

Aneesh vs State of Kerala

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Court : Kerala

Decided On : Mar-07-2025

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : Crl.MC/9693/2023

Appellant : Aneesh

Respondent : State of Kerala

Judgement :

-: 1 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
FRIDAY, THE 7TH DAY OF MARCH 2025 / 16TH PHALGUNA, 1946
CRL.MC NO. 9693 OF 2023 CRIME NO.31/2023 OF POTHANIKADU
POLICE STATION, ERNAKULAM AGAINST THE ORDER/JUDGMENT
DATED IN CC NO.164 OF 2023 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT - II, KOTHAMANGALAM
PETITIONERS/ACCUSED 1 TO 3: 1 ANEESH AGED 25 YEARS,
S/O.NANDANAN, PALLIKUNNATHU HOUSE, MUVATTUPUZHA
TALUK, PIN - 686673 2 NANDANAN AGED 60 YEARS S/O
KRISHNANKUTTY, PALLIKUNNATHU HOUSE, MUVATTUPUZHA, PIN

- 686673 3 SANTHAKUMARINANDANAN, AGED 60 YEARS W/O NANDANAN, PALLIKUNNATHU HOUSE, MUVATTUPUZHA, PIN - 686673 BY ADV BALRAM S.A. -: 2 :- RESPONDENTS/STATE AND DEFACTO COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 ATHIRAMOL K R @ATHIRA K.R W/O ANEESH, KANNAMKUZHIYIL HOUSE, KALLOORKADU P.O., KALLOORKKADU VILLAGE, MUVATTPUZHA TALUK, KERALA STATE-686668, NOW RESIDING AT PALLIKUNNATHU HOUSE, MUVATTUPUZHA TALUK, PIN - 686673 BY ADVS. C.N. PRABHAKARAN, SENIOR PUBLIC PROSECUTOR ASWIN V. NAIR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07.03.2025, 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 reason that she has resolved -: 4 :-

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

-: 5 :- 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 to 3 in Crime No.31/2023 of Pothanikadu Police Station, Ernakulam,

now pending as C.C.No.164/2023 before the Judicial First Class Magistrate Court-II, Kothamangalam. As per the Final Report, the offences alleged are under Sections 498-A and 34 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; learned counsel for the 2nd respondent/defacto complainant 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 was handed over. On perusal of :- 6 :-

the same, it is clear that the issues between the petitioners and the defacto complainant are amicably settled and that the defacto complainant has no objection in quashing the criminal proceedings 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 herein) as Annexure-2 wherein she would unequivocally state that the disputes have been settled amicably out of the Court and that the complaint stemmed from some misunderstanding. Furthermore, the defacto complainant is residing peacefully with her husband (1st petitioner herein) at the matrimonial

house, wherefore, she has no objection

grievance against the petitioners and that the affidavit is sworn to on her own volition. This Court is therefore convinced that the settlement arrived at is genuine and bonafide. Moreover, learned counsel for the 2nd respondent would submit that the relief sought for herein be allowed, in view of the settlement between the parties. -: 7 :-

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

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-

1 Final Report and all further proceedings in C.C.No.164/2023 of the Judicial First Class Magistrate Court-II, Kothamangalam, are hereby quashed. Sd/- C.JAYACHANDRAN, JUDGE ww -: 8 :- APPENDIX OF CRL.MC 9693/2023 PETITIONER ANNEXURES ANNEXURE 1 CERTIFIED COPY OF THE FINAL REPORT/CHARGE SHEET DATED 28-02-2023 IN C.C.NO.164 OF 2023, ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT - II, KOTHAMANGALAM ARISING FROM CRIME NO.31 OF 2023 ON THE FILES OF POTHANICADU, POLICE STATION, ERNAKULAM DISTRICT ANNEXURE 2 AFFIDAVIT SWORN BY THE 2NDRESPONDENT DATED 06-11-2023

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