



2024:KER:87047

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 20TH DAY OF NOVEMBER 2024 / 29TH KARTHIKA, 1946

CRL.MC NO. 1853 OF 2024

CRIME NO.659/2023 OF ALAKODE POLICE STATION, KANNUR
CC NO.1843 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST
CLASS, TALIPARAMBA

PETITIONERS/ACCUSED NOS.1 TO 3:

- 1 EAPPAN JOSEPH
AGED 34 YEARS
S/O.JOSEPH VALAKUZHY, VALAKUZHY HOUSE, PALARIVATTOM,
ERNAKULAM, PIN - 682024
- 2 JOSEPH VALAKKUZHI @ OUSEPPACHAN,
AGED 65 YEARS
S/O.EAPACHAN VALAKKUZHI, VALAKKUZHI HOUSE, PALARIVATTOM,
ERNAKULAM, PIN - 682024
- 3 MINI JOSEPH
AGED 56 YEARS
W/O.JOSEPH VALAKUZHY, VALAKUZHY HOUSE, PALARIVATTOM,
ERNAKULAM, PIN - 682024
BY ADVS.
K.R.VINOD
M.S.LETHA
NABIL KHADER
RAHUL.S
DEVIKA S.

RESPONDENTS/COMPLAINANTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031
- 2 AKSHAYA K.THOMAS
AGED 28 YEARS
D/O.THOMAS K.T., KATTI VEETIL HOUSE, ARAVILANHAPOYIL,
UDAYAGIRI AMSOM, KANNUR RURAL., PIN - 670571
R1 BY PUBLIC PROSECUTOR SRI.M.P.PRASANTH
R2 BY ADVS.
SATHEESH V A
V.T.MADHAVANUNNI (K/000329/1983)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
6.11.2024, THE COURT ON 20.11.2024, PASSED THE FOLLOWING:

**ORDER**

Dated this the 20th day of November, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, by the petitioners, to quash Annexure A1 Final Report in C.C.No.1843/2023 on the files of the Judicial First Class Magistrate Court, Thaliparamba, arose out of Crime No.659/2023 of Alakode Police Station, Kannur. The petitioners herein are accused Nos.1 to 3 in the above case.

2. Heard the learned counsel for the petitioners, the learned counsel appearing for the de facto complainant and the learned Public Prosecutor in detail. Perused the relevant records.

3. Here, the prosecution allegation is that, the 1st accused, who married the de facto complainant on 8.5.2022, while the de facto complainant was staying at the matrimonial home, along with accused Nos.2 and 3, subjected the de facto complainant to cruelty demanding money and gold ornaments and thereby, committed offence punishable under Section 498A r/w Section 34 of the Indian Penal Code (for short, 'the IPC' hereinafter).



4. While seeking quashment of the entire proceedings as against the petitioners, who are accused Nos.1 to 3, it is zealously argued by the learned counsel for the petitioners that, if at all the entire allegations traceable from the prosecution records were taken together, prima facie, offence under Section 498A r/w Section 34 of the IPC not made out and in such view of the matter, the entire proceedings would warrant quashment.

5. While opposing quashment, the learned counsel for the de facto complainant read out the statement of the de facto complainant to contend that there are specific allegations against all the accused to see commission of offence under Section 498A r/w Section 34 of the IPC, prima facie and in such a case, quashment cannot be considered. It is also submitted by the learned counsel for the de facto complainant that, if at all, the allegation against accused Nos.2 and 3 are found to be general in nature, then also, specific allegation against the 1st accused is foreseeable, prima facie and in such a case, quashment of the case could not be considered.

6. The learned Public Prosecutor read out the FIS in detail



and submitted that, in the FIS, it is alleged that the 1st accused married the de facto complainant on 8.5.2022 and thereafter, they resided at the matrimonial home. It is further stated that, for the last 12 years, the 1st accused has been residing in Melbon, Australia and he had Australian citizenship and job in DXC company as Project Manager. According to the de facto complainant, in connection with the marriage, Rs.95 Lakh was entrusted to the 1st accused and thereafter, on 8.3.2022, after fixation of marriage, Rs.20 Lakh was transferred to the account of the 1st accused and Rs.5 Lakh again entrusted to him, by cash. Further, Rs.15 Lakh was entrusted to the father of the 1st accused on the date of marriage and prior to that, Rs.35 Lakh transferred on 6.5.2022 and on 6.6.2022 also, Rs.20 Lakh was transferred to the 1st accused. The allegation against the parents is that, the mother of the 1st accused obtained the entire gold ornaments of the de facto complainant and kept the same in locker and thereafter, failed to return the same. According to the de facto complainant, she resided the matrimonial home only from 8.5.2022 till 12.5.2022 and on 21.5.2022, she reached Melbon along with the 1st



accused. Thereafter, during her stay at Melbon, she was restrained even to make calls and she was permitted to make calls in the presence of the 1st accused. When she was invited to reach Sydney in connection with grant of award on 22.6.2022, the 1st accused assured to take her on 23.6.2022. But, the 1st accused failed to take her and she returned back to Melbon. She stated that, apart from demand of money during initial days of marriage, during her stay in Melbon, the 1st accused subjected her to cruelty.

7. On perusal of the FIS and the additional statements, it could not be held at the pre-trial stage that the 1st accused did not commit any overt acts prima facie to see commission of offence under Section 498A of the IPC. On the contrary, prima facie, offence under Section 498A of the IPC, is made out, as against the 1st accused. As regards the role of the parents, who are accused Nos.2 and 3, is concerned, the same are general in nature and it is discernible that the de facto complainant stayed along with them only for a short period between 8.5.2022 to 12.5.2022. Therefore, it could be held that, prima facie offence under Section 498A r/w Section 34 of the IPC



could not be gathered as against the petitioners 2 and 3, who are accused Nos.2 and 3 and therefore, the quashment prayer, at their instance, is liable to succeed. At the same time, since prima facie materials available as against the 1st petitioner/1st accused to see commission of offence under Section 498A of the IPC, quashment prayer, at his instance, is liable to fail.

In the result, this Crl.M.C. stands allowed in part. Accordingly, Annexure A1 Final Report and all further proceedings as against petitioners 2 and 3/accused Nos.2 and 3 in C.C.No.1843/2023 on the files of the Judicial First Class Magistrate Court, Thaliparamba, arose out of Crime No.659/2023 of Alakode Police Station, Kannur, stand quashed, while disallowing the quashment prayer at the option of the 1st petitioner/1st accused.

The interim order granted by this Court, stands vacated.

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

Sd/-
A. BADHARUDEEN
JUDGE



APPENDIX OF CRL.MC 1853/2024

PETITIONERS' ANNEXURES

- Annexure A1 THE CERTIFIED COPY OF THE FINAL REPORT
INCLUDING FIRST INFORMATION REPORT AND F.I.
STATEMENT IN C.C.NO.1843/2023 ON THE FILES
OF JUDICIAL FIRST-CLASS MAGISTRATE COURT,
THALIPARAMBA
- Annexure A2 THE COPY OF THE ORDER OF DISSOLUTION OF
MARRIAGE BETWEEN THE 1 ST PETITIONER AND
THE 2 ND RESPONDENT
- Annexure A3 THE COPY OF THE ORDER OF THE MAGISTRATES'
COURT OF VICTORIA DATED 27.02.2023

RESPONDENTS' ANNEXURES : NIL