



2024:KER:92652

Crl.M.C.No.4265/2020

-1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 10<sup>TH</sup> DAY OF DECEMBER 2024 / 19<sup>TH</sup> AGRAHAYANA, 1946

CRL.MC NO. 4265 OF 2020

CRIME NO.170/2016 OF BEDAKOM POLICE STATION, KASARGOD

AGAINST THE ORDER IN SC NO.345 OF 2018 OF ADDITIONAL  
SESSIONS COURT - I, KASARAGOD

PETITIONER/ACCUSED:

PUSHPANGADAN,  
AGED 38 YEARS  
S/O. MELOTH AMBU NAIR, R/AT PARAVANADKA,  
CHEMNAD VILLAGE, KASARAGOD DISTRICT.

BY ADV KODOTH SREEDHARAN

RESPONDENTS/COMPLAINANT/STATE:

- 1 STATE OF KERALA  
THROUGH THE STATION HOUSE OFFICER, BEDAKAM POLICE STATION,  
REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM 31
- 2 XXXX  
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SRI.PRASANTH M.P., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
06.12.2024, THE COURT ON 10.12.2024 DELIVERED THE FOLLOWING:

**ORDER**

The accused in S.C.No.345/2018 on the files of the Additional Sessions Court, Kasaragod, has filed the present petition under Section 482 Cr.P.C. for quashing the proceedings in the said case.

2. The allegation against the petitioner is that he had committed the offence punishable under Sections 376 & 506(i) IPC . According to the defacto complainant, a housewife having husband and two children, the accused had taken her to various lodges at Thiruvananthapuram, Kannur, Mangalapuram etc., by subjecting her to the threat of causing damage to the life of her husband and children, and committed the offence of rape. It is also stated that the accused had given the offer to marry her.

3. Heard the learned counsel for the petitioner and the learned public prosecutor representing the State of Kerala.

4. It is argued by the learned counsel for the petitioner that the offence of rape alleged against the petitioner is prima facie unsustainable since the prosecution records itself revealed that the attempt of the defacto complainant is to try whether the episodes of consensual sexual intercourse which she had indulged with the



petitioner could be depicted as rape. It is stated that, even as per the prosecution version, the defacto complainant, a housewife who had been living with her husband and children, had voluntarily gone along with the petitioner to various places, spent several nights in the same roof with him at various lodges and consented for the extramarital relationship which she had with the petitioner for a long period. Thus, it is argued that the defacto complainant cannot complain of rape in respect of the aforesaid relationship which she maintained with the petitioner.

5. It is true that the defacto complainant had stated before the Investigating Agency that she was compelled to accompany the petitioner to various places and to spend several nights under the same roof with him since she was threatened by the petitioner that her husband and children would be done away with. The above excuse offered by the defacto complainant for her promiscuous relationship with the petitioner, cannot be accepted without a pinch of salt. Seldom is it heard about a housewife resorting to forbidden relationship with a neighbour for a continuous period extending to several months to save her husband and children from being assassinated by her paramour. It is too hard to accept the above



explanation offered by the defacto complainant to bring the consent given by her for having prolonged sexual relationship with the petitioner as one coming under the purview of Section 90 of the IPC. Had it been a single incident where the offender had managed to conquer the victim on knife point to submit herself to his carnal desires by instilling fear of causing damage to the life of her husband and children, the contention of the victim would have been accepted. But, when the case relates to the continued amorous relationship between the victim and the offender for several months at various places where they travelled together, the contentions of the victim about her consent procured under fear of injury, cannot hold any water. The promise of marriage said to have been offered by the petitioner for the purpose of having sexual relationship with the defacto complainant, is also untenable in view of the fact that the defacto complainant is a housewife having husband and two children, and her marriage was subsisting during the occasions when she indulged extramarital relationship with the petitioner.

6. In the light of the facts and circumstances of the case discussed herein above, it has to be concluded that the continuance of prosecution would definitely amount to abuse of process of court.



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Needless to say that the prosecution proceedings in S.C.No.345/2018 against the petitioner before the Additional Sessions Court, Kasaragod, are liable to be terminated in exercise of the powers under Section 482 Cr.P.C.

In the result, the petition is allowed. The proceedings in S.C.No.345/2018 on the files of the Additional Sessions Court, Kasaragod, are hereby quashed.

(sd/-)

**G. GIRISH, JUDGE**

DST



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**APPENDIX**

**PETITIONER ANNEXURES**

- ANNEXURE I** TRUE COPY OF THE FINAL REPORT IN CRIME NO. 170/2016 OF BEDAKAM POLICE STATION, KASARAGOD DATED 6/02/2017
- ANNEXURE II** TRUE COPY OF THE FIR IN CRIME NO. 170/2016 OF BEDAKAM POLICE STATION, KASARAGOD DATED 31-03-2016
- ANNEXURE III** TRUE COPY OF THE F1 STATEMENT MADE BY HEER BEFORE THE POLICE DATED 28-4-2016
- ANNEXURE IV** TRUE COPY OF THE REQUEST BY THE WOMEN CELL DATED 30-03-2016.
- ANNEXURE V** TRUE COPY OF THE 164 STATEMENT MADE BY HER BEFORE THE LEARNED MAGISTRATE.
- ANNEXURE VI** TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 28-09-2017