

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 13TH DAY OF MARCH 2023 / 22ND PHALGUNA, 1944

CRL.MC NO. 9164 OF 2019

**AGAINST THE ORDER/JUDGMENTCC 1297/2015 OF JUDICIAL MAGISTRATE
OF FIRST CLASS ,THIRUVALLA**

PETITIONERS:

1

2 JEEVA MADHUSO

3

BY ADVS.
ABDUL JALEEL.A
SMT.M.A.SULFIA

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM 682 031.

2

BY ADVS.

N.R SANGEETHA RAJ- R1

JACOB P. ALEX

JOSEPH P.ALEX(K/1-C/2002)

MANU SANKAR P.(K/000823/2018)

AMAL AMIR ALI(K/000773/2019)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
13.03.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BABU, J

Crl. M.C No. 9164 of 2019

Dated this the 13th day of March, 2023

ORDER

The petitioners are accused Nos.1 to 3 in C.C No.1297/2015 on the file of the Judicial First Class Magistrate Court, Thiruvalla. The petitioners seek to quash Annexure A2 Final Report wherein they are alleged to have committed offence under Section 498-A r/w Section 34 of I.P.C.

Facts:-

2. Petitioner No.1 is the husband of respondent No.2. Petitioner Nos.2 and 3 are the mother and father respectively of petitioner No.1. Petitioner No. 1 married respondent No.2 on 16/04/2012 as per Christian Religious Rites and Customs. Subsequent to the marriage the parties resided together in the matrimonial home at Bombay. The petitioners allegedly harassed respondent No.2 with intent to meet their unlawful demand for property. She was also physically and mentally ill-treated. The petitioners misappropriated the assets of respondent No.2.

2.1 Respondent No. 2 gave Annexure A1 F.I.R before the Inspector of Police, Thiruvalla, based on which F.I.R No. 2383/2014 was registered. The Police completed the investigation and submitted Annexure A2 Final Report

alleging offence under Section 498-A r/w Section 34 of I.P.C. against the petitioners. The Jurisdictional Magistrate took cognizance of offence and issued process to the petitioners who appeared before the Court.

2.2 The Trial Court framed charge against the petitioners under Section 498-A r/w Section 34 of I.P.C.

3. Heard learned counsel for the petitioners, the learned Public Prosecutor and the learned counsel appearing for respondent No.2.

4. The learned counsel for the petitioners contented that Annexure A1 F.I.R and other materials placed before the Trial Court do not reveal the offence under Section 498-A of I.P.C, and therefore, the Final Report is liable to be quashed. The learned Public Prosecutor, *per contra*, contended that the F.I.R reveals the ingredients required to constitute an offence under Section 498-A of I.P.C. The learned counsel for respondent No.2, relying on **Minakshi Bala Vs. Sudhir Kumar and Others [(1994) 4 SCC 142]**, contented that only in rarest of rare cases this Court can exercise the Jurisdiction under Section 482 Cr.P.C to quash the proceedings in a case, where the Trial Court has already framed charge against the petitioners/accused under Sections 239 and 240 Cr.P.C.

5. A reading of Annexure A1 F.I.R would *prima facie* reveal the alleged harassment of respondent No.2 by the petitioners/accused Nos.1 to 3 raising unlawful demand for properties and valuable security.

6. It is settled by a long course of decisions of the Apex Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash criminal proceedings, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same *per se*. It has been further held that the High Court has no jurisdiction to examine the correctness or otherwise of the allegations {Vide: **State of West Bengal v. Swapan Kumar Guha [(1982) 1 SCC 561]**, **Pratibha Rani v. Suraj Kumar [(1985) 2 SCC 370]**}.

7. In **State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651]**, the Apex Court held that while exercising the power, it is not possible for the Court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In **State of U.P v. O.P.Sharma [(1996) 7 SCC 705]** a Three Judge Bench of the Apex Court observed that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 Cr.P.C or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. This view was reiterated by another Three Judge Bench of the Apex Court in **Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397]**, wherein the Apex Court held that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. It is trite that the power of quashing criminal proceedings should be

exercised with circumspection and that too, in the rarest of rare cases and it was not justified for this Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the Final report or the complaint. A finding on the veracity of a material relied on by the prosecution in a case where the allegations levelled by the prosecution disclose a cognizable offence, is not a consideration for the High Court while exercising its power under Section 482 Cr.P.C. This view is fortified by the decision of the Apex Court in **Mahendra K.C. v. State of Karnataka and Ors. (AIR 2021 SC 5711)**.

8. While dealing with the power under Section 482 Cr.P.C to quash the criminal proceedings the Apex Court in **M/s.Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra and others (AIR 2021 SC 1918)** concluded that when a prayer for quashing the FIR is made by the alleged Accused and the court when it exercises the power Under Section 482 Code of Criminal Procedure, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

9. In **Minakshi Bala Vs. Sudhir Kumar and Others**, the Apex Court has considered the jurisdiction of the High Court under Section 482 Cr.P.C

to quash criminal proceedings in which charges are framed in accordance with Section 240 Cr.P.C on a finding that *prima facie* case had been made out. In **Minakshi Bala Vs. Sudhir Kumar and Others**, the Apex Court in paragraph 7 of the judgment held thus:-

“If charges are framed in accordance with Section 240 CrPC on a finding that a prima facie case has been made out – as has been done in the instant case – the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Section 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.”

10. In the present case, the material placed before the Court reveal allegations to attract the offence under Section 498-A of I.P.C. The correctness or otherwise of the allegations levelled in Annexure A1 F.I.R and the Final Report is a matter to be tested during the course of the trial. The Crl.M.C, therefore, stands dismissed.

11. The learned counsel for the petitioners further prayed for a direction to the trial Court to dispose of the criminal case in a time bound manner. The learned counsel also submitted that as the petitioners are residing in Mumbai, their personal appearance during the course of trial may be dispensed with.

12. Having regard to the nature of the allegations levelled against the petitioners this Court is of the view that the personal appearance of the petitioners in the trial court is not required. Therefore, the presence of the petitioners in the Court below during the trial is dispensed with. The Trial Court shall dispose of the Calendar Case within a period of three months from the date of production of a certified copy of this order.

13. The learned counsel for respondent No.2 pressed for giving direction to the Court below to invoke the provisions of Rule 8(23) of the Electronic Video Linkage Rules for Courts (Kerala), 2021 for the examination of charge witness No.1 who is now settled in a foreign country.

14. Rule 8(23) of the Electronic Video Linkage Rules for Courts(Kerala), 2021, provides that when a Required Person is unable to reach the Court point or the Remote Point due to sickness or physical infirmity or due to any genuine reason which the Court may decide, or the presence of the Required Person cannot be secured without undue delay or expenses, the Court may authorise the conduct of the proceedings through Electronic Video Linkage from the place where the Required Person is situated. The Court below shall

invoke Rule 8(23) of the Electronic Video Linkage Rules for Courts (Kerala), 2021 for the examination of CW1.

15. It is further submitted that the Calendar Case now stands posted to 07/06/2023. The Court below shall prepone the trial of the matter with sufficient notice to both sides.

The trial Court shall dispose of the Calendar Case within three months from the date of production of a copy of this order. It is made clear that the learned Magistrate is at liberty to seek further time, if required.

**Sd/-
K. BABU
JUDGE**

AMR

APPENDIX OF CRL.MC 9164/2019

PETITIONERS' ANNEXURES

ANNEXURE A1	CERTIFIED COPY OF F.I.R. IN CRIME NO. 2383/2014 OF THIRUVALLA POLICE STATION.
ANNEXURE A2	CERTIFIED COPY OF FINAL REPORT SUBMITTED IN C.C. 1297/2015 ON THE FILES OF LEA REND JUDICIAL FIRST CLASS MAGISTRATE COURT, THIRUVALLA.
ANNEXURE A3	FAMILY PHOTOGRAPHS OF 1ST PETITIONER AND 2ND RESPONDENT.
ANNEXURE A4	TRUE COPIES OF TREATMENT RECORDS OF PETITIONERS 2 AND 3.
ANNEXURE A5	TRUE COPY OF JUDGMENT IN RP FE NO. 90 OF 2019 DATED 4/4/2019.