

Biju Eappen Vs. State of Kerala

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Court : Kerala

Decided On : Dec-21-2009

Reported in : 2010(1)KLT289

Judge : M. Sasidharan Nambiar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 498A; ;Code of Criminal Procedure (CrPC) - Section 482

Appeal No. : Crl. M.C. No. 3695 of 2009

Appellant : Biju Eappen

Respondent : State of Kerala

Advocate for Def. : P.A. Salim, Public Prosecutor,; V.S. Chandrasekhar and;

Advocate for Pet/Ap. : K. Mohanakannan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Sasidharan Nambiar, J.

1. Petitioner is the first accused and second respondent the de facto complainant in C.C. No. 73/2007 on the file of Judicial First Class Magistrate's Court, Nilambur.

By Annexure-A1 judgment, accused 2 and 3, were acquitted and petitioner/first accused was convicted for the offence under Section 498A of Indian Penal Code and sentenced to simple imprisonment for five months and a fine of Rupees Five thousand. Challenging the conviction and sentence, Crl. A. No. 57/2009 was filed before Sessions Court, Manjeri and it is pending. Meanwhile, entire matrimonial disputes between the petitioner and second respondent, his wife, the de facto complainant, were settled in respect of all the cases pending between them. Consequent to the settlement and in view of the agreement entered into by the petitioner and second respondent, to settle all the disputes, this petition is filed under Section 482 of Code of Criminal Procedure to quash the conviction and sentence now pending in Crl.A. No. 57/2009, Annexure-A3 affidavit/joint statement of the petitioner and second respondent was produced, which shows that there has been a complete settlement of all the matrimonial disputes.

2. Learned Counsel appearing for the petitioner, second respondent and learned Public Prosecutor were heard.

3. Learned Public Prosecutor submitted that statement of the second respondent, the de facto complainant was subsequently recorded and it shows that entire matrimonial disputes were amicably settled.

4. Annexure-A1 judgment of the learned Magistrate shows that petitioner was convicted for the offence under Section 498A of Indian Penal Code finding that petitioner treated second respondent with cruelty as provided under Section 498A of Indian Penal Code. Joint-statement (Annexure-A3) filed by the petitioner and second respondent establishes that O.P. No. 25 8/2007 was filed by the second respondent for realisation of money and gold, ornaments from the petitioner and O.P. No. 21/2007 was filed by the petitioner for restitution of conjugal rights and M.C. No. 693/2006 was filed by the second respondent for her maintenance as well as for the maintenance of the child and though maintenance was awarded by Family Court, Malappuram, it was challenged before this Court in R.P.(FC) No. 425/2007. It is also clear that when these disputes were pending, there was intervention by mediators and entire matrimonial disputes were amicably settled and consequent to the settlement, second respondent has no subsisting grievance

against the petitioner. It is, in such circumstances, quashing of the conviction and sentence has been sought for.

5. An offence under Section 498A of Indian Penal Code is not a compoundable offence. In such circumstances, learned Sessions Judge cannot be directed to permit the parties to compound the offence in CrI. A. No. 57/2009. In the light of the settlement arrived at between the parties, as held by the Apex Court in *B.S. Joshi v. State of Haryana* : 2003 (2) KLT 1062 (SC) : (2003)4 SCC 675, it is not in the interest of justice to continue the prosecution. Therefore, though the Sessions Judge cannot set aside the conviction based on the settlement arrived at between the parties, this Court, exercising the extraordinary inherent power under Section 482 of Code of Criminal Procedure, could, definitely, set aside the conviction and quash the proceedings, when due to the settlement of all the matrimonial disputes, conviction passed by the learned Magistrate under Annexure-AI, is necessarily to be interfered with, to secure justice, exercising the powers under Section 482 of Code of Criminal Procedure.

The petition is allowed. The conviction and sentence passed by Judicial First Class Magistrate, Nilambur in C.C. No. 73/2007 is set aside and CrI. A. No. 57/2009 pending before Sessions Court, Manjeri as well as C.C. No. 73/2007 on the file of Judicial First Class Magistrate's Court, Nilambur are also quashed.

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