

**Nishanth vs State of Kerala**

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**Court :** Kerala

**Decided On :** Feb-28-2025

**Judge :** Honourable Mr.Justice C. Jayachandran

**Appeal No. :** Crl.MC/127/2025

**Appellant :** Nishanth

**Respondent :** State of Kerala

**Judgement :**

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN FRIDAY, THE 28TH DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946 CRL.MC NO. 127 OF 2025 CRIME NO.632/2021 OF MALAMPUZHA POLICE STATION, PALAKKAD AGAINST THE ORDER/JUDGMENT DATED IN CC NO.390 OF 2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS -III,PALAKKAD PETITIONERS/ACCUSED 1-2: 1 NISHANTH AGED 32 YEARS S/O SETHUMADHAVAN, MANNATHUPPURA HOUSE, KADUKKAMKUNNAM, PALAKKAD, PIN - 678005 2 SOBHANA AGED 53 YEARS W/O SETHUMADHAVAN, MANNATHUPPURA HOUSE, KADUKKAMKUNNAM, PALAKKAD, PIN - 678005 BY ADVS. SARATH M.S. ATHUL KRISHNA A.

RESPONDENTS/STATE/DEFACTO COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 - 2 - 2 NIMISHA AGED 25 YEARS D/O MANIKANDAN, CHUKKINI HOUSE, MOZHIKUNNAM, NOCHPULLI P.O, MUNDOOR, PALAKKAD, PIN - 678592 BY ADVS. SRI. C.N. PRABHAKARAN, SENIOR PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28.02.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: - 3 -

## **ORDER**

B.S.Joshi and Others v. State of Haryana and another [(2003) 4 SCC 675] held that the offence under Section 498-A can be quashed by the High Court exercising its inherent power under Section 482 Cr.P.C (now Section 528 of B.N.S.S, 2023), though such offence is not compoundable under Section 320. Relying on State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699], a two Judges Bench in B.S.Joshi (supra) held that ends of justice are higher than ends of mere law, though justice has got to be administered according to laws made by legislature. The fact that there is no reasonable likelihood of conviction, in the wake of settlement between the parties, was taken stock of. The following findings in B.S.Joshi (supra) are relevant and extracted here below:

What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the - 4 -

reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband, with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce

on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bonafides.

2. The dictum laid down in B.S.Joshi (supra) was doubted along with that laid down in other cases and referred to and considered by a three Judges Bench of the Hon'ble Supreme Court in Gian

Singh v. State of Punjab and another [(2012) 10 SCC 303]. B.S.Joshi (supra), along with other cases, were confirmed by the Supreme Court. It is relevant to note that the subject matter in - 5 - B.S.Joshi (supra) was specifically with reference to the offences under Sections 498-A and 406 of the Indian Penal Code.

3. In the facts at hand, petitioners are accused nos.1 and 2 in Crime No.632/2021 of Malampuzha Police Station, Palakkad, now

pending as C.C.No.390/2022 before the Judicial First Class Magistrate Court-III, Palakkad. As per the Final Report, the offence alleged is under Section 498-A of the Indian Penal Code. The petitioners seek quashment of entire proceedings in the above Calendar Case, on the strength of the settlement arrived at by and between the parties.

4. Heard the learned counsel for the petitioners and the learned Senior Public Prosecutor. Perused the records.

5. When this Crl.M.C was moved, this Court directed to record

the statement of the defacto complainant. The said direction was complied and the statement of the defacto complainant was handed over. On perusal of the same, it is clear that the issues between - 6 - the petitioners and the defacto complainant have been settled and that the 1st petitioner and the defacto complainant have

jointly filed a petition for divorce before the Family Court. Furthermore, the defacto complainant has received all her gold ornaments, wherefore, she is no longer interested to proceed with the prosecution case against the petitioners. That apart, it is noticed that along with this Crl.M.C, an affidavit has been sworn

to by the defacto complainant (2nd respondent

stemmed from a misunderstanding. The defacto complainant has no

further complaints against the petitioners and that the 1st petitioner and the defacto complainant have decided to file mutual divorce petition. The defacto complainant would also swear that she does not intend to prosecute the case, any further and that the affidavit is sworn to on her volition, without any compulsion, whatsoever. This Court is therefore convinced that the settlement arrived at is genuine and bonafide.

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6. In the light of the above referred facts, this Court is of

the opinion that the necessary parameters, as culled out in B.S.Joshi (supra) and Gian Singh (supra), are fully satisfied. This court is convinced that further proceedings against the petitioners will be a futile exercise, inasmuch as the disputes have already been settled. There is little possibility of any conviction in the crime. Dehors the settlement arrived at by and between the parties, if they are compelled to face the criminal proceedings, the same, in the estimation of this Court, will amount to abuse of process of Court. The quashment sought for would secure the ends of justice.

7. In the circumstances, this Crl.M.C. is allowed. Annexure-A1 F.I.R, Annexure A2 Final report, and all further proceedings in C.C.No.390/2022 of the Judicial First Class Magistrate Court-III, Palakkad, are hereby quashed.

Sd/- C.JAYACHANDRAN, JUDGE ww - 8 - APPENDIX OF CRL.MC 127/2025  
PETITIONER ANNEXURES ANNEXURE A1 THE TRUE COPY OF FIR AND FIS  
AS CRIME NO. 632 OF 2021 DATED 18/12/2021 ANNEXURE A2 THE TRUE

COPY OF THE FINAL REPORT/CHARGE IN C.C. NO 390/2022 ON THE FILES OF JFCM COURT III, PALAKKAD DATED 16/03/2022 ANNEXURE A3 THE 2ND RESPONDENT HAS SWORN TO AN AFFIDAVIT PROVING THE FACTUM OF SETTLEMENT IN THE MATTER AND THE SAID AFFIDAVIT DATED

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