



2024:KER:70646

CRL.MC No. 1662 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 4TH DAY OF OCTOBER 2024 / 12TH ASWINA, 1946

CRL.MC NO. 1662 OF 2024

CRIME NO.975/2019 OF ERNAKULAM NORTH POLICE STATION,
ERNAKULAM IN SC NO.736 OF 2019 OF ASSISTANT SESSIONS
COURT/II ADDITIONAL SUB COURT,ERNAKULAM

PETITIONER/ACCUSED:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADVS.
ROSHIN IPE JOSEPH
SASTHAMANGALAM S. AJITHKUMAR(K/430/1983)

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN-682031

2 XXXXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

R1 SRI.RENJIT GEORGE, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23.09.2024, THE COURT ON 04.10.2024 PASSED THE
FOLLOWING:



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'C.R.'

ORDER

Dated this the 4th day of October, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure (Cr.P.C. for short hereinafter), by the accused, in Crime No.975/2019 of Ernakulam North Police Station, now pending as S.C.No.736/2019 on the files of the Assistant Sessions Court-II, Ernakulam, to quash the entire proceedings.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the relevant documents.

3. Here the prosecution alleges commission of offences punishable under Sections 354A(1)(ii) and 370(1)



(b) of the Indian Penal Code (IPC for short hereinafter) by the accused.

4. While seeking quashment of this proceedings, the learned counsel for the petitioner argued that going by the prosecution allegations, none of the offences alleged would attract prima facie. It is also submitted that as per Annexure 5 order in Crl.M.P.No.96/2020, the learned Assistant Sessions Judge dismissed the discharge petition filed by the petitioner, which was confirmed by the Sessions Judge, as per Annexure 6 order in Crl.R.P.No.35/2021. According to the learned counsel for the petitioner, since the defacto complainant reached Chennai for attending an official meeting, it could not be held that the accused herein trafficked her for the purpose of exploitation by recruiting, transporting, harbouring, transferring or in other manner dealt under



Section 370(1) of IPC so as to attract the said offence. It is also pointed out that even though there is an allegation that the accused demanded the defacto complainant to share her room, the same also would not by itself be sufficient to attract offence under Section 354A(1)(ii) of IPC.

5. Opposing the quashment prayer, the learned Public Prosecutor submitted that prima facie offences under Section 370(1)(b) as well as under Section 354A(1)(ii) of IPC would attract and thereby the learned Assistant Sessions Judge dismissed the plea for discharge and the Sessions Judge confirmed the same by Annexure 5 and Annexure 6 orders. Since prosecution materials would substantiate the offences prima facie, the matter would require trial and the quashment prayer would fail.

6. Assimilating the facts of this case, this Crime was registered pursuant to a complaint filed by the defacto



complainant before the SHO, Central Police Station, Ernakulam. As per the complaint, the allegation is that while the defacto complainant was working as the General Manager of M/s.Mathew Associates Consultants (P) Ltd., Ernakulam, the accused who had been working as the Managing Director, committed the alleged offences on 31.05.2019.

7. Addressing the argument tendered by the learned counsel for the petitioner, it is necessary to consider the ingredients to attract offence under Section 370(1) of IPC. Section 370(1) of IPC provides as under;

370. Trafficking of person.—(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.—using threats, or

Secondly.—using force, or any other form of coercion, or



Thirdly.—by abduction, or

Fourthly.—by practising fraud, or deception, or

Fifthly.—by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

8. Section 143 of the Bharatiya Nyaya Sanhita, 2023 (BNS for short hereinafter) is the pari materia provision to Section 370, although there are some differences in the phraseology. Section 143(1) of BNS reads as under;

143. Trafficking of person. — (1)Whoever, for the purpose of exploitation recruits, transports,



harbours, transfers, or receives a person or persons, by—

- (a) using threats; or
- (b) using force, or any other form of coercion; or
- (c) by abduction; or
- (d) by practising fraud, or deception; or
- (e) by abuse of power; or
- (f) by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.—The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, beggary or forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.



9. Thus when a person recruits, transports, harbours, transfers, or receives a person or persons, by using the methods dealt in First to Sixth, in Section 370(1) of IPC for the purpose of exploitation, the same is an offence under Section 370(1) of IPC. Similarly, offence get attracted when a person recruits, transports, harbours, transfers, or receives a person or persons, by using the methods dealt in Section 143(1)(a) to (f) of BNS. Therefore, transporting, transferring or receiving a person by using coercion, by practising fraud or deception for the purpose of exploitation also would cover the offence under Section 370(1) of IPC as well as under Section 143(1) of BNS.

10. According to the learned counsel for the petitioner, the ingredients to attract offence under Section 370(1) of IPC are not at all made out prima facie and in this connection, he has placed a decision of this Court reported in



MANU/KE/2017/2022 : Imthiyaz Ahammed v. State of Kerala (Crl.M.C. No.2922 of 2022) with reference to paragraph 7 and the same reads as under;

7. Section 370 of the IPC deals with trafficking of persons. Admittedly, the deceased was employed as a maid by the petitioner at his home. A plain reading of Section 370 of the IPC makes it clear that whoever, for the purpose of exploitation, recruits, transports, harbours, transfers or receives, any girl or woman for the purpose of exploitation by using threats, or any other form of coercion, or by abduction, or by practising fraud, or deception, or by abuse of power, or by inducement, such person is guilty of the offence of trafficking of person. The expression “exploitation” includes any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. A reading of the FIS would show that there are no allegations that the deceased was procured for the purpose of exploitation or that the petitioner has resorted to



threats, force, or any other form of coercion or inducement either on the deceased or on the 3rd respondent or on any other person. There is absolutely no case for the prosecution in the final report that the petitioner recruited, transported, harboured, transferred, or received the deceased either by using threat or using force or coercion or by abduction or by practising fraud, or deception, or by abuse of power or by inducement. There are absolutely no allegations that there was any sort of exploitation. In the absence of any such allegations, the charge under Section 370 of IPC does not get attracted. A reading of the entire final report would show that the deceased was employed by the petitioner as early as in the year 2017. After a short while, she went back to her native place and came back to the petitioner's home as a domestic servant on her own volition. In these circumstances, I am of the view that the basic ingredients of Section 370 of the IPC are not attracted.

11. The crucial question herein is whether the



petitioner herein brought the defacto complainant to Chennai by practising fraud or deception for the purpose of exploiting her.

12. Here the allegation is that the petitioner, who had been the Managing Director of the Company, brought/transported the defacto complainant to Chennai for an official meeting. In the complaint lodged by the defacto complainant, it is stated that at the time of informing her about the meeting itself, she requested the petitioner to arrange ticket for herself to leave to Mumbai on 31.05.2019 itself, since the meeting in Chennai would be finished on 31.05.2019 and the meeting in Mumbai would start at 07.00 a.m. on 01.06.2019. But instead of booking flight for the defacto complainant to Mumbai on 31.05.2019, the petitioner booked a ticket for her on the next day, he also booked a room at Novotel Hotel, Chennai and compelled her



to stay along with the accused. He also demanded sexual favours from her, but she was hesitant to heed the demand and thereby nothing more happened. It is alleged further that after ensuring the stay of the defacto complainant at the hotel room, he demanded the defacto complainant to share his bed and lay along with him in one room, on commenting that what was wrong in it, and the said practice is not uncommon. Further, during her stay at the hotel room, the accused sent another lady by name Nithya to coerce her presence at the bedroom of the accused. Thus the allegations would prima facie show the ingredients to attract offence under Section 370(1) of IPC.

13. Coming to Section 354A of IPC, the same provides as under;

354A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts—



- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

14. Section 75 of BNS is the pari materia provision and the same also reads as under;

75. (1) A man committing any of the following acts:—



(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.



15. Going by Section 354A(1)(ii) of IPC and under Section 75(1)(ii) of BNS, a man commits an offence of sexual harassment, when he demands or requests sexual favours from the woman.

16. However, the prosecution records would show that the accused herein brought the defacto complainant to Chennai for an official meeting and ensured her presence during the night on 31.05.2019 by not booking flight ticket for her to leave to Mumbai on 31.05.2019 ignoring her specific instruction that she should be given flight ticket to leave to Mumbai on 31.05.2019 and thereafter, after securing her presence during night at the hotel room, he demanded sexual favour. If so, it could be held that offences under Section 370(1)(b) and 354A(1)(ii) of IPC are made out in the present case prima facie warranting trial of the accused for the said offences. The decision in **Imthiyaz**



Ahammed's case (supra) has no application in the present case where the facts dealt are different from the facts of this case. Therefore, dismissal of discharge petition by the Assistant Sessions Court as per Annexure 5 order and confirmation of the same by the Sessions Judge as per Annexure 6 order and frame of charge for the offences under Section 370(1)(b) and under Section 354A(1)(ii) of IPC are perfectly in order.

17. The learned counsel for the petitioner argued that, if at all the overt acts to attract offence under Section 354A(1)(ii) of IPC are made out, then also the same is an offence triable by a Magistrate and sessions trial is not warranted, the said contention doesn't arise for consideration, in view of the finding that the offences under Sections 370(1)(b) and 354A(1)(ii) of IPC are prima facie made out warranting trial of this matter.



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18. In view of the above findings, the prayers sought for herein necessarily would fail.

19. In the result, this petition stands dismissed. Interim order granted by this Court dated 28.02.2024 shall stand vacated accordingly.

Registry is directed to forward a copy of this order to the trial court for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

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APPENDIX OF CRL.MC 1662/2024

PETITIONER'S ANNEXURES

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| Annexure 1 | CERTIFIED COPY OF THE FINAL REPORT IN S.C.NO.736/2019 ON THE FILES OF THE IIND ADDITIONAL ASSISTANT SESSIONS COURT, ERNAKULAM. |
| Annexure 2 | CERTIFIED COPY OF FIR DATED 02.06.2019 IN CRIME NO.1198/2019 OF CENTRAL POLICE STATION, ERNAKULAM. |
| Annexure 3 | CERTIFIED COPY OF FIR DATED 05.06.2019 BEARING CRIME NO.975/2019 OF ERNAKULAM TOWN NORTH POLICE STATION. |
| Annexure 4 | CERTIFIED COPY OF DEFACTO COMPLAINANT'S STATEMENT UNDER SECTION 164 CR.P.C. |
| Annexure 5 | CERTIFIED COPY OF THE ORDER DATED 06.10.2021 IN CRL.M.P.NO.96/2020 IN S.C.NO.736/2019 BEFORE THE HONOURABLE SECOND ADDITIONAL ASSISTANT SESSIONS COURT, ERNAKULAM. |
| Annexure 6 | CERTIFIED COPY OF THE ORDER DATED 18.11.2023 IN CRL.R.P.NO.35/2021 BEFORE THE HONOURABLE EIGHTH ADDITIONAL SESSIONS COURT, ERNAKULAM. |
| Annexure 7 | CERTIFIED COPY OF THE CHARGE DATED 11.01.2024 FRAMED IN S.C.NO.736/2019 BEFORE THE HONOURABLE SECOND ADDITIONAL ASSISTANT SESSIONS COURT, ERNAKULAM. |