



2025:KER:67386

O.P (Crl).No.284/2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 12<sup>TH</sup> DAY OF SEPTEMBER 2025 / 21ST BHADRA, 1947

OP(CRL.) NO. 284 OF 2025

CRIME NO.763/2016 OF MALAPPURAM POLICE STATION, MALAPPURAM

SC NO.826 OF 2017 OF FAST TRACK SPECIAL COURT, MANJERI

ORDER DATED 20.04.2017 IN CP NO.25 OF 2017 OF JUDICIAL  
MAGISTRATE OF FIRST CLASS ,MALAPPURAM

PETITIONER/ACCUSED:

XXXXXXXXXX  
XXXXXXXXXX XXXXXXXXXXXX

BY ADVS.  
SHRI.THAREEQ ANVER  
SMT.K.C.KHAMARUNNISA  
SHRI.K.SHAMSUDHEEN  
SRI.ARUN CHAND  
SHRI.RASSAL JANARDHANAN A.  
SHRI. GOVIND G. NAIR  
SHRI.SHINTO MATHEW ABRAHAM

RESPONDENT/STATE AND DE FACTO COMPLAINANT (VICTIM):

- 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031
- 2 XXXXXXXXXXXX  
XXXXXXXXXX XXXXXXXXXXXX
- 3 INSPECTOR OF POLICE, MALAPPURAM POLICE STATION,  
DOWNHILL POST, MALAPPURAM, PIN - 676519

SMT PUSHPALATHA M.K., SR. PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON  
10.09.2025, THE COURT ON 12.09.2025 DELIVERED THE FOLLOWING:



## **J U D G M E N T**

The accused in S.C No.826/2017 on the files of the Fast Track Special Court, Manjeri has filed this petition under Article 227 of the Constitution of India for quashing the proceedings against him in the said case. The offence alleged are under Section 376B I.P.C and Section 31(1) of the Protection of Women from Domestic Violence Act (hereafter referred as 'the Act') .

2. The prosecution case is that the accused, who is the husband of the de facto complainant, raped her on 16.12.2016, while they were remaining under separation pursuant to the talaq executed on 02.11.2016. It is stated that the de facto complainant was residing in the same house of the petitioner, as permitted by the order passed by the Judicial First Class Magistrate Court, Malappuram, in a domestic violence complaint preferred by her. It is the further case of the prosecution that, on 25.12.2016, the petitioner expelled the de facto complainant from his house, in violation of the order of the learned Magistrate. Thus, the petitioner is alleged to have committed the offence under Section 376B I.P.C and Section 31(1) of the Act.

3. In the present petition, the petitioner would contend that the prosecution against him is, prima facie, not maintainable in view of the



bar contained under Section 198B Cr.P.C. It is further contended that prosecution for the offence under Section 31(1) of the Act is not maintainable before the Sessions Court in view of the provisions contained under Section 26(b) of Cr.P.C.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

5. The offence under Section 376B I.P.C is attracted when it is shown that the offender had committed rape upon his wife while they were living separately under a decree of separation or otherwise. It is thus obvious that the marital status of the victim as the wife of the accused shall be subsisting at the time when the offence as stated above is committed.

6. As far as the present case is concerned, the petitioner is alleged to have pronounced talaq upon the de facto complainant and communicated the same to the Juma Masjid Committee concerned on 02.11.2016. However, there is no case for the prosecution that the aforesaid talaq has come into effect. Going by the personal law of the parties concerned, the divorce by way of talaq would come into effect only on expiry of 90 days from the date of pronouncement of talaq. Thus, it has to be stated that the marital status of the de facto



complainant was as the wife of the petitioner on 16.12.2016, when she was allegedly subjected to sexual intercourse against her consent by the petitioner. Obviously, it is due to the said reason that the petitioner has been proceeded against for the commission of offence under Section 376B I.P.C. But, it is pertinent to note that, as per the provisions contained in Section 198B Cr.P.C, cognizance for the offence under Section 376B I.P.C could be taken by the Court concerned only upon a complaint filed by the wife. The aforesaid provision expressly bars taking cognizance of the aforesaid offence in any other manner. Thus, it is apparent that the learned Magistrate had taken cognizance of the offence under Section 376B I.P.C upon the final report filed by the Malappuram Police, against the legal embargo contained in Section 198B Cr.P.C. That being so, the prayer of the petitioner to quash the proceedings against him in respect of the aforesaid offence, is fully justified.

7. As far as the offence under Section 31(1) of the Act is concerned, it is pertinent to note that the petitioner is alleged to have committed the aforesaid offence by forcefully expelling the de facto complainant from his house on 25.12.2016, which is nine days after his alleged act of rape committed upon the de facto complainant on 16.12.2016. Since the aforesaid act of expulsion of the de facto



complainant from the matrimonial home is a distinct offence, which took place at a later point of time, the Investigating Agency had apparently gone wrong in registering the same F.I.R in respect of the aforesaid two offences. That apart, there is substance in the contention of the petitioner that the offence under Section 31(1) of the Act is a matter to be dealt with by the Judicial First Class Magistrate concerned. Therefore, the prosecution initiated against the petitioner in respect of the said offence, is also liable to be quashed.

In the result, the petition stands allowed as follows:

(1) The proceedings against the petitioner/accused in S.C No.826/2017 on the files of the Fast Track Special Court, Manjeri, which arose out of Crime No.763/2016 of Malappuram Police Station, are hereby quashed.

(2) It is made clear that this order would in no way preclude the institution of prosecution proceedings against the petitioner in conformity with the procedures prescribed by law.

(sd/-)

**G. GIRISH, JUDGE**