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CRL.MC NO. 1401 OF 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 26TH DAY OF NOVEMBER 2024/5TH AGRAHAYANA,

1946

CRL.MC NO. 1401 OF 2021

CRIME NO.714/2020 OF KADUTHURUTHI POLICE STATION,

KOTTAYAM

PETITIONER:

XXXX
XXXX

BY ADVS.
C.R.REGHUNATHAN
SRI.R.BALAKRISHNAN
SRI.B.HARRYLAL

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA - 682 031.
- 2 STATION HOUSE OFFICER
KADUTHURUTHY POLICE STATION,
KADUTHURUTHY - 686604.
- 3 XXXX
XXXX

BY ADV K.K.RAZIA
SRI.M P PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 26.11.2024, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

**CR****ORDER**

Dated this the 26th day of November, 2024

This Criminal Miscellaneous Case has been filed by the petitioner, who is the sole accused in Crime No.714/2020 of Kaduthuruthy Police Station, under Section 482 of the Code of Criminal Procedure, 1973, seeking the following prayers:

- "i. Call for the records, hear the parties and quash Annexure A9 Final Report, invoking inherent powers of this Hon'ble Court under section 482 of the Code of Criminal Procedure, 1973.*
- ii. Grant such other relief that may be proper and necessary in the interest of justice."*

2. Heard the learned counsel for the petitioner, learned counsel for the 3rd respondent and the learned Public Prosecutor. Perused the records, placed by the learned counsel for the petitioner, form part of the prosecution and other documents.



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3. Here, the prosecution alleges commission of offences punishable under Sections 354D, 450 and 376(2)(n) of the Indian Penal Code, 1860, as well as Section 6 r/w 5(l) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the PoCSO Act'). The allegation is that the defacto complainant and the accused, who legally effected marriage as on 19.06.2017, maintained love relationship since 2015 onwards while the defacto complainant was a minor, aged below 18 years. Further allegation is that while maintaining the relationship during the juvenility of the defacto complainant, the petitioner herein subjected her to sexual intercourse at 11.30 hours on 08.03.2015 when she was aged 16 years and 11 months and thereafter repeated the same on 09.03.2015 and 11.03.2015 at 12 midnight. The prosecution case further is that during the month of October, 2016, and thereafter during the month of June, 2017 also, she was subjected to sexual intercourse by the accused after she attained majority. This is the base



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on which the prosecution alleges commission of the above offences.

4. While seeking quashment of the crime, it is submitted by the learned counsel for the petitioner that the entire allegations are false and foisted. According to the learned counsel for the petitioner, there was no relationship in between the petitioner and the defacto complainant before February, 2016, and there was no sexual intercourse before the marriage as alleged. According to the learned counsel for the petitioner, after having solemnized the marriage on 19.06.2017, while living together as husband and wife, there were differences of opinion between the defacto complainant and the petitioner and ultimately, the defacto complainant lodged a complaint on 24.06.2020 before the Station House Officer as Annexure-A5 and in the said complaint, no allegation of sexual molestation, during the juvenility of the defacto complainant was stated, as put forth now, and denial of maintenance was the allegation therein. As per Annexure



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A7, the police disposed of the complaint, directing the parties to approach the Family Court and seek remedies. Therefore, the argument of the learned counsel for the petitioner is that the defacto complainant, in order to wreak vengeance, by misusing the provisions of PoCSO Act levelled allegations of sexual molestation during the period of her juvenility, that too, after three years and one month after the marriage, on 06.07.2020, without any basis. Accordingly, it is submitted that this is a case, wherein false and fraudulent allegations are made, warranting quashment of the same.

5. Opposing quashment, the learned counsel appearing for the defacto complainant would submit that the allegations are true and offences are *prima facie* made out. Therefore, trial is necessary. When the learned counsel for the defacto complainant is asked to justify the delay in lodging the FIR even after solemnization of marriage for a period of three years, the learned counsel failed to offer



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either a sufficient explanation or even a remotely sufficient explanation in any manner.

6. The learned Public Prosecutor would submit that the marriage between the defacto complainant and the petitioner was solemnized on 19.06.2017 and the FIR was lodged only on 06.07.2020. The prosecution records would show that the allegations, *prima facie*, are made out and therefore, quashment is liable to fail.

7. In the instant case, the parties are admittedly married, as evident from Annexure A2 marriage certificate, on 19.06.2017 and now their status is that of husband and wife. As per the prosecution allegations, the defacto complainant was subjected to sexual intercourse during the month of June, 2017 also. If the same is after marriage on 19.06.2017, no offence would be attracted as the same is after marriage.

8. It is true that in the statement of the defacto complainant, she disclosed penetrative sexual intercourse on



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08.03.2015, 09.03.2015 and 11.03.2015 and thereafter in between October, 2016 and June, 2017, during the juvenility of the defacto complainant. However, according to the learned counsel for the petitioner, in continuation of the relationship, which started during the month of February, 2016, the parties got married and they are now husband and wife. It is true that there is discord between them and are now living separately. The crucial question to be addressed herein is, whether the allegations made by the defacto complainant on 06.07.2020 alleging sexual molestation during the period starting from 08.03.2015 to October, 2016 are *prima facie* believable in the facts and circumstances of this particular case. No doubt, for the first time, the allegation was raised by the defacto complainant only on 06.07.2020. It is discernible that even though she lodged Annexure A5 complaint before the Station House Officer as on 25.06.2020, she did not raise any such allegations. As per Annexure A6, the police closed the petition, directing the parties to resort



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remedies before the Family Court and on 24.06.2020, after two weeks, the present complaint was lodged raising allegations which have been dealt in detail above. It is discernible that the PoCSO Act has been enacted by the legislature to protect children from sexual abuse of any mode with exhaustive penal provisions of very stringent nature. But now a days, the provisions of the PoCSO Act are being misused by certain group of persons to wreak vengeance and also to make a strong case against their rivals, so as to obtain ulterior motives therefrom. Therefore, when the courts addressing the genuineness of the case, by exercising the power under Section 482 of the Cr.P.C., have a duty to segregate the grains from the chaff to analyse whether the allegations, if taken together in the facts of a particular case, would constitute the offences alleged and the same are *prima facie* digestible to prudence. When the facts of the case are scanned, if the same reveals that the allegations are levelled with ulterior motives and the same are not digestible



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to prudence, the courts shall exercise its power under Section 482 of Cr.P.C. or under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to quash the false and frivolous litigations at the threshold. Here, the wife of the petitioner is the defacto complainant and she lodged complaint after three years and one month regarding coitus between them in the year 2015 and 2016 when the marital relationship estranged and they become rivals. *Prima facie*, it appears that the entire allegations are raised with ulterior motives by the wife against the husband by misusing the provisions of the PoCSO Act and the penal provisions of IPC at a much belated stage after the marriage was solemnized. Therefore, *prima facie* allegations are found unsustainable. In view of the matter, by exercising power under Section 482 of the Code of Criminal Procedure, this matter would require quashment.

In the result, this petition stands allowed and Annexure A9 Final Report and all further proceedings in



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Crime No.714/2020 of Kaduthuruthy Police Station,
Kottayam, as against the petitioner, stand quashed.

**Sd/-
A. BADHARUDEEN
JUDGE**

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APPENDIX OF CRL.MC 1401/2021

PETITIONER ANNEXURES

ANNEXURE A1 TRUE COPY OF THE PHOTOGRAPHS OF
MARRIAGE CEREMONY.

ANNEXURE A2 TRUE COPY OF THE MARRIAGE CERTIFICATE
ISSUED BY THE VICAR OF ST.JOHN THE
BAPTISTS CHURCH, THURUTHIPALLY DATED
20.03.2020.

ANNEXURE A3 TRUE UNEDITED COPY OF THE CONVERSATION
RECORDED ON 19.06.2018 COPIED IN DVD.

ANNEXURE A4 TRUE COPY OF THE JUDGMENT DATED
15.01.2020 IN OS 179/2019 OF THE
MUNSIFF COURT

ANNEXURE A5 TRUE COPY OF THE COMPLAINT FILED BY
3RD RESPONDENT BEFORE 2ND RESPONDENT.

ANNEXURE A6 TRUE COPY OP (DIV) NO.358/2020 BEFORE
FAMILY COURT, ETTUMANNOR, ON
26.05.2020.

ANNEXURE A7 TRUE COPY OF THE SETTLEMENT RECORDED
ON 24.06.2020 AT KADUTHURUTHY POLICE
STATION.

ANNEXURE A8 CERTIFIED COPY OF THE FIR IN CRIME
NO.714/2020.

ANNEXURE A9 CERTIFIED COPY OF THE FINAL REPORT
NO.886/2020

RESPONDENTS ANNEXURES : NIL