



2024:KER:79262

CRL.MC No. 1424 of 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 21ST DAY OF OCTOBER 2024 / 29TH ASWINA, 1946

CRL.MC NO. 1424 OF 2022

CC NO.463 OF 2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,
KOLLAM

PETITIONER/1ST ACCUSED:



BY ADVS.K.RAMAKUMAR (SR.)
S.M.PRASANATH
T.RAMPRASAD UNNI
T.H.ARAVIND
R.S.ASWINI SANKAR
G.RENJITH
M.MANOJKUMAR (CHELAKKADAN)

RESPONDENTS/STATE & COMPLAINANT:

1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682031.



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R1 SRI.RENJIT GEORGE, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
21.10.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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'C.R.'

ORDER

Dated this the 21st day of October, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure by the 1st accused in C.C.No.463/2011 on the files of the Judicial First Class Magistrate Court-II, Kollam. The plea raised is to quash the said case.

2. In this matter, the prosecution alleges commission of offence punishable under Section 498A read with 34 of the Indian Penal Code by the accused on the allegation that the accused subjected the defacto complainant, who is the wife of the petitioner/1st accused, to cruelty during their stay at the matrimonial home after the marriage in between them, solemnised on 02.11.2009.




3. The learned Senior Counsel appearing for the petitioner/1st accused zealously pointed out that offence under Section 498A would not attract in the instant case and it is argued that, in order to attract offence under Section 498A, it is necessary that the act of cruelty shall be done by the husband or relatives of the husband. It is also argued that 'husband' means the partner of a woman engaged in a legal marriage. According to the learned counsel for the petitioner, in the instant case, the marriage between the defacto complainant and the petitioner has been declared as null and void by the Family Court. Therefore, there is no legal marriage in the eye of law to place the 1st petitioner as the husband as defined under Section 498A, at any point of time during the period of occurrence or otherwise. Therefore, quashment is liable to succeed.

4. The learned Public Prosecutor though pointed out the allegations, he also conceded Annexure A order in O.P.



(HMA) No.477/2011 dated 23.03.2013, whereby the Family Court declared the marriage between the petitioner and defacto complainant dated 02.09.2009, as null and void.

5. While addressing the contention raised by the learned counsel for the petitioner, reference to Annexure A order of the Family Court is necessary. Annexure A order stems from a petition filed by the petitioner herein under Section 7 of the Family Courts Act to declare the marriage between the petitioner and the defacto complainant as null and void. The main contention raised is that the marriage between the petitioner and the defacto complainant was solemnised on 02.11.2009, while the first marriage between the defacto complainant and one  had been subsisting. Going by the order, while granting the decree of nullity of marriage, the learned Family Court Judge found that the marriage between the 1st petitioner and the defacto complainant was solemnised



during the subsistence of marriage between the defacto complainant and [REDACTED], since the same was not dissolved. It was also observed that as per Section 11 of the Hindu Marriage Act, any marriage solemnised after the commencement of the Hindu Marriage Act shall be null and void and may be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

6. As per Section 5(i) of the Hindu Marriage Act, one of the conditions of marriage is that neither party has a spouse living at the time of the marriage. In this matter, the Family Court found that prior to the marriage between the petitioner and the defacto complainant, the defacto complainant was married to one [REDACTED] and the said marriage was subsisting at the time of the present marriage and thereby the marriage between the petitioner and the defacto complainant was declared as null and void.



7. Since the marriage has been declared as null and void and failure to satisfy the conditions of the marriage, then there is no legal marriage in the eye of law.

8. In the decision reported in **Aswin V. Nair (Dr.) V. State of Kerala [2024 KHC Online 611]**, this Court considered an issue in paragraph Nos. 4 to 9 held as under:

“4. While canvassing quashment of the proceedings, the learned counsel for the petitioner argued that the relationship between the accused and the defacto complainant was a live-in relationship and there is no legal marriage in between them. Accordingly, it is submitted that the offence punishable under Section 498(A) of IPC would not attract in the facts of this case. The learned counsel for the petitioner placed two decisions of this Court viz. **Unnikrishnan @ Chandu v. State of Kerala** [[2017(4) KHC 356 : 2017 (2) KLD 480 : 2017 (3) KLT 991 : 2017 (3) KLJ 918 : ILR 2017 (4) Ker. 822 : 2018 CriLJ 265] and **Narayanan v. State of Kerala** [2023 (6)



KHC 427 : 2023 KHC OnLine 651 : 2023 KER 61827 : 2023 (4) KLJ 590], in this regard.

5. The learned Public Prosecutor also fairly submitted that, even though crime was registered alleging commission of offence punishable under Section 498(A) of IPC, the relationship between the accused and the defacto complainant was only livein relationship and no materials brought in to see any legal marriage between them.

6. In a three Bench decision of the Apex Court reported in **Shivcharan Lal Verma and Another v. State of Madhya Pradesh [2002 (2) Crimes 177 SC: JT 2002 (2) SC 641]**, the Apex Court held as under:

For a prosecution under S.498A IPC, there must be a valid marital relationship between the accused and the victim. That is a case where a second wife committed suicide, allegedly due to the acts of cruelty of her husband and the former wife. The



victim's marriage with the accused in the said case was void ab initio.

7. Holding so, the Apex Court held that a conviction under Section 498A could not be sustained in such situation. The said ratio has been followed by this Court in **Unnikrishnan @ Chandu's case (supra)** and **Narayanan's case (supra)**.

8. On perusal of the statutory wording under Section 498(A) of IPC, it has been provided as under:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this



section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

9. Thus, it appears that in order to attract an offence punishable under Section 498(A) of IPC, the most essential ingredient is, subjecting a woman to cruelty by her husband or relative/relatives of the husband. The term ‘husband @ hubby’ means, a married man, woman’s partner in marriage. Thus, marriage is



the constituent which takes the women's partner to the status of her husband. Marriage means a marriage in the eye of law. Thus, without a legal marriage, if a man becomes a woman's partner, he will not be covered by the term 'husband' for the purpose of Section 498(A) of IPC."

9. Thus it is emphatically clear that when there is no legal marriage the woman's partner did not attain the status of her husband and an offence under Section 498A of IPC would get attracted only against her husband or relative/relatives of her husband. Therefore, in the absence of a legal marriage as borne out from the records, no offence under Section 498A of IPC would get attracted against the partner of a woman or against the partner's relatives since the partner without a legal marriage would not occupy the status of husband. Section 85 of the Bharatiya Nyaya Sanhita, 2023 (for short the 'BNS') is in pari materia to 498A of IPC and the same reads as under:



“85. Husband or relative of husband of a woman subjecting her to cruelty. —

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Classification of Offence: Cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf-Nonbailable-Triable by Magistrate of the first class Punishment: Imprisonment for 3 years and fine-Non-compoundable.”

9. Here the petitioner/1st accused never stood on the status of a husband at any point of time, since the marriage



was null and void from the very beginning and the same was declared as such, subsequently. Therefore, the prosecution case to the effect that the petitioner committed offence under Section 498A read with 34 of IPC would not stand and accordingly, this matter would require quashment.

10. In the result, this petition stands allowed. All further proceedings in C.C.No.463/2011 on the files of the Judicial First Class Magistrate Court-II, Kollam stand quashed.

Registry is directed to forward a copy of this order to the trial court for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE

bpr



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APPENDIX OF CRL.MC 1424/2022

PETITIONER'S ANNEXURES

- Annexure A TRUE COPY OF JUDGMENT DATED 23/03/2013
ON THE FILE OF THE FAMILY COURT, KOLLAM.
- Annexure B TRUE COPY OF FIR NO.1100/2010 DATED
13/11/2010 REGISTERED BY THE
SAKTHIKULANGARA POLICE STATION.
- Annexure C TRUE COPY OF THE CHARGESHEET DATED
16/03/2011 IN CC NO.463/2011 ON THE FILE
OF THE JUDICIAL 1ST CLASS MAGISTRATE'S
COURT-II, KOLLAM.