

Dharmaraj P, vs State of Kerala

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Court : Kerala

Decided On : Mar-13-2025

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : Crl.MC/835/2025

Appellant : Dharmaraj P,

Respondent : State of Kerala

Judgement :

2025:KER:22355

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
THURSDAY, THE 13TH DAY OF MARCH 2025 / 22ND PHALGUNA,
1946 CRL.MC NO. 835 OF 2025 CRIME NO.244/2024 OF ERNAKULAM
NORTH POLICE STATION, ERNAKULAM IN CC NO.228 OF 2024 OF
ADDITIONAL CHIEF JUDICIAL MAGISTRATE, ERNAKULAM
PETITIONER: 1 DHARMARAJ P, AGED 43 YEARS C/O PUNNAMALI,
RESIDING AT HOUSE NO 92 A, SREE SHAILAM, 1ST CROSS,
PALAPARAMBU ROAD, ERNAKULAM DISTRICT, PIN - 682012 BY
ADVS. SAM ISAAC POTHIYIL S.SURAJA MUHAMMED SUHAIR C.A

DHANYA MOHAN RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031 2 STATION HOUSE
OFFICER, ERNAKULAM TOWN NORTH POLICE STATION,
ERNAKULAM DISTRICT, PIN - 682018 3 CHANDRALEKHA ,AGED 38
YEARS, D/O KADAKKARAI, RESIDING AT HOUSE NO 92 A, SREE
SHAILAM, 1ST CROSS, PALAPARAMBU ROAD, ERNAKULAM
DISTRICT, PIN - 682012 BY ADVS. SRI. SANAL P. RAJ, PUBLIC
PROSECUTOR -2- SMT. NEETHU SATHEESH FOR R3

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13.03.2025, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING: -3-

C. JAYACHANDRAN, J.

----- Crl.M.C.No.835 of 2025
----- Dated, this the 13th day of March, 2025

ORDER

B.S.Joshi and Others v. State of Haryana and another [(2003) 4 SCC 675] held that the offence under Section 498A can be quashed by the High Court exercising its inherent power under Section 482 Cr.P.C (now Section 528 of BNSS, 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 -4- implied imputations. There may be many reasons for not supporting the imputations. It may be either for the 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 bona fides.

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 B.S.Joshi (supra) was specifically with reference to the offences under Section 498A and 406 of

-5- the Indian Penal Code.

3. In the facts at hand, petitioner is the sole accused in Crime No.244/2024 of Ernakulam Town North Police Station, Ernakulam, now pending as C.C.No.228/2024 before the Additional Chief Judicial Magistrate Court, Ernakulam. As per the final report, the offences alleged are under Sections 498A,

323 and 324 of the Indian Penal Code. The petitioner seeks 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 petitioner, learned counsel for the defacto complainant/3 rd respondent and the learned 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 was handed over. On perusal of the same, it is clear that the issues between the petitioner and the defacto complainant are settled amicably and that they are living together comfortably; wherefore, -6- she is disinterested to proceed with the case, any further. The defacto complainant has no objection in quashing the criminal proceedings against the petitioner. That apart, it is noticed that, along with this Crl.M.C, an affidavit has been sworn to by the defacto complainant (3 rd respondent herein) as Annexure-A3, wherein she would unequivocally state that the disputes have been amicably settled. The defacto complainant would also swear that she has no subsisting grievance against the petitioner and that she has no objection in quashing the criminal proceedings against the petitioner. The affidavit is sworn to on her own volition, without any compulsion, whatsoever. This Court, is

therefore, convinced that the settlement arrived at by and between the parties is bona fide and the quashment sought for can be allowed.

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 petitioner will be a futile exercise, inasmuch -7- 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. This Court also notice that offence under Section 323 is compoundable, which is all the more a reason to accept the compromise between the parties. In the circumstances, this Crl.M.C. is allowed. Annexure-A1 FIR, Annexure-A2 Final Report in Crime No.244/2024 and all

further proceedings in C.C.No.228/2024 of the Additional Chief Judicial Magistrate Court, Ernakulam, are hereby quashed. Sd/- C. JAYACHANDRAN JUDGE SKP - 8- APPENDIX OF CRL.MC 835/2025 PETITIONERS ANNEXURES: ANNEXURE A1 THE CERTIFIED COPY OF THE FIR ALONG WITH FIS IN CRIME NO. 244 /2024 OF ERNAKULAM TOWN NORTH POLICE STATION, ERNAKULAM DISTRICT ANNEXURE A2 THE CERTIFIED COPY OF THE FINAL REPORT IN

CRIME NO. 244 /2024 OF ERNAKULAM TOWN NORTH POLICE STATION, ERNAKULAM DISTRICT, NOW PENDING ON THE FILES OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT ERNAKULAM, ERNAKULAM DISTRICT AS C.C NO.228/2024 ANNEXURE A3 THE AFFIDAVIT SWORN TO BY THE DE FACTO COMPLAINANT /3RD RESPONDENT DATED 14.01.2025 RESPONDENTS' ANNEXURES: NIL TRUE COPY P.A. TO JUDGE

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