



2024:KER:57539

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 17<sup>TH</sup> DAY OF JULY 2024 / 26TH ASHADHA, 1946

CRL.MC NO. 4549 OF 2024

CRIME NO.295/2024 OF CHENGAMANAD POLICE STATION, ERNAKULAM

PETITIONER/ACCUSED:

AMAL BABU,  
AGED 34 YEARS  
S/O BABU P.M., PUTHENPURAYIL HOUSE,  
VADAKODE P.O., KANGARAPPADY,  
ERNAKULAM, PIN - 682021  
BY ADVS.  
P.M.BINDHUMOL  
G.BINDU

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
PIN - 682 031
- 2 THE INSPECTOR OF POLICE  
CHENGAMANAD POLICE STATION, ERNAKULAM  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, PIN - 682031
- 3 ASWATHY SIVAN  
AGED 33 YEARS  
D/O SIVAN T.C., THAIPARAMBIL HOUSE,  
KURUMASSERY P.O., PARAKKADAVU,  
ERNAKULAM, PIN - 683579  
BY ADVS.  
BLAZE K. JOSE  
NIKHIL SANJAY(K/001778/2020)  
TREESA ROSE(K/000813/2023)  
AIRINE JOBY(K/000680/2024)  
SRI. M P PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
17.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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**ORDER**

Dated this the 17<sup>th</sup> day of July, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973 to quash Annexure A1 First Information Report in Crime No.295/2024 of Chengamanad Police Station, Ernakulam. The petitioner herein is the sole accused in the above crime.

2. Heard the learned counsel for the petitioner, the learned counsel for the defacto complainant and the learned Public Prosecutor in detail. Perused the available documents.

3. In this matter, when a private complaint, alleging commission of offence punishable under Section 494 of IPC, was lodged before the Magistrate, the learned Magistrate forwarded the same for investigation to the police and accordingly, crime No.295/2024 of Chengamanad police station, Ernakulam has been registered. Now investigation has been going on.



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4. According to the learned counsel for the petitioner, the police could not investigate an offence punishable under Section 494 of IPC and it is the domain of the Magistrate to deal with the complaint in view of the mandate under Section 198 of Cr.P.C. She has placed decision of this Court in **Sali Antony and Another v. State of Kerala and Another**, reported in **2020 KHC 5595** to buttress this contention, wherein in paragraph No.8 this Court held as under:

*"8. Therefore, there is no question of the criminal court concerned taking cognizance of the offence as per Section 494 of the I.P.C. which has included in chapter XX of the I.P.C. except on a complaint in writing of the party concerned, who is aggrieved of such an offence relating to marriage. There is an absolute statutory bar and embargo on the part of the learned Magistrate in taking cognizance of the offence as per Section 494 of the I.P.C. on the basis of a Final Report/Charge Sheet/Police Report, filed by the Police investigating agency under Section 173 of the Cr.P.C. Therefore, the learned Magistrate has rightly discharged the 1st petitioner for the offence as per Section 494 of the I.P.C. in the police*



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*charge sheeted case in C.C. No.2079/2015. The sole substantive offence in C.C. No.412/2016 is the one as per Section 494 of the I.P.C., which the learned Magistrate has taken cognizance on the basis of the protest complaint submitted by the 2<sup>nd</sup> respondent (lady de facto complainant). The learned Magistrate has given proper reasons in the impugned order as to how the factual ingredients are satisfied for the purpose of taking cognizance of the said offence as per Section 494 of the I.P.C. Hence, both the abovesaid Calendar Cases contain distinct offences. The action on the part of the learned Magistrate in having taking cognizance of the offences as per Sections 494, 120B read with Section 34 of the I.P.C. in the protest complaint filed by the 2<sup>nd</sup> respondent, cannot be said to be illegal or unlawful. Consequently, it cannot be said that the learned Magistrate has acted illegally and improperly in having refused the plea of the petitioners for discharging them for the offence as per Section 494 of the I.P.C. in C.C. No.412/2016. Hence, the prayers in the present petition fail.”*

5. Whereas it is submitted by the learned counsel for the defacto complainant that there is no legal bar to refer a



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complaint alleging commission of offence under Section 494 of IPC, where Section 198 of Cr.P.C. would apply for investigation under Section 156(3) of Cr.P.C. and the bar is only in relation to taking cognizance, based on the report filed by the police. In support of this contention, the learned counsel placed two decisions of this Court, viz., **Varghese v. Annamma and Others** reported in **1987 (1) KLT 104** and **Madhu V. Saseendra** reported in **2000(2) KLT 112**.

6. In **Madhu's** case (*supra*), in paragraph Nos.14 and 15, this court held as under:

*"14. From the above decision [Manuel Augustine V. State of Kerala (1984 KLT 859)] it is clear that the police report filed by the investigating officer with respect to the non-cognizable offences cannot be treated as police report as such and cognizance cannot be taken. But such police reports should be treated as complaints and the procedure stipulated in respect of the complaints filed before the Magistrate should be followed. Therefore, in this case even though the Magistrate has forwarded the complaint filed by the 1<sup>st</sup> respondent for investigation and report under S.156(3) of the Cr.P.C., the learned*



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*Magistrate cannot proceed straight away and take cognizance of the offence on receipt of the final report from the investigating officer. He has to follow the procedure laid down in Chapter XV of the Cr.P.C. with regard to the complaints filed before the Magistrate after receipt of the final report from the investigating officer before taking cognizance of the offence against the accused, petitioner herein.*

15. *It follows from what is stated above that the contention of the petitioner that the procedure followed by the learned Magistrate in forwarding the complaint filed by the 1<sup>st</sup> respondent against the petitioner alleging offence punishable under S.494 r/w.S.34 of IPC to the police for investigation and report under S.156(3) of the Cr.P.C. is illegal and therefore, the entire proceedings against him should be quashed, is not sustainable. Hence, this Crl.M.C. is dismissed.”*

7. In paragraph Nos.6, 7 and 8 of the decision in **Varghese’s** case (*supra*), this Court held as under:

*“6. There is no merit in the contention that once a police report has been sent up after investigation under S. 156(3) no further step can be taken on the complaint or that the complaint will be merged in the police report. A similar contention was raised in*



*Tula Ram's case (AIR. 1977 SC. 2401). It was contended that "once the Magistrate chooses to act under S.156(3) of the Code it was not open to him to revive the complaint, take cognizance and issue process against the accused. It was also contended that "in such a case court has two alternatives and two alternatives only, either he could direct re-investigation if he was not satisfied with the final report of the police or he could straightaway issue process to the accused under S.204". Repelling those contentions Their Lordships observed as follows: "Attractive though the argument appears to be, we are however unable to accept the same. In the first place, the argument is based on a fallacy that when Magistrate orders investigation under S.156(3) the complaint disappears and goes out of existence".*

*7. The decision of a single bench of this Court has been brought to my notice by the learned counsel for the petitioner. It is reported in **State of Kerala v.Wilfred (1968 KLT 57)**. The question raised in that case was whether the complaint forwarded by the Magistrate to the police for investigation under S 156(3) of the Code would continue its character as a complaint even though the police sent up final report charging the case after investigation. Sadasivan, J. held that*



*forwarding the complaint under S. 156(3) of the Code will not change the character of the complaint. He observed that "In other words, the complaint originally filed will not, on that account, assume a different garb when the police report is received. The proceedings will continue to be proceedings instituted on complaint." Though the principle had been broadly stated in the said decision the question involved therein was not regarding the ban of taking cognizance of certain offences mentioned in Ss. 195 (2) and 199 of the Code.*

*8. The result of the aforesaid discussion is the following. The Chief Judicial Magistrate was right in not taking cognizance of the offences under S.497 or 498 of the Penal Code on the police report filed. But he should have taken cognizance of the said offences on the basis of the complaint filed by the petitioner albeit the final report sent up by the police. I therefore direct the learned Chief Judicial Magistrate to take cognizance of the aforesaid offences on the strength of the complaint and proceed to examine the complainant in the manner provided in S.200 of the Code. He may proceed with the complaint by registering a different case for the said offences."*





8. Considering the scope of Section 198 of Cr.P.C., the same is an exception to the general rule that any person, having knowledge of the commission of an offence, may set the law in motion. Chapter XX of the Indian Penal Code relates to offences against marriage and in such offences Court cannot take cognizance except upon a complaint made by same person aggrieved by the offence. The complaint must be made by the person aggrieved. The person aggrieved is the person affected or injured. 'Complaint' means, a complaint as defined in S.2(d) of the Act. It should be of the specific offence falling under Chapter XX of the Penal Code and not of any offence. The word 'complaint' does not include a police report. Police report is a complaint within the meaning of S.7 of the Dowry Prohibition Act, 1961. Where no complaint is filed in respect of Section 494, IPC, as required by Section 198, Cr.P.C, cognizance of the offence by the Magistrate on the basis of police report is without jurisdiction.



9. In this connection, it is relevant to refer the decision in **Ushaben v. Kishorbhai Chunilal Talpada and Others** reported in **2012 (6) SCC 353**. In this case, the Hon'ble Apex Court considered a question, '*where there are allegations about commission of offence punishable under Section 498A of IPC, which is a cognizable offence, and an offence under Section 494 of IPC which is non-cognizable, whether the court can take cognizance for the offence under Section 494 of IPC on the police report?*' and held in the affirmative.

10. The facts of the case dealt by the Hon'ble Apex Court is that the appellant got married to Respondent No.2 on 07.12.2000. She lived with Respondent No.2 in the joint family till 18.01.2006. During this period the appellant gave birth to two children. On 30.07.2007 the appellant was forced to leave the matrimonial home due to the cruelty meted out to her in the matrimonial home. During the subsistence of the appellant's marriage with Respondent No.2 in 2008,



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Respondent No.2 got married to Respondent No.8. Sometime in 2009, when the appellant came to know about the second marriage of Respondent No.2, she lodged a complaint against Respondents 1 to 9 for alleging commission of offences punishable under Sections 498-A, 494, 506(2) read with Section 114 IPC and under Sections 3 and 7 of the Dowry Prohibition Act. Nadiad Rural Police Station, District Kheda registered it as CR No.24 of 2009. Thereafter, Respondents 1 to 9 moved an application before the Gujarat High Court under Section 482 of the Code, contending, inter alia, that cognizance of offence under Section 494 IPC can be taken only on the complaint made by an aggrieved person and inasmuch as in this case the complaint is not made by the aggrieved person, the police could not have taken cognizance of offence under Section 494 IPC.

11. The Apex Court answered the query in paragraph No.17 of **Ushaben's** case (*supra*) that if a complaint contains



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allegations about commission of offence under Section 498A IPC which is a cognizable offence, apart from allegations about the commission of offence under Section 494 IPC, the court can take cognizance on both offences even on a police report.

12. In paragraph No.18 of the above decision, the Hon'ble Apex Court held that the reliance placed by the High Court on its earlier judgment in **Babubhai Madhavlal Patel v. State of Gujarat (1969) 1 Cri LJ 567 (Guj)** is misplaced. In that case, the High Court was dealing with all offences falling under Chapter XX IPC. Initially, the accused were charged under Section 417 read with Section 114 of IPC. That charge was given a go-by and a fresh charge in respect of Section 493 to 496 IPC was framed. These offences fall in Chapter XX IPC. Therefore, the High Court held that cognizance thereof can be taken by the Magistrate only on the basis of complaint filed under Section 190(1)(a) of the Code by an aggrieved person. The Apex Court held that



**Babubhai Madhavlal Patel's** case (*supra*) dealt with offences of non-cognizable nature dealt under Chapter XX of the Cr.P.C. and the said ratio could not apply when offence under Section 498A of IPC (Cognizable offence) and under Section 494 of IPC (non-cognizable offence) were investigated and final report filed.

13. Thus the legal position is so vivid that when a Magistrate gets a police report inclusive of Cognizable and non-cognizable offences offence covered by Chapter XX of IPC, the Magistrate is legally empowered to take cognizance of both, even acting upon the police report. But the scenario is different when the Magistrate forwards a complaint for investigation by the police involving offences covered by Chapter XX of Cr.P.C. for which procedure of 198 of Cr.P.C. to be complied. In such cases, if at all the Magistrate directs an investigation to be done by the police by forwarding the complaint under Section 156(3) of Cr.P.C., the report filed by the police officer is deemed to be a complaint covered by



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explanation to Section 2(d) of Cr.P.C. and the Magistrate could not take cognizance, acting on the said complaint and for which the Magistrate should have gone for the procedure laid down in Section 200 read with Section 198 of Cr.P.C and to taken cognizance only on the complaint, albeit the final report sent by the police officer.

14. In the present case, the learned Magistrate forwarded a private complaint lodged by a person competent to lodge the same as per Section 198 of Cr.P.C., alleging commission of offences under Section 494 of IPC and now the same is under investigation by the Investigating Officer. The mere forwarding of the complaint under Section 156(3) of Cr.P.C. is not legally barred. But while taking cognizance, report of the police as part of the investigation to be reckoned as a complaint and the Magistrate shall go by the procedure, as discussed herein above, acting on the original complaint filed by the complainant, if the Magistrate intends to take cognizance of the said offence.



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Holding so, this petition stands disposed of, directing the learned Magistrate to consider the legal position while taking cognizance, in this matter and proceed further, if found necessary.

Interim order of stay, if any, stands vacated.

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

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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APPENDIX OF CRL.MC 4549/2024

**PETITIONER ANNEXURES**

- ANNEXURE A1** TRUE OF THE FIRST INFORMATION REPORT IN CRIME NO. 295/2024 OF CHENGAMANAD POLICE STATION, ERNAKULAM DATED 11-04-2024
- ANNEXURE A2** TRUE COPY OF THE O.P. NO. 940/2022 DATED 17-08-2020 BEFORE THE HON'BLE FAMILY COURT, AT ALUVA
- ANNEXURE A3** TRUE COPY OF THE FIR IN CRIME NO. 679/2020 DATED 01-10-2020 OF THRIKKAKARA POLICE STATION, ERNAKULAM CITY
- ANNEXURE A4** TRUE COPY OF THE FINAL REPORT IN CRIME NO.679/2020 DATED 31-12-2020 FILED BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD
- ANNEXURE A5** THE AGREEMENT BETWEEN THE PETITIONER AND TEENA THOMAS REGARDING THEIR LIVING TOGETHER RELATIONSHIP DATED 06-08-2022

**RESPONDENTS ANNEXURES : NIL**