propositions in this regard. The first is that, the promise to marry must be a false promise, given in bad faith, with no intention of adherence to the same, at the time when it was given. The second one is that the false promise itself must be of immediate relevance, or bear a direct nexus, to the women’s decision to engage in the sexual act. The case before the Hon'ble Supreme Court was also one of intense and intimate relationship between the accused and the victim for the period from 1998 to 2004; that they used to travel great distances and had engaged in sexual intercourse regularly over a period of five years, that they visited hospital jointly to check whether the complainant was pregnant; and that, they fall apart when the accused expressed his reservation in marrying the complainant. The High Court refused to quash the crime involving the offence under Section 376. However, the Supreme Court, in that case, held that the offence under

Section 375 of the Penal Code is not attracted, even if the facts set out in the complainant’s statements are accepted in toto.

9. The next decision to be looked into is ***Dr.Dhruvaram Mulidhar Sonar*** v. ***State of Maharashtra and others*** [AIR 2019 SC 327]. In that case also, the accused and the victim were living together sometime at the house of the victim; and sometime, at the residence of the accused. They were in a relationship with each other for quite sometime and enjoyed each other's company. A complaint was lodged when the victim came to know that the appellant had married another woman. It was found that she had taken a conscious decision after active mind application to take part in the sexual activity; not a case of passive submission due to any psychological pressure or due to any misconception of fact. In that case also, the Supreme Court chose to quash the crime and all further proceedings.

10. Gauged in the touchstone of the law laid down by the Hon'ble Supreme Court in the decisions afore-referred, it cannot be held that the consent of the defacto complainant for the physical relationship between herself and the petitioner is vitiated by a false promise to marry.

11. More importantly, the petitioner and defacto complainant had thereafter got married, as evidenced from the marriage certificate. They are presently living together as husband and wife, happily. Affidavit sworn to by the defacto complainant would vouch that the defacto complainant has no grievance, whatsoever, against the petitioner now and that the issues have been settled amicably.

12. In the light of the above referred facts, this Court is of the opinion that the necessary parameters, as culled out in ***Narinder Singh and Others v. State of Punjab*** [(2014) 6 SCC 466], ***Madan Mohan Abbot v. State of Punjab***

[(2008) 4 SCC 582] and ***Gian Singh v. State of Punjab and another*** [(2012) 10 SCC 303], are fully satisfied. This Court is convinced that further proceedings against the petitioner will be a futile exercise, inasmuch as the disputes have already been settled. There is little possibility of any conviction in the crime. *Dehors* the settlement arrived at by and between the parties, if they are compelled to face the criminal proceedings, the same, in the estimation of this Court, will amount to abuse of process of Court. The quashment sought for would secure the ends of justice.

In the circumstances, this Crl.M.C. succeeds and F.I.R. in Crime No.371/2022 of Infopark Police Station, Ernakulam City, and all further proceedings pursuant thereto, will stand quashed.

Sd/-

C. JAYACHANDRAN
JUDGE

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APPENDIX OF CRL.MC 4289/2022

PETITIONER ANNEXURES

Annexure A1	**THE CERTIFIED COPY OF THE FIR NO.371/2022 OF INFOPARK POLICE STATION DATED 07.05.2022**
Annexure A2	**THE COPY OF THE AFFIDAVIT FILED BY THE RESPONDENT NO.2**
Annexure 3	**TRUE COPY OF THE CERTIFICATE OF MARRIAGE BEARING REGISTRATION NUMBER 24/2023 DATED 11.05.2023 ISSUED BY THE LOCAL REGISTRAR OF MARRIAGES (COMMON), CHITTATTUKARA GRAMA PANCHAYATH**