



CNR : KLHC011494692024
2026:KER:64110

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 19TH DAY OF AUGUST 2026 / 28TH SRAVANA, 1948

CRL.MC NO. 8899 OF 2024

CRIME NO.461/2022 OF MANNARKKAD POLICE STATION, PALAKKAD

AGAINST THE ORDER/JUDGMENT DATED IN SC NO.779 OF 2023 OF FAST
TRACK SPECIAL COURT, PATTAMBI

PETITIONER:

XXXXXX
AGED 27 YEARS
XXXXXX, PIN - 678001

BY ADVS.
SHRI.SUNNY MATHEW
SHRI.ANOOJ.J

RESPONDENT/S:

- 1 XXXXX, AGED 20 YEARS
XXXXXXXXXXXXXXXXXX, PIN - 678583
- 2 THE INSPECTOR OF POLICE, MANNARGHAT POLICE STATION,
PALAKKAD DISTRICT, PIN - 678582
- 3 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM COCHIN, PIN - 682031

BY ADV SRI.P.JAYARAM
SRI. NAVAS V.A, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
17.08.2026, THE COURT ON 19.08.2026 PASSED THE FOLLOWING:

C.RORDER

This petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the first accused in Crime No. 461 of 2022 of Mannarkkad Police Station, registered alleging the commission of offences punishable under Sections 366, 376(2)(n) of the Indian Penal Code, 1860 and Sections 6(1) r/w 5(l) & 15(1) of the Protection of Children from Sexual Offences Act, 2012, now pending as S.C. No. 779 of 2023 on the files of the Fast Track Special Court, Pattambi.

2. The prosecution case is that on 23.10.2021, the first accused kidnapped the victim girl in a car, took her to his residence, and committed rape upon her repeatedly from 23.10.2021 to 26.10.2021, and the second and third accused facilitated the commission of the said offence. Moreover, despite being aware of the offence allegedly committed by the first accused, the parents of the victim failed to take her back or report the matter to the authorities concerned. Thus, the accused are alleged to have committed offences punishable under Sections 366, 376(2)(n) of the Indian Penal Code, 1860 and Sections 6(1) r/w 5(l), 15(1), 17 r/w 16 of the Protection of Children from Sexual Offences Act, 2012.



3. I heard Sri. Sunny Mathew, the learned counsel appearing for the petitioner, Sri. P. Jayaram, the learned counsel appearing for the first respondent, and Sri. Navas V.A., the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner submitted that the present case is a classic example of an abuse of the process of law, instituted with the ulterior motive of wreaking vengeance upon the petitioner. According to the learned counsel, the de facto complainant, who is the alleged victim of the offence, is the legally wedded wife of the petitioner. The learned counsel further urged that when the de facto complainant was 17 years and one month old, the petitioner married her on 23.07.2021 in accordance with Islamic religious rites and ceremonies in the presence of members of both families. The performance of such a marriage was admitted by the de facto complainant, the Khazi of the mosque where the marriage took place, and the brother of the de facto complainant in their statements given to the police. Placing reliance on Exception 2 to Section 375 of the IPC, the learned counsel urged that sexual intercourse by a man with his own wife is not rape if the wife is not under 15 years of age. Hence, according to the learned counsel, the offence of rape is not attracted in the facts of the present case, and consequently, the final report as well as all further proceedings registered against the petitioner are liable to be quashed.



5. Per contra, the learned counsel for the first respondent submitted that, evidently, the victim of the alleged offence was only 17 years of age at the time of the incident and would fall within the definition of "child" as defined under Section 2(1)(d) of the POCSO Act. According to the counsel, sexual intercourse with a minor girl repeatedly below the age of eighteen years would certainly constitute the offence of aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act, as well as the offence of rape punishable under Section 376 of the IPC. It was further submitted that, if the allegations contained in the First Information Statement (FIS) are taken at face value, the essential ingredients of the alleged offence are fully made out, and therefore, this is not a fit case for invoking the inherent jurisdiction of this Court to terminate the criminal proceedings at a nascent stage.

6. The learned Senior Public Prosecutor also supported the submissions advanced by the learned counsel for the first respondent.

7. Before delving into a discussion regarding the rival contentions, it is to be noted that this Court possesses inherent jurisdiction under Section 528 of the BNSS (corresponding to Section 482 of the Code of Criminal Procedure, 1973) to quash criminal proceedings in appropriate cases. However, such jurisdiction is extraordinary in nature and is required to be exercised sparingly,



cautiously, and only when such intervention is necessary either to prevent an abuse of the process of law or otherwise to secure the ends of justice.

8. One of the well-recognised grounds for quashing criminal proceedings is that, even if the allegations contained in the complaint or FIS are taken at face value and accepted in their entirety, they do not disclose the commission of any offence or make out a case against the accused. At the same time, while exercising jurisdiction under Section 528 of the BNSS, this Court is not expected to conduct a meticulous examination of the evidence, assess the probative value of the materials collected during the investigation, or undertake a mini-trial.

9. The scope of inquiry in a petition seeking quashment of criminal proceedings is essentially limited to examining whether the allegations, on a plain reading together with the materials available on record, disclose the essential ingredients of the alleged offences. Where the allegations raise disputed questions of fact requiring the appreciation of evidence, such matters are ordinarily to be adjudicated by the trial court after a full-fledged trial.

10. Keeping in view the aforesaid principles while coming to the present case, it can be seen that in the FIS, it is specifically alleged that on 23.10.2021, the accused, who arrived in a Maruti Alto



car, enticed the de facto complainant by stating that he would purchase clothes for her and subsequently took her to his house at Thottara. It is further alleged that the accused compelled her to reside at his house, and when she expressed her desire to sleep with the mother of the accused, the parents of the accused refused permission, placed her in the bedroom of the accused, and locked the door from outside. It is further alleged that on the night of the said day, the accused forcefully engaged in sexual intercourse with her, and repeated the act on the following four days. Although the truthfulness or otherwise of the allegations raised in the FIS can be determined only after a full-fledged trial, the allegations, if taken at face value, prima facie disclose the commission of the alleged offences.

11. However, I am not unmindful of the contention raised by the learned counsel for the petitioner that the de facto complainant is the legally wedded wife of the accused. While considering the said contention, it is to be noted that the main materials on which the petitioner relies to show that the petitioner had married the de facto complainant are the statements given to the police by the de facto complainant, her brother, and the Khazi of the mosque where the marriage was allegedly performed, wherein they admitted that the petitioner married the de facto complainant. Nevertheless, whether a valid marriage actually took place as claimed by the petitioner is a



matter that can be determined only after trial, particularly since there is no documentary evidence showing the solemnization of such a marriage.

12. Even assuming for the sake of argument that a marriage was solemnized as per Muslim religious rites and ceremonies, the same will not salvage the petitioner's criminal liability, particularly since the girl was seventeen years old at the time of the alleged marriage and subsequent sexual acts. Undisputedly, the provisions of the POCSO Act apply if one of the parties to the marriage is a minor, irrespective of the validity or otherwise of the marriage under personal law. At this juncture, it is worthwhile to refer to the decision of this Court in **Khaledur Rahman v. State of Kerala and Another** [2022 KHC Online 913], wherein it was observed:

"The POCSO Act is a special statute enacted specifically for the protection of children from sexual offences. Sexual exploitation of every nature against a child is treated as an offence. Marriage is not excluded from the sweep of the statute and, in the absence of any specific exclusion of customary or personal law from statutory provisions, Statute will prevail, and personal law or customary law shall stand abrogated to the extent of the inconsistency."

13. Undisputedly, the POCSO Act was enacted based on principles arising out of jurisprudence relating to child protection and



rights. Notably, as per Section 2(1)(d) of the Act, "child" means any person below the age of eighteen years. Likewise, Section 42A of the POCSO Act makes it clear that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, and in case of any inconsistency, the provisions of the POCSO Act shall have overriding effect on the provisions of such law to the extent of the inconsistency. Therefore, it is manifestly clear that sexual intercourse with a girl below eighteen years of age attracts the offences under the POCSO Act, and in such a situation, whether the child is the wife of the accused or not is of little consequence. Be that as it may, the allegations in the present case *prima facie* constitute the ingredients required to attract the offences alleged under the POCSO Act.

14. Now, the crucial question that requires to be addressed is whether the accused can seek exoneration from liability for the offence punishable under Section 376 of the IPC with the aid of Exception 2 to Section 375 of the IPC. It is to be noted that under the said Exception, sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is excluded from the definition of rape. In considering whether the said Exception enures to the benefit of the accused, it must first be noted that whether a valid marriage existed between the petitioner and the de facto complainant is a matter of evidence to be relegated to the trial



stage.

15. Moreover, the Hon'ble Supreme Court in **Independent Thought v. Union of India and Another** [(2017) 10 SCC 800] considered the applicability of the said Exception in the case of a married girl aged between fifteen and eighteen years and held that the said Exception was violative of Articles 14, 15, and 21 of the Constitution of India, contrary to constitutional morality and human rights concepts, and inconsistent with pro-girl child statutory provisions in force. Applying a harmonious and purposive interpretation, the Hon'ble Supreme Court read down Exception 2 to Section 375 IPC to provide that *"sexual intercourse or sexual acts by a man with his own wife, not being under eighteen years of age, is not rape,"* thereby aligning it with constitutional and statutory philosophy.

16. In view of the law laid down by the Hon'ble Supreme Court in Independent Thought's Case (cited supra), a person who engages in sexual intercourse with a girl below the age of eighteen years is liable to be prosecuted for the offence of rape under Section 376 IPC, even if the victim is his wife and is between fifteen and eighteen years of age. Therefore, in the case at hand, the accused cannot escape prosecution with the aid of Exception 2 to Section 375 IPC.



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17. As already stated, on a plain reading of the allegations contained in the FIS and the materials accompanying the final report, this Court has no hesitation in holding that the allegations, if accepted at face value, prima facie disclose the commission of the alleged offences against the petitioner. Consequently, this Court is of the considered view that this is not a fit case for exercising inherent jurisdiction under Section 528 of the BNSS to quash the FIR, final report, or further proceedings arising therefrom.

In the result, this Crl.M.C. is dismissed. It is made clear that the observations contained in this order are made solely for the purpose of deciding the present petition and shall not influence the trial court while considering the case on its merits.

Sd/-

JOBIN SEBASTIAN

JUDGE

vdv