



2024:KER:51429

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 8TH DAY OF JULY 2024 / 17TH ASHADHA, 1946

CRL.MC NO. 2654 OF 2024

CRIME NO.939/2023 OF KOYILANDY POLICE STATION, KOZHIKODE

IN CC NO.1471 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,

KOYILANDY

PETITIONER/ACCUSED:

DR.ASWIN V NAIR
AGED 28 YEARS
S/O.VINAYA KUMAR, RESIDING AT INDEEVARAM,
UDAYAMPEROOR POST, ERNAKULAM DISTRICT, PIN - 682307
BY ADVS.
T.MADHU
C.R.SARADAMANI
RENJISH S. MENON
VRINDA T.S.
AISWARYA JAYAPAL

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 THE STATION HOUSE OFFICER
QUILANDY POLICE STATION, KOZHIKODE DISTRICT, PIN - 673305
- 3 JITHINAKUMARY C
AGED 23 YEARS
D/O.RAGHUNATHAN, RESIDING AT CHERUVATTU HOUSE,
MELOOR P.O., QUILANDY, KOZHIKODE DISTRICT, PIN - 673305

PP - SANAL P RAJ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
08.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“C.R.”****ORDER****Dated this the 8th day of July, 2024**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings pursuant to Annexure-A2 Final Report in Crime No.939/2023 of Quilandy Police Station, Kozhikode, now pending as C.C. No.1471/2023 on the files of the Judicial First Class Magistrate Court, Quilandy. The petitioner herein is the sole accused in the above case.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor, in detail. Perused the relevant materials available.

3. In this matter, the prosecution allegation is that, while the defacto complainant was maintaining a live-in relationship with the accused, during the period from 13.03.2023 to 20.08.2023, at the house of the accused, the accused mentally and physically harassed the defacto



complainant. On this premise, the prosecution alleges commission of offence punishable under Section 498(A) of IPC.

4. While canvassing quashment of the proceedings, the learned counsel for the petitioner argued that the relationship between the accused and the defacto complainant was a live-in relationship and there is no legal marriage in between them. Accordingly, it is submitted that the offence punishable under Section 498(A) of IPC would not attract in the facts of this case. The learned counsel for the petitioner placed two decisions of this Court viz. ***Unnikrishnan @ Chandu v. State of Kerala*** [2017(4) KHC 356 : 2017 (2) KLD 480 : 2017 (3) KLT 991 : 2017 (3) KLJ 918 : ILR 2017 (4) Ker. 822 : 2018 CriLJ 265] and ***Narayanan v. State of Kerala*** [2023 (6) KHC 427 : 2023 KHC OnLine 651 : 2023 KER 61827 : 2023 (4) KLJ 590], in this regard.

5. The learned Public Prosecutor also fairly submitted that, even though crime was registered alleging commission of offence punishable under Section 498(A) of



IPC, the relationship between the accused and the defacto complainant was only live-in relationship and no materials brought in to see any legal marriage between them.

6. In a three Bench decision of the Apex Court reported in ***Shivcharan Lal Verma and Another v. State of Madhya Pradesh [2002 (2) Crimes 177 SC: JT 2002 (2) SC 641]***, the Apex Court held as under:

For a prosecution under S.498A IPC, there must be a valid marital relationship between the accused and the victim. That is a case where a second wife committed suicide, allegedly due to the acts of cruelty of her husband and the former wife. The victim's marriage with the accused in the said case was void ab initio.

7. Holding so, the Apex Court held that a conviction under Section 498A could not be sustained in such situation. The said ratio has been followed by this Court in ***Unnikrishnan @ Chandu's*** case (supra) and ***Narayanan's*** case (supra).

8. On perusal of the statutory wording under Section 498(A) of IPC, it has been provided as under:



498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

9. Thus, it appears that in order to attract an offence punishable under Section 498(A) of IPC, the most essential ingredient is, subjecting a woman to cruelty by her husband or relative/relatives of the husband. The term



'husband @ hubby' means, a married man, woman's partner in marriage. Thus, marriage is the constituent which takes the women's partner to the status of her husband. Marriage means a marriage in the eye of law. Thus, without a legal marriage, if a man becomes a woman's partner, he will not be covered by the term 'husband' for the purpose of Section 498(A) of IPC.

10. Having been so, the petitioner herein, who was not the legally wedded partner of the defacto complainant, would not come within the purview of definition of husband, dealt in Section 498(A) of IPC. Therefore, the cognizance taken by the Magistrate acting on the Final Report filed in Crime No. 939/2023 of Quilandy Police Station, alleging commission of offence punishable under Section 498A of IPC by the petitioner herein is illegal and the same is liable to be quashed.

Accordingly, this petition stands allowed. Annexure-A2 Final Report and all further proceedings in Crime No.939/2023 of Quilandy Police Station, Kozhikode, now pending as C.C. No.1471/2023 on the files of the



Judicial First Class Magistrate Court, Quilandy stand
quashed.

**Sd/-
A. BADHARUDEEN
JUDGE**

SK

Shoneek Kapoor.com



APPENDIX OF CRL.MC 2654/2024

PETITIONER ANNEXURES :

- Annexure-A1** THE CERTIFIED COPY OF THE FIR DATED 1/9/2023 IN CRIME NO.939/2023 OF QUILANDY POLICE STATION
- Annexure-A2** THE CERTIFIED COPY OF THE FINAL REPORT DATED 30/9/2023 IN CRIME NO.939/2023 OF QUILANDY POLICE STATION, KOZHIKODE DISTRICT
- Annexure-A3** THE TRUE COPY OF THE ORDER DATED 13/10/2023 IN B.A.NO.8750/2023 ON THE FILES OF THIS HONOURABLE COURT
- Annexure-A4** THE TRUE COPY OF THE ORDER DATED 1/11/2023 IN CRL.M.C.NO.9118/2023 ON THE FILES OF THIS HONOURABLE COURT

RESPONDENTS' ANNEXURES : NIL

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