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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 17TH DAY OF NOVEMBER 2025 / 26TH KARTHIKA, 1947

CRL.MC NO. 5348 OF 2019

CRIME NO.3053/2017 OF FORT POLICE STATION, THIRUVANANTHAPURAM

PENDING AS S.C NO.802/2019 ON THE FILE OF THE ADDITIONAL SESSIONS COURT-IX, THIRUVANANTHAPURAM

PETITIONER/ACCUSED:

PRADEEP, AGED 38 YEARS
S/O. WILSON, PRADEEP BHAVAN VEEDU, KKRA-281,
MAVARAMTHOTATHU, KOTTUKALKONAM, BALARAMAPURAM VILLAGE,
KATTACHALKUZHY P.O., THIRUVANANTHAPURAM.

BY ADV SHRI.B.MOHANLAL

RESPONDENTS/COMPLAINANT:

1 **THE STATION HOUSE OFFICER,**
FORT POLICE STATION, THIRUVANANTHAPURAM CITY,
THIRUVANANTHAPURAM DISTRICT, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031

2 **XXXXXXXX (VICTIM)**

BY ADV SHRI.AJITH KRISHNAN FOR R2
SMT.SEENA.C PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11.11.2025, THE COURT ON 17.11.2025 PASSED THE FOLLOWING:

O R D E R

The accused in S.C No.802/2019 on the files of the Additional Sessions Court-IX, Thiruvananthapuram has filed this petition under Section 482 Cr.P.C to quash the proceedings against him in the said case. The allegation against the petitioner is that he committed the offences punishable under Sections 493, 496 and 376 I.P.C.

2. The prosecution case is summarised as follows:

The de facto complainant/second respondent is a widow having a daughter and a son aged 18 years and 16 years respectively. Her husband died in the year 2013. During 2009, the petitioner befriended the de facto complainant by calling her over mobile phone and rendered financial assistance to her. While so, on a day in the year 2009, the petitioner came to the room which the de facto complainant was occupying at Kuzhithura in connection with her business of sale of 'agarbathi' and 'olibanum', and indulged in sexual relationship with her after making her believe that he would marry her. Thereafter, on 22.10.2013, the husband of the de facto complainant passed away. After the death of the husband of the de facto complainant, the petitioner resided along with the de facto complainant and her children and maintained the relationship with her. While so, the

petitioner got employment as a Watcher in the Forest Department at Wayanad. Even thereafter, the petitioner used to come to the residence of the de facto complainant on leave and indulged in sexual relationship with her. When the de facto complainant insisted for the performance of a marriage, the petitioner tied a knot in the gold chain worn by her in front of a candle and lamp and made her believe that he had married her. The relationship between the petitioner and the de facto complainant went on for years. While so, the de facto complainant came to know that the petitioner had married another woman residing at Aryanad. When the de facto complainant questioned the petitioner about the aforesaid alliance, he replied that though he had married another lady, he considered the de facto complainant alone as his wife and continued physical relationship with her. On 01.11.2017, the de facto complainant had the occasion to talk with the lady whom the petitioner had married, over telephone. At that time, the de facto complainant had told that lady that even before the petitioner married her, he had tied the nuptial knot upon her neck and that both of them were living as husband and wife for a long period. However, the petitioner called the de facto complainant on 04.11.2017 and informed her that he does not want to continue the relationship with her and that she should not call him thereafter. Though the de facto complainant tried to contact the petitioner

on several occasions thereafter, he did not care to respond. Though the de facto complainant came to the office of the petitioner at the place called Kattikulam, the petitioner did not care to accept her, and instead, shouted at her to leave from that place. Thus, the petitioner committed the aforesaid offences.

3. In the present petition, the petitioner would contend that none of the offences alleged in this case are legally sustainable. According to the petitioner, the consensual relationship between him and the de facto complainant will not constitute the offence of rape. He denied the accusation that he had offered to marry the de facto complainant.

4. Heard the learned counsel for the petitioner, the learned counsel for the second respondent / de facto complainant, and the learned Public Prosecutor representing the State of Kerala.

5. As regards the offences under Sections 493 and 496 I.P.C incorporated in the final report, it has to be stated that a prosecution for the commission of the aforesaid offences is, prima facie, not maintainable since under Section 198 Cr.P.C, the court concerned is proscribed from taking cognizance of the said offences except upon a complaint made by a person aggrieved by the offence. Therefore, the petitioner cannot be compelled to

face trial for the offences under Sections 493 and 496 I.P.C in a final report filed by the police under Section 173(2) Cr.P.C.

6. As regards the offence under Section 376 I.P.C, it is pertinent to note that the facts revealed from the prosecution records itself make it clear that the sexual relationship between the petitioner and the de facto complainant was purely consensual. It is true that the de facto complainant had come forward with a contention that she extended consent for the above relationship believing the offer of marriage by the petitioner. However, it is not possible to attribute any credence to the aforesaid contention of the de facto complainant since it is seen that even as per her version she had been maintaining relationship with the petitioner from the year 2009 which was about four years prior to the death of her husband. It is not possible to accept the contention of the de facto complainant that she had extended consent for sexual relationship with the petitioner at a time when her husband was alive, believing the offer made by the petitioner to marry her. The subsequent conduct of the de facto complainant maintaining the relationship with the petitioner for about four years after the death of her husband, also show that the sexual relationship between the petitioner and the de facto complainant cannot be classified as rape. True that the de facto complainant has got a case that the petitioner contracted marriage

with another lady during the year 2014 against the promise made to her that she alone would be considered as his wife. But the above allegation of de facto complainant is of no consequence since the statement of the de facto complainant itself would reveal that she maintained relationship with the petitioner even after knowing the aforesaid marriage of the petitioner with another lady. An overall analysis of the relationship between the petitioner and the de facto complainant for a period of more than eight years starting from 2009, when the husband of the de facto complainant was still alive, would make it clear that the consensual sex between the de facto complainant and the petitioner cannot be termed as rape.

7. The consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. A promise to marry without anything more will not give rise to misconception of fact within the meaning of Section 90 IPC. However, the position will be different if it is shown that the accused, with a view to elicit the assent of the victim, gave the false promise of marriage, without having the intention or inclination to marry her, and made the victim submit herself to him, and later on deceived her by backtracking from the promise of marriage.

8. In ***Uday v. State of Karnataka*** **[(2003) 4 SCC 46]** the Apex Court, while dealing with this issue, held as follows:

> "It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

9. In ***Deepak Gulati v. State of Haryana*** **[(2013) 7 SCC 675]** the Hon'ble Supreme Court, on the aspect of consent in rape cases, held as follows:

> "Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance,

> the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives."

10. Again in ***Dhruvaram Murlidhar Sonar v. State of Maharashtra*** **[(2019) 18 SCC 191],** the Hon'ble Supreme Court, while interpreting Section 90 IPC and clause 'secondly' in Section 375 IPC observed as follows:

> "Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala

> fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by the accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

11. Very recently, while dealing with a case where a married woman having three children alleged rape under false promise of marriage upon a person, the Apex Court held in ***Naim Ahamed v. State (NCT of Delhi)*, [(2023) 15 SCC 385]** as follows:

> **"22.** In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till

she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as "rape" by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be

> said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 IPC."

12. Thus, the consistent view being followed in the aforesaid judicial precedents is that absence of consent cannot be presumed in every case where the prosecutrix alleges that she indulged in sexual intercouse with the offender believing the offer of marriage made by him. For bringing home the offence of rape, it has to be established that from the very beginning the accused was not having any intention at all to marry the prosecutrix and that the offer of marriage was made as a ploy to make her surrender to him in order to satiate his carnal desires.

13. As far as the present case is concerned, the aforesaid vital requirement to establish misconception of facts vitiating the consent extended by the de facto complainant is lacking, and hence it cannot be said that the offence of rape is attracted. The long cohabitation of the accused and victim over a period of more than eight years itself show that their relationship partook the character of consensual sex, and that the accused and victim had been behaving with each other like husband and wife. The fact that the accused went in search of greener pasture for

giving vent to his promiscuous sexual urge, and started a new relationship in the nature of marriage with another lady, by itself will not bring his prior relationship with the victim with in the meaning of rape. Hence the proceedings initiated against the accused in connection with the commission of rape, is primafacie unsustainable.

14. As a conclusion to the aforesaid discussion, I find that the final report and accompanying records relied on by the prosecution are not capable of bringing out the essential requirements for the prosecution of the petitioner in connection with the commission of the offences alleged against him. Therefore, the prayer of the petitioner to quash the proceedings against him, deserves to be allowed.

In the result, the petition stands allowed. The proceedings against the petitioner in S.C No.802/2019 on the files of the Additional Sessions Court-IX, Thiruvananthapuram, which arose out of Crime No.3053/2017 of Fort Police Station, Thiruvananthapuram, are hereby quashed.

(Sd/-)
G. GIRISH, JUDGE

jsr/DST

APPENDIX OF CRL.MC 5348/2019

PETITIONER ANNEXURES

ANNEXURE A1	**THE TRUE CERTIFIED COPY OF THE FIR AND FIS IN CRIME NO.3053/2017 OF FORT POLICE STATION IN THIRUVANANTHAPURAM DISTRICT.**
ANNEXURE A2	**THE TRUE COPY OF THE FINAL REPORT IN CRIME NO.3053/2017 OF FORT POLICE STATION IN THIRUVANANTHAPURAM DISTRICT PENDING AS S.C.NO.802/2019 ON THE FILE OF THE ADDITIONAL SESSIONS COURT-IX, THIRUVANANTHAPURAM.**
ANNEXURE R2 (A)	**A TRUE PHOTOCOPY OF THE RELEVANT PAGES OF FINAL REPORT IN CRIME NO.6/18, SUBMITTED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, MANATHAVADI**
ANNEXURE R2 (B)	**A TRUE PHOTOCOPY OF THE SUMMONS TO A WITNESS ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT –II,MANATHAVADI**
ANNEXURE R2 (C)	**A TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE DIVISIONAL FOREST OFFICER TO THE CONSERVATOR OF FOREST, KOZHIKODE OBTAINED ALONG WITH A LETTER DATED 16.4.2019**