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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 5TH DAY OF JUNE 2025 / 15TH JYAISHTA, 1947

CRL.MC NO. 9090 OF 2022

CRIME NO.537/2018 OF KELAKOM POLICE STATION, KANNUR

PETITIONER/ACCUSED:

XXXX
XXXX
XXXX

BY ADVS.
SHRI.K.P.VISWAMBHARAN
SRI.NABIL KHADER

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

1 XXXX
XXXX
XXXX

2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM DISTRICT, PIN - 682031

ADV SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 29.05.2025, THE COURT ON 05.06.2025 PASSED THE
FOLLOWING:



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ORDER

Dated this the 5th day of June, 2025

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash Annexure A1 FIR and Annexure A2 Charge Sheet in crime No.537/2018 of Kelakom police station, now pending as S.C.No.39/2020 on the files of the Additional Sessions Court, Thalassery. The petitioner herein is the sole accused in the above case.

2. Heard the learned counsel for the petitioner/accused and the learned Public Prosecutor in detail and perused the records placed by the learned counsel for the petitioner. Even though notice served upon the de facto complainant, she did not appear.

3. Here, the prosecution case, as could be read out from the First Information Report in Crime No.537/2018 of



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Kelakom Police Station, is that, while the husband of the de facto complainant went for a tour along with the business people in Kolakkad during 2017, the accused, who is the elder brother of the husband of the de facto complainant, criminally trespassed upon the residence of the de facto complainant, caught hold on her breast and also put his finger on her vagina. Thereafter, she was threatened from disclosing the same. On this premise, crime was registered, alleging commission of offences punishable under Sections 450, 506, 376(2)(f), 376(2)(l) and 376(2)(n) of the Indian Penal Code (hereinafter referred to as 'IPC' for short) and after investigation, final report filed alleging commission of offences punishable under Sections 450, 506(i), 376(2)(f) and 376(2)(l) of IPC.

4. While canvassing quashment of the entire proceedings, the learned counsel for the petitioner submitted that this is a false case foisted at the instance of the de facto



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complainant, who is the wife of the younger brother of the accused, since she is in inimical terms with the siblings of her husband, as she and her husband were dissatisfied with allotment of family property by the father of the petitioner as per Annexure A14 registered Will. It is pointed out by the learned counsel for the petitioner further that even though the occurrence was in the year 2017, the crime was registered on 26.12.2018, that too, by recording the statement of the de facto complainant on 26.12.2018. According to him, prior to 26.12.2018, the same de facto complainant filed another complaint, alleging commission of offences punishable under Sections 341, 324 and 509 r/w 34 of IPC, by the petitioner and the said case was registered on 22.12.2018. In the said case, First Information Statement given by the de facto complainant was recorded on 22.12.2018. Thus it is pointed out by the learned counsel for the petitioner that in the earlier statement recorded on 22.12.2018, there is no allegation similar to the



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allegation as to commission of rape and the same would go to show the falsity of the allegations. It is pointed out by the learned counsel for the petitioner further that the petitioner also registered rape cases against another brother of the husband of the de facto complainant by name, Alex and crime Nos.536/2018 and 20/2019 (wherein the wife of Alex also was involved) are those cases. That apart, against another brother, Jose, crime No.538/2018 and 526/2018 also were registered, alleging commission of rape. Out of which, the case arose out of crime No.538/2018 ended in acquittal. According to the learned counsel for the petitioner, due to animosity between the siblings of the husband of the de facto complainant, serious offences are alleged against the petitioner and his brothers without any basis and the entire prosecution is malafide and the same would require quashment.

5. While opposing quashment, the learned Public Prosecutor would submit that even though multiple



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crimes were registered against the petitioner and his siblings, the statement recorded as that of the de facto complainant forms part of this crime and the materials collected during investigation would show that the allegations are *prima facie* made out, warranting trial. Therefore, quashment prayer is liable to fail. It is also pointed out by the learned Public Prosecutor that the de facto complainant is a deaf and dumb person and it was so reported by the investigating officer.

6. In the instant case, as pointed out by the learned counsel for the petitioner and as borne out from the records, it is discernible that the de facto complainant is the wife of the younger brother of the petitioner and the allegation of rape, according to him, happened in the year 2017, as per her FIS, recorded in this crime on 26.12.2018. In the final report, the allegations again widened and it has been stated that there was repeated rape at the instance of the accused starting from 2016 to 31.03.2018, in deviation from the FIS



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wherein the allegation of rape during 2017 alone was alleged. In the final report, it is alleged that during the month of November, 2017, prior to the said date and thereafter, the accused committed rape against the de facto complainant. In fact, no specific date is referred apart from alleging general allegations as regards the dates of occurrence. It is worthwhile to note that even though the de facto complainant has a case that she was subjected to repeated rape by the petitioner during the month of November, 2017 and prior and after that, she did not file any complaint till 26.12.2018. It is most important that she did not raise such allegations even in the earlier crime registered against the petitioner vide crime No.528/2018 on the basis of her statement recorded on 22.12.2018. As far as the allegations against the brothers of the accused, as pointed out by the learned counsel for the petitioner, the same have no direct connection to the subject in issue though the same have deterrent effect.



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7. The crucial question arises for consideration is whether the prosecution case is made out *prima facie* to allow further proceedings and trial or the same would require quashment, holding otherwise that the entire prosecution is an abuse of process of court.

8. No doubt, the parties are close relatives and according to the learned counsel for the petitioner, there is dissatisfaction on the part of the de facto complainant and her husband in the matter of allotment of shares. It is true that in the FIS, the allegation is that during the year 2017, she was subjected to rape and in the final report, the allegations were exaggerated and the same are to the effect that during November 2017 and before and after that she was subjected to rape repeatedly, by the petitioner herein in deviation from her allegation in the first information statement disclosing a solitary incident. Anyhow, the allegation as to commission of rape was alleged for the first time only on 26.12.2018, that too,



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even not disclosing the same in the First Information Statement given in the earlier crime, viz., crime No.528/2018, registered at the instance of the de facto complainant against the petitioner herein on the basis of her statement given on 22.12.2018.

9. In this connection, it is relevant to refer a recent of the Apex Court in **Batlanki Keshav (Kesava) Kumar Anurag v. State of Telangana**, reported in **2025 KHC 6559**, wherein the facts of the case is as under:

“Appellant met the respondent through a matrimonial website while residing abroad, and they mutually agreed to marry. Upon returning to India, appellant allegedly engaged in sexual relations with respondent, who later accused him of deceitfully obtaining consent under a false promise of marriage. Multiple FIRs were lodged- initially under S.417 and S.420 IPC, followed by a second FIR under S.376(2)(n) IPC and the SC/ST (Prevention of Atrocities) Act. Appellant challenged the second FIR before the High Court



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seeking quashing under S.482 CrPC, which was declined, leading to the present appeal. The question that arose for consideration was whether the continuation of prosecution based on inherently contradictory and belated allegations of sexual exploitation under a false promise of marriage constituted a gross abuse of the legal process.”

Allowing the appeal, the court held as under:

“Upon appreciating the facts and circumstances narrated above and having given thoughtful consideration to the allegations as set out in the FIR and the chargesheet placed on record by the accused appellant, we find that there is no material what to say of prima facie material on record to substantiate the allegations of cheating or sexual intercourse under a false promise of marriage against the accused appellant. The allegations levelled in FIR No. 751 of 2021, dated 29th June, 2021, and the impugned FIR No. 103 of 2022 are at great variance and the inherent contradictions in the two reports over the same



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subject matter cannot be reconciled. Having considered the entirety of facts and circumstances as available on record, we are of the firm opinion that allowing prosecution of the accused appellant to continue in the impugned FIR No. 103 of 2022 would be nothing short of a travesty of justice in addition to being a gross abuse of the process of Court. The impugned FIR No. 103 of 2022 is nothing but a bundle of lies full of fabricated and malicious unsubstantiated allegations levelled by the complainant. The facts on record clearly establish the vindictive and manipulative tendencies of the complainant and these aspects have a great bearing on the controversy.”

10. Going by the ratio of the above decision, the Apex Court considered non-disclosure of the occurrence in the first FIR No.751/2021 and disclosure of the same in the second FIR No.103/2022 as fatal to the case of the de facto complainant therein being contradictory.



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11. Following the ratio of the above, indisputably non-disclosure of a serious offence within a reasonable time or at least when an earlier crime was registered against the same accused at the instance of the same de facto complainant would show falsity of the allegations and making the procedure of law as an abuse. That apart, as pointed out by the learned counsel for the petitioner, similar allegations raised by the de facto complainant against other siblings of the petitioner.

12. Although it is pointed out by the learned Public Prosecutor that the de facto complainant is a deaf and dumb person, the prosecution records in no way suggest so and as per the First Information Statement the only narration is that the de facto complainant is having some hearing loss and therefore, this contention also is of no avail to the prosecution.

13. Having found that the allegations are not trustworthy for the reasons already extracted, it could not be



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held that *prima facie* offences alleged by the prosecution as per the impugned final report is established, warranting trial. On the contrary, the entire proceedings are abuse of process of court.

14. In view of the above, the prayer in the petition is liable to succeed.

In the result, this petition stands allowed and Annexure A1 FIR and Annexure A2 Charge Sheet in crime No.537/2018 of Kelakom police station, now pending as S.C.No.39/2020 on the files of the Additional Sessions Court, Thalassery, against the petitioner, stand quashed.

Registry is directed to forward a copy of this order to the trial court forthwith.

**Sd/-
A. BADHARUDEEN
JUDGE**

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