

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT



THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 6TH DAY OF JUNE 2024 / 16TH JYAISHTA, 1946

CRL.MC NO. 2448 OF 2023

C.C.NO.153/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, ETTUMANOOR
ARISING OUT OF CRIME NO.216/2021 OF ETTUMANOOR POLICE STATION.

PETITIONER/ACCUSED NO.1:



BY ADVS.
THOMAS J.ANAKKALLUNKAL
ANUPA ANNA JOSE KANDOTH
JAYARAMAN S.
LITTY PETER

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

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R1 SRI.RENJIT GEORGE, SENIOR PUBLIC PROSECUTOR

R2 ADV. LUKE J.CHIRAYIL

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06.06.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



'C.R.'

ORDER

Dated this the 6th day of June, 2024

This is a petition filed by the petitioner, who is the 1st accused in C.C. No.153/2021 on the files of the Judicial First Class Magistrate Court, Ettumanoor under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), seeking quashment of the final report in the above case, arising out of Crime No.216/2021 of Ettumanoor Police Station, Kottayam District in the interest of justice.

2. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel for the defacto complainant.

3. In this matter, accused Nos.1 and 2 alleged to have committed offence punishable under Section 498A of the Indian Penal Code (for short 'IPC').



4. While canvassing quashment on the ground of want of sanction under Section 188 of the Cr.P.C., the learned counsel for the petitioner read out the FI Statement of the defacto complainant containing the overt acts, whereby the prosecution alleges commission of offence punishable under Section 498A of IPC by the 1st accused and invited attention of this Court that all the allegations warranting cruelty at the instance of the 1st accused under Section 498A were alleged to have been committed when the defacto complainant resided along with 1st accused in Australia. Since entire overt acts at the instance of the 1st accused, as stated in the FIS, occurred in Australia, prosecution is vitiated for want of sanction.

5. The learned Public Prosecutor placed the FI Statement for perusal and submitted that the allegations of cruelty as against the 1st accused is stated in the FIS, but the overt acts alleged are done not in India. Further, the Case Diary doesn't contain any additional statement to see any overt acts



within the territory of India. However, it is pointed out that there is an allegation of a threat made by the 1st accused, while in Australia through telephone call to the defacto complainant, while she was at her native place.

6. The learned counsel for the defacto complainant justified the prosecution case and zealously opposed quashment. It is also submitted there are overt acts against the 2nd accused.

7. In this connection, it is profitable to refer Section 188 of Cr.P.C., which is as under:-

188. Offence committed outside India.

– When an offence is committed outside India –

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found :



Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

8. The learned counsel for the petitioner placed an order of this Court in Crl.M.C. No.5290/2019 in **Amanulla Khan v. Sajeena Vahab** to contend that the bar under Section 188 of Cr.P.C. would squarely apply to the facts of this case and therefore, the case against the petitioner/1st accused would require quashment.

9. Reading Section 188 Cr.P.C., it provides that when an offence is committed outside India- (a) by a citizen of India, whether on the high seas or elsewhere; or (b) by a person, not being the citizen, on any ship or aircraft registered in India, the offender may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. Proviso to Section 188 Cr.P.C. stipulates that no such



offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

10. In a three Judge Bench of the Apex Court in **Sartaj Khan v. State of Uttarakhand** (2022 LiveLaw (SC) 321, 2022(2) : KHC 846 : 2023 Cr.LJ. 441 held that if the offence was not committed in its entirety, outside India, the matter would not come within the scope of Section 188 Cr.P.C. and there is no necessity of any sanction as mandated by the proviso to Section 188.

11. Thus, while analysing what are the cases for which proviso to Section 188 of Cr.P.C. would apply, it is held that when an offence is committed outside India- (a) by a citizen of India, whether on the high seas or elsewhere; or (b) by a person, not being the citizen, on any ship or aircraft registered in India, the offender may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found, where proviso to Section 188 of Cr.P.C. would apply and



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in such cases, previous sanction of the Central Government is necessary. At the same time, if part of the overt acts or at least one instance among the overt acts alleged to be committed in India, sanction under Section 188 of Cr.P.C. is not necessary in such cases.

12. In the instant case, it is perceivable that the entire allegations, which would attract offences under Section 498A of IPC alleged to be committed by the 1st accused is outside India, and the matter definitely would come within the ambit of Section 188 of Cr.P.C. Therefore, the present proceedings without obtaining prior sanction as contemplated under Section 188 Cr.P.C. is vitiated.

13. In the result, this petition stands allowed. Accordingly, all further proceedings in C.C. No.153/2021 on the files of the Judicial First Class Magistrate Court, Ettumanoor arising out of Crime No.216/2021 of Ettumanoor Police Station, Kottayam District as against the 1st accused/petitioner herein



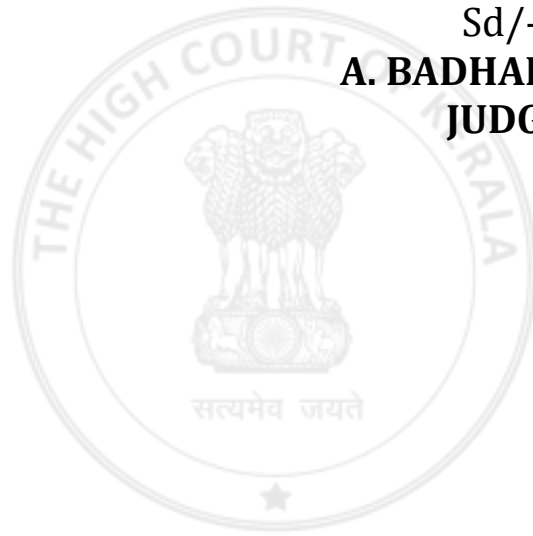
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stands quashed with a direction to the learned Magistrate to proceed against the 2nd accused.

Registry is directed to communicate a copy of this order to the trial court forthwith.

Sd/-
A. BADHARUDEEN
JUDGE

bpr



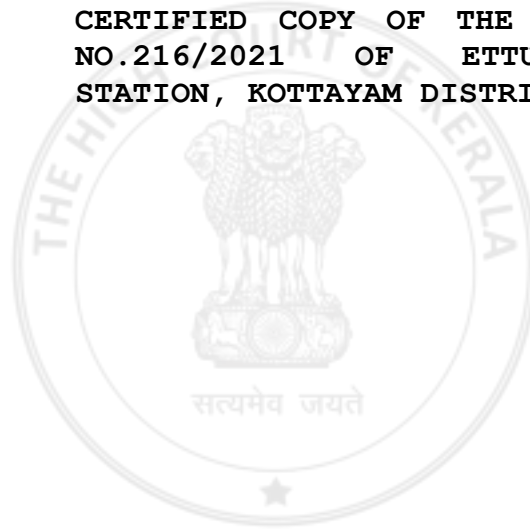
HIGH COURT OF KERALA
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APPENDIX OF CRL.MC 2448/2023

PETITIONER'S ANNEXURES

- Annexure A1** CERTIFIED COPY OF THE FINAL REPORT IN C.C NO.153/2021 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ETTUMANOOR ARISING OUT OF CRIME NO.216/2021 OF ETTUMANOOR POLICE STATION, KOTTAYAM DISTRICT.
- Annexure A2** CERTIFIED COPY OF THE F.I.S IN CRIME NO.216/2021 OF ETTUMANOOR POLICE STATION, KOTTAYAM DISTRICT.



HIGH COURT OF KERALA
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