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Harish vs State of Kerala

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Court : Kerala

Decided On : Mar-14-2025

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : Crl.MC/10316/2024

Appellant : Harish

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN FRIDAY, THE 14TH DAY OF MARCH 2025 / 23RD PHALGUNA, 1946 CRL.MC NO. 10316 OF 2024 CRIME NO.465/2018 OF Kilikolloor Police Station, Kollam AGAINST THE ORDER/JUDGMENT DATED IN CC NO.1890 OF 2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, KOLLAM PETITIONER/ACCUSED: HARISH AGED 33 YEARS S/O.NAVAS, SHAN MANZIL, T.K.M.COLLEGE P.O, KARIMBALIMUKKU, MANGAD VILLAGE, KOLLAM DISTRICT, PIN - 691005 BY ADVS. K.SIJU ANJANA KANNATH MARIYA JOSE RESPONDENTS/STATE & DEFACTO COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT

OF KERALA, ERNAKULAM, PIN - 682031 2 STATION HOUSE OFFICER KILIKOLLOOR POLICE STATION, KOLLAM DISTRICT -, PIN - 691004 3 SHIHANA AGED 38 YEARS D/O.JAMEELA BEEVI, DARUL-ABRAR, PHARMACY JUNCTION, VETTIYARA CHERRY, NAVAIKULAM VILLAGE, THIRUVANANTHAPURAM, PIN - 695603 BY ADV A.MUHAMMED RAFFI SRI. E.C. BINEESH (PP) THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14.03.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: :2:

C.JAYACHANDRAN, J.

---------- ---------- Dated this the 14th 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

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

:3: 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 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 :4: 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 the Indian Penal Code.

3. In the facts at hand, petitioner is the sole accused in Crime No.465/2018 of Kilikolloor Police Station, Kollam, now pending as C.C.No.1890/2018 before the Judicial First Class Magistrate Court-I, Kollam. The offence alleged is under Section 498A of the Indian Penal Code. The petitioner seeks :5: 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 3rd 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 the same, it is clear that the issues between the petitioner and the defacto complainant are settled amicably and that

they are legally separated. The defacto complainant is no more interested to proceed with prosecution case and that she has no objection in quashing the criminal proceedings against the petitioner. That apart, it is noticed that, along with this Crl.M.C,

:6: 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 amiacbly settled and that they have decided to execute a Mubarath Agreement, thereby separating their marital tie. The defacto complainant would also swear that she has no surviving 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 free will. This Court is therefore convinced that the settlement arrived at is genuine and bonafide. Learned Counsel for the 3rd respondent/defacto complainant would also endorse that 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 :7:

is convinced that further proceedings against the petitioner 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. In the circumstances, this Crl.M.C. is allowed. Annexure-A1 FIR in Crime No. 465/2018, Annexure-A2 Final

Report and all further proceedings

in C.C.No.1890/2018 of the Judicial First Class Magistrate Court-I, Kollam, are hereby quashed. Sd/- C. JAYACHANDRAN, JUDGE. Raj. :8: APPENDIX OF CRL.MC 10316/2024 PETITIONER ANNEXURES Annexure A1 THE COPY OF FIR WITH FIS IN CRIME NO.465/2018 OF KILIKOLLOOR POLICE STATION DATED 13.7.2018 Annexure A2 THE COPY OF FINAL REPORT IN CRIME NO.465/2018 OF KILIKOLLOOR POLICE STATION DATED 21.11.2018 Annexure A3 THE AFFIDAVIT SWORN BY THE 3RD RESPONDENT/DE-FACTO COMPLAINANT REGARDING COMPROMISE DATED 30.11.2024

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