

Hareesh Kumar R vs State of Kerala

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Court : Kerala

Decided On : Jan-13-2025

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : Crl.MC/9755/2024

Appellant : Hareesh Kumar R

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
MONDAY, THE 13TH DAY OF JANUARY 2025 / 23RD POUSHA, 1946
CRL.MC NO. 9755 OF 2024 CRIME NO.1406/2018 OF Anchalummoodu
Police Station, Kollam AGAINST THE ORDER/JUDGMENT DATED IN
CC NO.1920 OF 2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS -
I, KOLLAM PETITIONER/ACCUSED 1 AND 2: 1 HAREESH KUMAR R
AGED 36 YEARS S/O.HARIDASAN PILLAI, HAREESH BHAVAN,
PAMPALIL, PERINAD P.O., PANAYAM VILLAGE, KOLLAM, PIN -
691601 2 MANIYAMMA AGED 56 YEARS W/O.HARIDASAN PILLAI,
HAREESH BHAVAN, PAMPALIL, PERINAD P.O., PANAYAM VILLAGE,
KOLLAM, PIN - 691601 BY ADVS. B.MOHANLAL P.S.PREETHA

ASWIN V. NAIR KARTHIK J SEKHAR ABIJITH M. AVANI NAIR
JAYAPRABHA ARJUN PRAVEENA T. RESPONDENTS/STATE &
DEFACTO COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031 ..2.. 2 THE STATION HOUSE OFFICER
ANCHALUMMOOD POLICE STATION, ANCHALUMMOOD, KOLLAM,
PIN - 691601 3 SMT.ARYA AGED 26 YEARS D/O.AMMINIYAMMA,
VISHNU BHAVANAM, PAMPALIL, PERINAD P.O., PANAYAM
VILLAGE, KOLLAM, PIN - BY ADV SHINE N.S - R3 ADV.SANAL P.RAJ
- PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING
COME UP FOR ADMISSION ON 13.01.2025, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING: ..3..

ORDER

Dated this the 13th day of January, 2025

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 ..4..

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 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 ..5.. [(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 the Indian Penal Code.

3. In the facts at hand, petitioners are accused nos. 1 and 2 in Crime No.1406/2018 of Anchalummoodu Police Station, Kollam, now pending as C.C.No.1920/2018 before the

Judicial First Class Magistrate Court-I, Kollam. The offences alleged are under Sections 498A and 34 of the Indian Penal Code. The petitioners seek quashment of the 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 3rd respondent/defacto complainant and the learned Senior Public Prosecutor.

Perused the records. ..6..

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

record the statement of the defacto complainant. The said direction was complied with, and the statement recorded over the phone was handed over. On perusal of the same, it is clear that the issues between the petitioners and the defacto complainant are settled amicably and the 1st

petitioner and the defacto complainant are residing together harmoniously as husband and wife. The defacto complainant is no longer interested in prosecuting the case anymore and that she 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 (3rd

respondent herein) as Annexure-A3, wherein she would unequivocally state that the disputes have been settled amicably and that they are living together in matrimony along with their son born out of the wedlock. The defacto complainant would also swear that she has no objection in quashing the criminal proceedings against the petitioners and that the affidavit is sworn to on her own volition,

..7..

without any compulsion, whatsoever. This Co

quashment sought can be allowed. This Court is therefore convinced that the settlement arrived at is genuine and bonafide.

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.

..8.. In the circumstances, this Crl.M.C. is allowed. Annexure-A1 FIR in Crime No. 1406/2018 of Anchalumood, Annexure-A2 Final Report and all further proceedings in C.C.No.1920/2018 of the Judicial First Class Magistrate Court-I, Kollam, are hereby quashed. Sd/- C. JAYACHANDRAN JUDGE TR ..9..

APPENDIX OF CRL.MC 9755/2024 PETITIONER ANNEXURES Annexure A1 THE CERTIFIED COPY OF THE COMPLAINT AND FIR IN CRIME NO:1406/2018 OF ANCHALUMMOOD POLICE STATION IN KOLLAM DISTRICT DATED 05/11/2018 Annexure A2 THE CERTIFIED COPY OF THE FINAL REPORT IN C.C.NO:1920/2018 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT- I, KOLLAM ON 30/11/2018 Annexure A3 THE ORIGINAL AFFIDAVIT DATED 11/11/2024 SWORN BY THE 3RD RESPONDENT

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