



2024:KER:62605

CrI.M.C.Nos.7541 & 10135 of 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 12TH DAY OF AUGUST 2024 / 21ST SRAVANA, 1946

CRL.MC NO. 7541 OF 2023

CRIME NO.1704/2019 OF Vattiyoorkavu Police Station,
Thiruvananthapuram

CC NO.3010 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS-
II, NEDUMANGAD

PETITIONER/4TH ACCUSED:

NISHIN HUSSAIN, AGED 27 YEARS
D/O MOHAMMED HUSSAIN M.I, RESIDING AT DEEYA, VKRA
136 , KADIYAKKONAM LINE, VAZHOTTUKONAM,
VATTIYOORKAVU P.O, THIRUVANATHAPURAM, PIN - 695013.
BY ADVS.
V.G.ARUN (K/795/2004)
V.JAYA RAGI
R.HARIKRISHNAN (KAMBISSERIL)
NEERAJ NARAYAN
AVANEETH S.R.
BHARATH VIJAYAN U.R.

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031.
- 2 LEELU SUBIN HUSSAIN, D/O SUNILKUMAR , URA1,
PERANGATU HOUSE, STEPS JUNCTION, NALANCHIRA,
THIRUVANANTHAPURAM CITY, PIN - 695015.
PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
19.07.2024 ALONG WITH CRL.M.C.NO.10135/2023, THE COURT ON
12.08.2024 PASSED THE FOLLOWING:



2024:KER:62605

Crl.M.C.Nos.7541 & 10135 of 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 12TH DAY OF AUGUST 2024 / 21ST SRAVANA, 1946
CRL.MC NO. 10135 OF 2023
CRIME NO.1704/2019 OF Vattiyookavu Police Station,
Thiruvananthapuram
CC NO.3010 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS-
II, NEDUMANGAD

PETITIONER/3RD ACCUSED:

LAILU M HUSSAIN, AGED 60 YEARS
W/O MUHAMMED HUSSAIN, RESIDING AT DEEYA, VKRA 136 ,
KADIYAKKONAM LINE, VAZHOTTUKONAM, VATTIYOORKAVU P.O,
THIRUVANATHAPURAM, PIN - 695013

BY ADVS.

V.G.ARUN (K/795/2004)

V.JAYA RAGI

R.HARIKRISHNAN (KAMBISSERIL)

NEERAJ NARAYAN

AVANEETH S.R.

(The name of the petitioner mentioned as "LILA M
HUSSAIN" is corrected as "LAILU M HUSSAIN" in the cause
title of Crl.M.C as per order Dt.1.02.2024 in
Crl.M.Appl.No.1/2024 in Crl.M.C.No.10135/2023.)

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031.
- 2 LEELU SUBIN HUSSAIN, D/O SUNILKUMAR, URA1, PERANGATU
HOUSE, STEPS JUNCTION, NALANCHIRA, THIRUVANANTHAPURAM
CITY, PIN - 695015.

PUBLIC PROSECUTOR SRI M.P.PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
19.07.2024 ALONG WITH CRL.M.C.NO.7541/2023, THE COURT ON
12.08.2024 PASSED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.***

*Crl.M.C No.7541 of 2023**and**Crl.M.C.No.10135 of 2023*

*Dated this the 12th day of August, 2024***COMMON ORDER**

The 3rd accused in C.C.No.3010/2021, on the files of Judicial Magistrate of First Class-II, Nedumangad, has filed this Criminal Miscellaneous Case under Section 482 of the Code of Criminal Procedure ('Cr.P.C' for short) seeking the following reliefs:

“i. To quash Annexure A1 FIR and Annexure A3 Final Report and all further proceedings in Crime No.1704 of 2019 of Vattiyoorkavu Police Station presently pending trial before Judicial First Class Magistrate-II, Nedumangad as CC.No.3010/2021.

(b) Pass such any other order, direction or reliefs as this Hon'ble Court may deem fit and proper in the interest of justice, equity and good conscience.”

2. Crl.M.C.No.7541/2023 is at the instance of the 4th accused in the above crime. She also seeks quashment of the above proceedings.



3. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor in detail. Perused materials.

4. The learned counsel for the petitioners/3rd and 4th accused argued that there are no allegations specifically made out as against the petitioners, who are the 3rd and 4th accused in the above case, to attract offence punishable under Sections 498A, 354A and 34 of the Indian Penal Code. He also submitted that the 3rd and 4th accused/petitioners herein are ladies and therefore no offence under Section 354A of the IPC would attract against them. It is submitted by the learned counsel for the petitioners further that only omnibus allegations are raised against the petitioners in as much as the other offences are concerned and the same are insufficient to proceed against the petitioners. He has placed decisions of the Apex Court reported in [MANU/SC/0163/2022], *Mahkashan Kausar & Ors. v. State of Bihar & Ors.* He also argued that in order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence and decision of the Apex Court reported in



[MANU/SC/1733/2009], *Neelu Chopra & Ors. v. Bharti*, has been placed in this regard. Misuse of provisions under Section 498A to rope in distinct relatives of the husband in crimes also highlighted with the aid of the decision in [2018 KHC 6625 : 2018(2) KLD 766 : 2018 (1)) SCALE 112 : AIR 2018 SC 4009 : 2018 (14) SCC 452], *Subba Rao K. & Ors. v. State of Telangana rep. By its Secretary*. Relying on the decision in in [MANU/DE/0372/2019], *Anju v. Govt. of NCT of Delhi & Ors.* dated 04.02.2019, the learned counsel for the petitioners argued that general and omnibus allegations, without specifying about the date, time or place of the alleged overt acts, are not sufficient to proceed with trial. Accordingly, he prayed for quashment.

5. The learned Public Prosecutor strongly opposed the quashment sought for pointing out the specific allegations raised against the petitioners which would disclose, *prima facie*, materials to attract the offences alleged by the prosecution.

6. The prosecution allegation herein is that the 1st accused, the husband of the defacto complainant, the 2nd accused – the father of the 1st accused, the 3rd accused – the mother of the 1st accused and the 4th accused - the sister of the 1st accused, subjected the defacto complainant,



who did not belong to their community, to cruelty and molestation, by demanding money and flat. On this premise, the prosecution alleges commission of the above offences.

7. In view of the rival arguments, I have perused the F.I.S to find as to whether the prosecution case, *prima facie*, made out against the petitioners.

8. The specific allegation is that while the defacto complainant was staying along with the accused in continuation of registered marriage on 08.02.2013 and a religious marriage on 31.03.2013, the accused herein put her to starvation and detained in a room demanding more money. Further allegation is that they bagged Rs.5 lakh. Thereafter, they demanded 5 lakh more and they occupied the custody of the car and money of the defacto complainant. The accused beat her also. The specific allegation against the 3rd accused is that she opened the gas stove with intention to harm the defacto complainant and also by obstructing her studies. The further allegation against the 3rd accused is that while the defacto complainant was abroad, the 3rd accused forced her to send her salary in the name of the 2nd accused. There is further allegation that the 1st accused effected talaq while she was on rest after pregnancy. Since



there are specific allegation against the 3rd accused that she attempted to harm the defacto complainant by opening the gas stove and other allegations as stated herein above, it could not be held at this stage that the 3rd accused is innocent and there are no materials to go for trial as against the 3rd accused.

9. Allegation against the 4th accused is that the defacto complainant was compelled to nourish her on the premise that she had infirmity on her vertebra. That apart, another allegation is that the 4th accused informed the defacto complainant that the 4th accused maintained relationship with one of her school friends and she had sexual intercourse with him, when there was nobody in the house. He also recorded the video of the sexual assault and now by using the same, he had been exploiting the 4th accused. It is alleged further that when the boy friend of the 4th accused compelled the 4th accused to have sexual intercourse with his friends, the 4th accused resisted the same. Then the boy friend of the 4th accused imposed a condition, for ending their relationship, that the 4th accused should make available the defacto complainant for sexual intercourse with him and handed over a tablet to be administered by the 4th accused to the defacto complainant, capable of providing sleep for 24



hours so that he could subject the defacto complainant for sexual intercourse, during this time. Specific allegations otherwise also seen raised in Annexure A2 complaint running to 37 paragraphs.

10. In so far as commission of offence under Section 354A of IPC by the petitioners herein, who are accused Nos.3 and 4 in the above case, is concerned, it is necessary to address the argument let in by the learned counsel for the petitioners. Section 354A of IPC provides as under:

“354A: Sexual harassment and punishment for sexual harassment:--

1. A man committing any of the following acts—
 - (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.
2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause



(iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Thus in order to attract offence under Section 354A of IPC, the overt acts dealt under Section 354A(1), (2) and (3), should be the volition of "a man". So the legislature diligently used the term 'a man' instead of 'any person'. In the statutory provision and the legislative intent is to exclude woman/women from the purview of Section 354A of IPC. If so, it has to be held that Section 354A of IPC would not apply when the overt acts dealt therein was done by a woman against another woman/women. If so, the allegation of prosecution that the petitioners herein committed offence punishable under Section 354A of IPC is, *prima facie*, not sustainable and the proceedings for said offence is liable to be quashed.

11. Coming to the essentials to attract an offence under Section 498A of IPC is concerned, the same has been considered by this Court. In the decision in *Shyamala Bhasker v. State of Kerala* reported in [2024 KHC OnLine 429], this Court considered the essentials to invoke the inherent powers under 482 Cr.P.C., while dealing with a case where offence under section 498A of IPC, was involved. In paragraph No. 6, it was held as under:



“6. In order to address the rival contentions, reference to Section 498A of IPC is necessary, which reads as under:

“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.”

*Going by the definition, subjecting a woman to cruelty by husband or relative of the husband 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 harassment of the woman where such harassment is with a view to coerce 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 is an offence. In the decision in **Achin Gupta v. State of Haryana** [2024 KHC OnLine 6257 : 2024 (3) KHC SN 24 : 2024 LiveLaw (SC) 343 : 2024 KLT OnLine 1481], the Apex Court considered earlier decisions of the Apex Court dealing with Section 498A of IPC and it was held that general and sweeping allegations without mentioning specific instances of criminal conduct is an abuse of the process of court*



and in such cases the courts owe a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving some individuals in a criminal charge, more particularly, when a prosecution arises from a matrimonial dispute.

12. Same is the legal position argued by the learned counsel for the petitioners.

13. On evaluation of the prosecution allegations, it could not be held that only general and sweeping allegations raised against the petitioners herein and there are specific allegations against the petitioners. Therefore, it could not be held that the offence punishable under Section 498A of IPC is not made out against the petitioners, *prima facie*, so as to quash the proceedings for the said offence also.

14. Holding so, these petitions are allowed in part. Quashment sought for in relation to offence punishable under Section 354A of IPC stands allowed, while disallowing the prayer to quash the entire proceedings for the offence punishable under Section 498A read with 34 of IPC. Therefore, trial against the petitioners can go on regarding offence under Section 498A of IPC.



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15. Interim order, if any, already granted shall stand vacated.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/



APPENDIX OF CRL.MC 7541/2023

PETITIONER' s ANNEXURES

- Annexure A1** THE TRUE COPY OF THE FIR IN CRIME NO. 1704 OF 2019 OF VATTIYOORKAVU POLICE STATION DATED 30.08.2019.
- Annexure A2** THE TRUE COPY OF THE COMPLAINT NO. 3036 DATED 29.08.2019 FILED BY THE DE FACTO COMPLAINANT BEFORE THE ASSISTANT CITY POLICE COMMISSIONER, THIRUVANANTHAPURAM.
- Annexure 3** THE TRUE COPY OF THE FINAL REPORT IN VATTIYOORKAVU POLICE STATION CRIME NO. 1704/2019 FILED BEFORE JFMC-II; NEDUMANGADU DATED 06.08.2021.



APPENDIX OF CRL.MC 10135/2023

PETITIONER' S ANNEXURES

- Annexure A1** **THE TRUE COPY OF THE FIR IN CRIME NO. 1704 OF 2019 OF VATTIYOORKAVU POLICE STATION DATED 30.08.2019.**
- Annexure A2** **THE TRUE COPY OF THE COMPLAINT NO. 3036 DATED 29.08.2019 FILED BY THE DE FACTO COMPLAINANT BEFORE THE ASSISTANT CITY POLICE COMMISSIONER, THIRUVANANTHAPURAM.**
- Annexure A3** **THE TRUE COPY OF THE FINAL REPORT IN VATTIYOORKAVU POLICE STATION CRIME NO. 1704/2019 FILED BEFORE JFMC-II, NEDUMANGADU DATED 06.08.2021.**
- Annexure A4** **THE TRUE COPY OF THE INTERIM ORDER DATED 18.09.2023 IN CRL MC NO. 7541 OF 2023 PASSED BY THIS COURT.**
- Annexure A5** **THE TRUE COPY OF THE INTERIM ORDER DATED 20.10.2023 IN CRL MC NO. 7541 OF 2023 PASSED BY THIS COURT.**