



2025:KER:30289

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 2<sup>ND</sup> DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

CRL.MC NO. 6880 OF 2022

CRIME NO.466/2019 OF Santhanpara Police Station, Idukki

AGAINST SC NO.213 OF 2020 OF FAST TRACK SPECIAL COURT,

KATTAPPANA (POCSO)

PETITIONER/ACCUSED:

XX

XX

BY ADVS.

S.RAJEEV

V.VINAY

M.S.ANEER

SARATH K.P.

PRERITH PHILIP JOSEPH

ANILKUMAR C.R.

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
PIN - 682031  
(CRIME NO.466/2019 OF SANTHAMPARA POLICE STATION,  
IDUKKI DISTRICT - 685508)

2 YY  
YY

BY ADV.ANAND KALYANAKRISHNAN

ADV.E.C. BINEESH - PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
02.04.2025, ALONG WITH Cr1.MC.7427/2024, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

CrI.M.C.Nos. 6880 of 2022 and 7427 of 2024



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 2<sup>ND</sup> DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

CRL.MC NO. 7427 OF 2024

CRIME NO.63/2020 OF Karinkunnam Police Station, Idukki

AGAINST SC NO.212 OF 2020 OF SPECIAL COURT UNDER  
POCSO ACT, IDUKKI

PETITIONER/ACCUSED:

XXXXXXXXXXXX  
XXXXXXXXXXXX XXXXXXXXXXXX

BY ADVS.  
BOBBY GEORGE  
BABY SIMON  
JOY C. PAUL  
ABHILASH MURALEEDHARAN  
NOBLE GEORGE  
MADHU V.

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM DISTRICT, PIN - 682031
- 2 XXXXXXXXXXXX  
XXXXXXXXXXXX XXXXXXXXXXXX  
SRI. C.N. PRABHAKARAN-SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
02.04.2025, ALONG WITH CrI.MC.6880/2022, THE COURT ON THE  
SAME DAY PASSED THE FOLLOWING:

Crl.M.C.Nos. 6880 of 2022 and 7427 of 2024



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“C.R.”

**COMMON ORDER**

*Dated this the 2<sup>nd</sup> day of April, 2025*

Two separate independent criminal cases are sought to be quashed on the strength of settlement between the parties. Since both these cases involve offences under the Protection of Children from Sexual Offences Act, 2012, ('POCSO Act' for short) - the quashment of which on the basis of settlement being a debatable proposition - this Court choose to dispose of both matters by virtue of a Common Order, as the parameters for consideration are common.

2. The relevant facts may be summarized thus:

**Cr1.M.C.No.6880/2022:-** Petitioner herein is the sole accused in Crime No.466/2019 of Shanthanpara Police Station, now pending as S.C.No.213/2020 before the Fast Track Special Court (POCSO), Kattappana. The offences alleged are under Section 376 of the Penal Code and under

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Section 3(a), read with Section 4 and 5(ii)(j) and (l), read with Section 6 of the POCSO Act. The prosecution would allege that the petitioner/accused, with the necessary animus, had committed penetrative sexual assault on the victim, a minor girl, repeatedly during the period from 22.12.2018 till 24.12.2018 and thereafter, at a different house on 11.09.2019, pursuant to which the victim became pregnant, thus committing the offences enumerated above.

**Cr1.M.C.No.7427/2024:-** Petitioner herein is the sole accused in Crime No.63/2020 of Karinkunnam Police Station, Idukki, now pending as S.C.No.212/2020 before the Special Court (POCSO), Idukki. The offences alleged are under Sections 363, 366(A), 370 and 376(2)(n) of the Penal Code and also under Section 4, read with Section 3(a); Sections 5(1) and 5(j)(ii), read with Section 6 of the POCSO Act. The prosecution would allege that the petitioner/accused, with the necessary animus, have enticed the victim girl, aged 17 years, from her lawful

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guardianship by June 2017 and committed penetrative sexual assault on her during the period from May 2019 to September 2019, repeatedly, with the result, the victim became pregnant. On 09.02.2020, the petitioner/accused contacted the victim on several occasions and kidnapped her by about 3:30 p.m. in his scooter. The prosecution would also allege that the victim gave birth to a baby girl, thus committing the offences enumerated above.

3. A common facet of both these cases is that the respective petitioner/accused have married the victim girl after the registration of the crime, upon the respective minors attaining majority. In Crl.M.C.No.6880/2022, Annexure-VI is the marriage certificate, while it is Annexure-A3 in Crl.M.C.No.7427/2024. In both these cases, the respective petitioners seek quashment on the strength of amicable settlement with the victim girls, as also, their parents. In Crl.M.C.No.6880/2024, Annexure-V is the affidavit sworn to by the defacto complainant/victim,

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wherein she would swear that she had decided to marry the petitioner upon attaining majority (at the time of swearing the affidavit the marriage had not taken place); that the families of both the petitioner and victim have accepted the relationship; and that the defacto complainant/victim has no objection in quashing all further proceedings in that crime. A similar affidavit is sworn to by the defacto complainant/victim in CrI.M.C.No.7427/2024, produced at Annexure-A6, wherein she would swear that the petitioner/accused is her husband and that their marriage was solemnized on 24.01.2020 at a temple, in accordance with the religious rites. It is also stated that in that wedlock, they have a girl child by name Theertha, then studying at LKG and further, that the deponent/victim is again pregnant. The deponent would also state that she has been sent for B.Sc Nursing course by the petitioner, and he is taking care of the four year old child. According to the victim, the crime was filed on the basis of misunderstanding and that she has no surviving

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grievance against the petitioner/accused, inasmuch as the subject matter of the Sessions Case concerned is fully settled by and between them.

4. Apart from the affidavits sworn to by the victim girls, this Court directed the Investigating Officers concerned to record the statement of the victim pursuant to the filing of the above-referred Criminal Miscellaneous Cases. The facts sworn to in the respective affidavits were reiterated by the respective victims in such statements of the victims given before the Investigating Officer. It is on the basis of the above factual parameters that this Court has been called upon to quash the crime, the final report, and also all further proceedings on the strength of the settlement between the parties.

5. Having regard to the importance of the common issues involved in a batch of cases, this Court appointed

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Smt. A. Parvathi Menon as Amicus Curiae. Learned Amicus gave a preliminary report before this Court dated 11.12.2024 touching upon the various aspects of the issue, including the legal as well as the societal point of view, which report is of considerable assistance to this Court in resolving the issues involved in these cases.

6. The quashment sought for under Section 482 Cr.P.C. on the strength of the settlement between the parties has always vexed the Court, and several landmark judgments have been rendered in this regard, including the *State of Haryana and Others v. Bhajan Lal and Others* [1992 SCC (Cri) 426] and *Gian Singh v. State of Punjab and another* [(2012) 10 SCC 303]. In *Gian Singh* (supra), it was held that the inherent power under Section 482 is not limited by Section 320 of the Code of Criminal Procedure and that the High Court can quash the proceedings in respect of non-compoundable offences, provided it serves the ends of justice. However, compounding of serious and heinous





offences, which impact the society at large was frowned upon by the three Judges Bench in **Gian Singh** (supra).The conclusions in **Gian Singh** (supra) in Paragraph no.61 are extracted here-below:

*“61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be*



*fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite*



*full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."*

7. Recently, the Hon'ble Supreme Court examined the legal position as regards quashment of offences under the POCSO Act in ***Ramji Lal Bairwa and Another v. State of Rajasthan and Others*** [2024 SCC OnLine SC 3193]. Frowning upon the quashment of offences under POCSO Act based on the settlement between the parties, the Supreme Court held that in the nature of cases before the Supreme Court, the compromise between the parties, or the fact that there exists a remote and bleak chance of conviction, cannot be

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a ground to abruptly terminate the investigation by quashing the F.I.R. and further proceedings thereto, by invoking the powers under Section 482 of the Cr.P.C. The legal position in **Gian Singh** (supra) that the powers under Section 482 Cr.P.C. cannot be used to quash proceedings based on compromise, if it is in respect of heinous offences, which are not of a private nature, and having serious impact on the society, is seen reiterated. However, it is relevant in this regard to take note of the factual premise based upon which the above dictum was laid down. In **Ramji Lal** (supra), the attendant facts constituting the prosecution allegation is to the following effect:

On 06.01.2022, the victim child, who was then a student of class XI in Higher Secondary, was alone in the classroom. The 3<sup>rd</sup> respondent, a teacher, came there and after ensuring that there is no one else in the classroom, he reached behind the victim, patted on her cheeks and put his hands inside her bodice and rubbed her breast. When



the victim got up and ran away, the accused followed to stop her. Though the victim sought for help of other teachers, there was no positive response. In the meanwhile, one teacher came to the victim's residence, and when her mother reached the school, she found the victim in a deadly, terrified and numbed state. The child was not in a position to say anything to her mother. Upon reaching home, she divulged the incident to the mother, pursuant to which the F.I.R. was lodged.

8. Needless to say that the factual situation is quite different from the facts at hand. In *Ramji Lal* (supra), a teacher had made sexual advancements to his pupil, constituting offences under the POCSO Act; whereas in the instant facts before me, there was a relationship between the petitioner and the accused, which led to physical relationship, followed by the marriage of the petitioner/accused and the defacto complainant/victim.

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9. This Court will now address the views of the various High Courts in this regard. I will begin with the judgment of a learned Single Judge of this Court in ***Vishnu v. State of Kerala*** [2023 (3) KLT 754]. After making a thorough scan of all the precedents on the point, the learned Single Judge concluded that normally the High Court should not interfere with the investigation/criminal proceedings involving sexual offences against women and children, only on the ground of settlement. However, exercise of the extraordinary powers under Section 482 Cr.P.C. or Article 226 of the Constitution is not completely foreclosed to quash such proceedings in extraordinary circumstances, to do complete justice to the parties. The learned Judge exhorts to take a rational view based on *pros and cons* being weighted, so as to identify fit cases for compromise.

10. In 2019, a learned Single Judge in Crl.M.C.No.381/2018 quashed the proceedings by invoking

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the powers under Section 482 Cr.P.C, wherein the offences under the POCSO Act were also involved. The learned Single Judge found that, once the petitioner/accused and the victim had married each other, refusal to quash the criminal proceedings will detrimentally affect their family life, as also, the balance and harmony achieved by the resolution of disputes.

11. A more or less similar view is seen taken by the Delhi High Court in *Kapil Gupta v. State (NCT of Delhi) and another* [2022 SCC Online SC 1030]. In *Amar Kumar and Another v. State (Government of NCT of Delhi) and Another* [2023 SCC Online Del 8452], the Delhi High Court quashed all further proceedings in a case where the offences under the POCSO Act were alleged. There was a relationship between the 1<sup>st</sup> petitioner and the 2<sup>nd</sup> respondent in that case, as a consequence of which the 2<sup>nd</sup> respondent, who was a minor, became pregnant. In quashing the proceedings, the Delhi High Court found that the continuance of the

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proceedings would cause extreme injustice to the parties, besides there being remote possibility for any conviction.

12. A similar course was adopted by the Delhi High Court in *Arjun Kamti v. State of GNCT of Delhi, through SHO and Others* [2023 SCC Online Del 4735].

13. The Punjab and Haryana High Court in *Rajveer Singh and Another v. State of Punjab and Another* [CRM-M-39297/2021] quashed the proceedings taking stock of the compromise between the parties. The Court found that no useful purpose will be served by continuing the proceedings. The fact that the accused married the victim and that they are happily cohabiting was taken stock of. The denial of the prayer would be contrary to the interest of the petitioner and the victim, was the finding of the Punjab and Haryana High Court.

14. In *Vijayalakshmi v. State represented by the Inspector of Police, All Women Police Station* (2021 SCC



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*Online Mad 317*), the Madras High Court quashed the proceedings involving offences under the POCSO Act on the strength of the settlement between the accused and the victim, holding that, punishment of an adolescent boy for entering into a relationship with a girl below eighteen years of age was never the objective of the POCSO Act.

15. The Bombay High Court in *Nauman Suleman Khan v. State of Maharashtra and Another* [2022 LiveLaw (Bom) 200] quashed the crime involving the offence under the POCSO Act, taking note of the fact that the accused had married the victim girl, holding that the continuance of the prosecution would hamper the peaceful life of the parties.

16. The Delhi High Court in *AK v. State Govt. of NCT of Delhi and Another* [2022 LiveLaw (Del) 1077] held that the intention of the POCSO Act was not to criminalize consensual romantic relations.

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17. In *Vijaya Kumar v. The State Government of NCT of Delhi* [Crl.M.C.No.2153/2021], the Delhi High Court quashed the F.I.R. involving the offence under Section 6 of the POCSO Act, holding that the 2<sup>nd</sup> respondent therein, a major at the time of settlement, wishes to stay with the petitioner as his wife, along with their minor child, and unless the F.I.R. is quashed, three lives will be ruined.

18. In *Kamal v. State, Represented by the Inspector of Police* (Crl.O.P.No.3323/2024), the Madras High Court quashed the proceedings under the POCSO Act when the victim girl, who was present in the Court, stated that she had married the petitioner and had a child in that relationship.

19. The same is the course adopted by the High Court of Himachal Pradesh in *Sakshi and Another v. State of H.P. Through Secretary (Home to the Government of Himachal Pradesh) and Others* [2021 SCC OnLine HP 7834], wherein the

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High Court gave emphasis on the aspect that, if the settlement between the parties is to result in harmony between them, so as to improve their future relationship, the Court can exercise the power under Section 482 Cr.P.C. That was also a case where the marriage between the petitioner/accused and the victim was solemnized and a female child was born in that wedlock.

20. Relying upon the afore-referred judgments, the Orissa High Court in ***Rojalin Rout and Another v. State of Odisha and Another*** [2024 SCC OnLine Ori 1339], followed the same course, after noticing the fact that the parties are leading a happy married life. The fact that the possibility of securing a conviction is remote and that continuance of the proceedings may adversely affect the mental, emotional and educational well being of the victim, were taken stock of. The Orissa High Court held that the offence which created impediments for the victim and their families in the form of loss of reputation and

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dignity, have been substantially mitigated when the accused married the victim, which also has the effect of reforming the accused.

21. In *Kajal and Another v. State of Himachal Pradesh and Another* [2018 SCC OnLine HP 2424], the High Court of Himachal Pradesh also chose to quash the proceedings involving the offences under the POCSO Act, as also, the offences pertaining to rape under the Penal Code, taking stock of the fact that the accused and the victim are presently living happily, pursuant to their marriage, refusal to quash will cause undue prejudice to the legally wedded husband and wife.

22. However, this Court also notice that in *Jagdish Kumar v. State of H.P. and Others* [Crl.M.M.O.No.25/2023], a learned Single Judge of the High Court of Himachal Pradesh refused to accept the compromise between the petitioner and the victim. *Dehors* their marriage, the

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learned Single Judge chose not to quash the proceedings.

23. The same is the situation in *Hiteshbhai Urfe Bholo Gopalbhai Kadivar v. State of Gujarat and Another* (R/Crl.M.A.No.7634 of 2024). By Order dated 24.04.2024, the High Court of Gujarat also declined the relief of quashment based on the settlement between the parties in respect of offences under the POCSO Act.

24. Having extensively referred to the above views of the various High Courts, I am only inclined to follow the views of this Court in *Vishnu* (supra), as also, of the various High Courts, where the proceedings were quashed taking stock of the settlement between the parties, ultimately ending in the marriage between the petitioner/accused and the defacto complainant/victim. I am of the opinion that, merely because the offences under the POCSO Act is alleged, there cannot be an absolute proposition of law that the proceedings cannot be

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quashed based on settlement between the parties, especially when the settlement is genuine and bonafide so as to ultimately result in the marriage between the accused and the victim. As held in many cases, each case will have to be addressed in the peculiar facts obtaining therein, and there cannot be an *en bloc* conclusion that the quashment is wholly impermissible in cases involving POCSO offences. There are offences which are not of a very serious and grievous nature coming under the POCSO Act, say, for example, an offence under Sections 11(i) or (iv) of the Act. By saying that the said offences are less serious, this Court is not undermining the significance and seriousness of such offences, since it is perpetrated against a minor. However, when the legal position, even in respect of an offence under Section 307 of the Penal Code, is to the effect that the same can be quashed based upon genuine and *bonafide* settlement between the parties, there is no reason as to why a less serious offence under the POCSO Act cannot be terminated. Generally, serious

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offences having a sexual overtone, like rape under the Penal Code, and a penetrative sexual assault etc., under the POCSO Act cannot be terminated by quashing the same, acting only upon the settlement between the parties. It is indeed the offence against the society and not a private issue between the petitioner and the defacto complainant. However, in cases where there exist extreme mitigating circumstances, adherence to that Rule will work out injustice. Suffice to say that the choice in this regard will have to be taken based on the attendant facts; and not on the basis of the nomenclature of the statute.

25. Coming to the instant facts, in both the cases, the petitioner/accused had married the victim. Affidavits sworn to by the victims and their statements recorded by the Investigating Officer would reveal that they are living a happy married life, along with their child. The petitioner/accused is adequately taking care of the interest of the victim. In one case, the victim is sent



for further studies, and the child is being taken care of by the petitioner/accused. This Court is of the opinion that these circumstances are extremely extenuating, so as to bring the case outside the scope of the general proposition that serious sexual offences cannot be quashed, acting only upon the settlement between the parties.

26. The following aspects assume significance in the peculiar nature of the cases, where the offence is followed by the marriage between the perpetrator and the victim:

(1) Unless the criminal proceedings are terminated by quashing the same, there will be utter chaos, confusion and even havoc in the life of the victim who married the accused, and who is leading a happy life. In other words, the life of the victim, the accused and the child, if any, in that relationship will be ruined. Per





contra, If the offence is quashed, it will bring in harmony, peace and happiness, thus promoting their family life.

(2) Unless, the Court choose to quash the proceedings, the trauma/agony of the child/victim continues, despite a genuine and *bonafide* settlement.

(3) Despite and *dehors* a *bonafide* and genuine settlement culminating in the marriage between the petitioner/accused and the victim, if the criminal proceedings are to continue - thereby compelling the parties to face the trial - the same verge upon abuse of process.

(4) The ends of justice is in favour of quashment in such category of cases, since it will be an injustice to separate a well knit family by the continuance of the proceedings.

(5) Quashment of the proceedings will result in rendering total and complete justice to the



parties.

(6) When the crucial witness is the victim, who had married the accused, there exists little chance for her to speak against her own husband/accused, wherefore, the chances of conviction will be too bleak and remote. In other words, no fruitful purpose will be served by continuance of the proceedings.

(7) Compelling the continuance of a proceedings, which is otherwise settled genuinely and which answers the requirements of the interest of justice will only add to the burden of criminal courts in India, which is otherwise over-burdened.

**27.** For the afore-referred reasons, both the Crl.M.Cs are allowed. In the result, all further proceedings in Crime No.466/2019 of Shanthapara Police Station, now pending as S.C.No.213/2020 before the Fast Track Special Court, Kattappana (Crl.M.C.No.6880/2022); and in Crime No.63/2020

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of Karikunnam Police Station, now pending as S.C.No.212/2020 before the Special Court (POCSO), Idukki, (Crl.M.C. No.7427/2024), will stand quashed.

This Court places on record its sincere appreciation to the commendable service rendered by Smt.A.Parvathi Menon, the learned Amicus Curiae.

Sd/-

**C. JAYACHANDRAN**  
**JUDGE**

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APPENDIX OF CRL.MC 7427/2024

**PETITIONER ANNEXURES**

<b>Annexure A1</b>	THE CERTIFIED COPY OF THE FIS AND FIR IN CRIME NO.63/2020 DATED 11.02.2020 OF KARIMKUNNAM POLICE STATION
<b>Annexure A2</b>	CERTIFIED COPY OF THE FINAL REPORT IN S.C.212/2020 OF THE FIRST ADDITIONAL DISTRICT AND SESSIONS COURT (SPECIAL COURT POCSO ACT) THODUPUZHA
<b>Annexure A3</b>	TRUE COPY OF THE CERTIFICATE OF MARRIAGE BEARING NO.400575/CRCM02/ GENERAL/2020/243 DATED 27/03/2023 ISSUED FROM THE PURAPUZHA GRAMA PANCHAYAT.
<b>Annexure A4</b>	THE BIRTH CERTIFICATE OF THE CHILD BEARING NO.B00601902003097
<b>Annexure A5</b>	THE TRUE COPY OF THE CERTIFICATE DATED 14.07.2024 ISSUED FROM SREE CHAITHANYA COLLEGE OF NURSING, TIRUPATHI BY THE PRINCIPAL OF THE COLLEGE IN FAVOUR OF THE SECOND RESPONDENT
<b>Annexure A6</b>	THE AFFIDAVIT SWORN BY THE SECOND RESPONDENT BEFORE THE NOTARY PUBLIC DATED 20.07.2024

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APPENDIX OF CRL.MC 6880/2022

**PETITIONER ANNEXURES**

<b>Annexure I</b>	<b>COPY OF THE FIR &amp; FIS IN CRIME NO.466/2019 OF SANTHANPARA POLICE STATION</b>
<b>Annexure II</b>	<b>CERTIFIED COPY OF THE FINAL REPORT IN SC NO.213/2020</b>
<b>Annexure III</b>	<b>A COPY OF THE BIRTH CERTIFICATE OF THE DEFACTO COMPLAINANT</b>
<b>Annexure IV</b>	<b>A COPY OF THE ACKNOWLEDGEMENT CUM RECEIPT FOR SPECIAL MARRIAGE AND NOTICE OF INTENDED MARRIAGE DATED DATED 15.09.2020</b>
<b>Annexure V</b>	<b>THE NOTARIZED AFFIDAVIT SWORN BY THE 2ND RESPONDENT/DEFACTO COMPLAINANT</b>