



2025:KER:3

Crl.M.C.Nos.1002 of 2022 & 3351 of 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

CRL.MC NO. 1002 OF 2022

CRIME NO.105/2019 OF CHITTARIKAL POLICE STATION, KASARGOD

AGAINST THE FINAL REPORT IN CC NO.857/2019 FILED BEFORE
THE JUDICIAL MAGISTRATE OF FIRST CLASS-II, HOSDRUG

PETITIONER:

EBIN SEBASTIAN,
AGED 33 YEARS,
NEHRU ROAD, AYYAPPANKAVU,
KOCHI, ERNAKULAM, PIN-682018

BY ADVS.SUBHASH CYRIAC
S.SREEJITH (S-3453)
ASHA JYOTHY

RESPONDENTS/STATE AND COMPLAINANT:

- 1 STATE OF KERALA
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN-682031
- 2 SHEEBA K.J.,
AGED 37 YEARS, KAKKIRIYIL HOUSE,
PATHIRAPPALLY, ALAPPUZHA, PIN-688521
- R1 SRI.JIBU T.S., PUBLIC PROSECUTOR
- R2 ADVS.SHEEBA K.J. (PARTY-IN-PERSON)
R.PREM SANKAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
04.12.2024, ALONG WITH CRL.MC.3351/2022, THE COURT ON
06.01.2025 PASSED THE FOLLOWING:



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Crl.M.C.Nos.1002 of 2022 & 3351 of 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

CRL.MC NO. 3351 OF 2022

CRIME NO.175/2019 OF CHITTARIKAL POLICE STATION, KASARGOD

AGAINST THE FINAL REPORT IN CC NO.912/2019 FILED BEFORE
THE JUDICIAL MAGISTRATE OF FIRST CLASS-II, HOSDURG

PETITIONERS/ACCUSED 1 AND 2:

- 1 EBIN SEBASTIAN,
AGED 32 YEARS, S/O DEVASIA,
KUNDARAM, PALAVAYAL, CHITTARIKKAL,
KASARAGODE DISTRICT, PIN-670511
- 2 SALI @SALI DEVASIA,
AGED 55 YEARS, W/O DEVASIA,
KUNDARAM, PALAVAYAL, CHITTARIKKAL,
KASARAGODE DISTRICT, PIN-670511
- * 3 ANGEL,
D/O DEVASIA, AGED 27 YEARS,
KUNDARAM, PALAVAYAL, CHITTARIKKAL,
KASARAGODE DISTRICT, PIN-670511
- * 3RD PETITIONER IMPEADED AS PER ORDER DATED
07.07.2022

ADVS.SUBHASH CYRIAC
S.SREEJITH (S-3453)
ASHA JYOTHY
SHEEBA JOSEPH

RESPONDENTS/STATE AND DEFACTO COMPLAINANT AND 3RD ACCUSED:

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



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- 2 SHEEBA K.J. ,
 D/O.JAMES ,
 KAKKARIYIL HOUSE ,
 PATHIARAPPALLY, ALAPPUZHA ,
 PIN-688521
- * 3 ANGEL ,
 D/O.DEVASIA, AGED 27 YEARS ,
 KUNDARAM, PALAVAYAL, CHITTARIKKAL ,
 KASARAGODE DISTRICT, PIN-670511.

* NAME AND ADDRESS OF 3RD RESPONDENT DELETED AS
PER ORDER DATED 07.07.2022.

- R1 SRI.JIBU T.S. , PUBLIC PROSECUTOR
- R2 ADV.N.P.SETHU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 04.12.2024, ALONG WITH CRL.MC.1002/2022, THE COURT ON
06.01.2025 PASSED THE FOLLOWING:



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Crl.M.C.Nos.1002 of 2022 & 3351 of 2022

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COMMON ORDER

Dated this the 6th day of January, 2025

Crl.M.C.No.3351/2022 has been filed under Section 482 of the Code of Criminal Procedure and the prayer is as under;

to quash Annexure A1 Final Report in Crl.M.C.No.175/2019 of Chittarikkal Police Station, in C.C.No.912/2019 before the Judicial First Class Magistrate Court-II, Hosdurg.

2. The petitioners herein are accused Nos.1 to 3 in the above case.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor in detail. No representation for the 2nd respondent.

4. In this matter, prosecution alleges commission of offences punishable under Section 498A read



with Section 34 of the Indian Penal Code (for short IPC hereinafter), by accused Nos.1 to 3.

5. The specific allegation of the prosecution is that the defacto complainant herein, who got married 18 years before and had two male children therein, started to reside separately for about 15 years. While so, the defacto complainant opted doing the job of home nurse for her livelihood. During this period, the 1st accused, who was doing the job of painting, made acquaintance with her. Thereafter, the defacto complainant and the 1st accused married at Shiva Temple near Railway Station, Mangalapuram on 30th December, 2013. The mother and the sister of the 1st accused, mother's sister and her husband, and friends of the 1st accused also participated in the marriage. Thereafter, they had meals from a hotel and started to reside at the residence of the 1st accused in Kavunthala for a week. Thereafter, she got engaged in her job in Ernakulam and she used to reach and reside at



the house of the accused, but her residence at the matrimonial home was not acceptable to accused Nos.2 and 3. When she reached back to the matrimonial home after one month, then the mother and sister (accused Nos.2 and 3) poured kerosene on her head in the absence of the 1st accused. According to the defacto complainant, she spent money for the purpose of house construction of the 1st accused and also for getting electric connection to the house. The further allegation is that during 2015, the 1st accused purchased a motor bike and in 2016, he purchased an autorickshaw using the gold and money belonged to the defacto complainant. She also spent expenses for the marriage, etc. According to the defacto complainant, while she was pregnant during 2016, accused Nos.1 to 3 physically assaulted her and thereafter, there was abortion. The further allegation is that accused persons misappropriated five sovereigns of gold ornaments and Rs.7 lakh belonging to the defacto complainant. Thereafter, they



restrained the entry of the defacto complainant at the matrimonial home and thereby, she was physically and mentally harassed, and she was forced to get an order of injunction against them.

6. While seeking quashment of the proceedings, the learned counsel for the petitioners argued that in the instant case, there is no legal marriage and as per the statement given by the defacto complainant itself, she admitted that she was married 18 years before and had two male children. Since there is no legal marriage, the allegations of cruelty and harassment to attract offence under Section 498A of IPC are not made out. Therefore, the entire proceedings would require quashment.

7. According to the learned Public Prosecutor, even though the the defacto complainant admitted her first marriage before 18 years, the defacto complainant's statement is to the effect that the said marriage was separated 15 years



before. Therefore, the marriage between the defacto complainant and the 1st accused solemnised at Shiva Temple on 30.12.2023 is having the characteristics of a legal marriage to attract offence under Section 498A of IPC. According to the learned Public Prosecutor, even otherwise the same is a matter of evidence. Therefore, quashment sought for cannot be considered in a case where the allegations of cruelty and harassment are discernible from the prosecution records, *prima facie*.

8. In the instant case, the prosecution allegation is that the defacto complainant herein, who got married 18 years before and had two male children therein, started to reside separately for about 15 years. While so, the defacto complainant opted doing the job of home nurse for her livelihood. During this period, the 1st accused, who was doing the job of painting, made acquaintance with her. Thereafter, the defacto complainant and the 1st accused married at Shiva



Temple near Railway Station, Mangalapuram on 30th December, 2013. The mother and the sister of the 1st accused, mother's sister and her husband, and friends of the 1st accused also participated in the marriage. Thereafter, they had meals from a hotel and started to reside at the residence of the 1st accused in Kavunthala for a week. Thereafter, she got engaged in her job in Ernakulam and she used to reach and reside at the house of the accused, but her residence at the matrimonial home was not acceptable to accused Nos.2 and 3. When she reached back to the matrimonial home after one month, then the mother and sister (accused Nos.2 and 3) poured kerosene on her head in the absence of the 1st accused. According to the defacto complainant, she spent money for the purpose of house construction of the 1st accused and also for getting electric connection to the house. The further allegation is that during 2015, the 1st accused purchased a motor bike and in 2016, he purchased an autorickshaw using the gold and



money belonged to the defacto complainant. She also spent expenses for the marriage, etc. According to the defacto complainant, while she was pregnant during 2016, accused Nos.1 to 3 physically assaulted her and thereafter, there was abortion. The further allegation is that accused persons misappropriated five sovereigns of gold ornaments and Rs.7 lakh belonging to the defacto complainant. Thereafter, they restrained the entry of the defacto complainant at the matrimonial home and thereby, she was physically and mentally harassed, and she was forced to get an order of injunction against them.

9. Crl.M.C.No.1002/2022 has been filed under Section 482 of the Code of Criminal Procedure and the prayer is as under;

to quash Annexure 2 Final Report in Crime No.105/2019 of Chittarikkal Police Station, in C.C.No.857/2019 before the Judicial First Class Magistrate Court-II, Hosdurg.



10. In this matter, prosecution alleges commission of offence punishable under Section 420 of IPC by the accused on the premise that the accused, who maintained a relationship with the defacto complainant after having solemnised the marriage at Shiva Temple near Railway Station, Mangalapuram, failed to solemnise legal marriage and also misappropriated five sovereigns of gold ornaments and Rs.7 lakh belonging to the defacto complainant and thereby she was cheated.

11. According to the learned counsel for the petitioner, there is no legal marriage between the defacto complainant and the accused, but there was a ceremony in the form of marriage as on 30.12.2013 at Shiva Temple. Thereafter, the defacto complainant and the accused lived together for a substantive period and now they are living separately. It is pointed out by the learned counsel for the petitioner that in this matter, offence under Section 420 of IPC



would not attract, since the accused has no intention to cheat or defraud the defacto complainant at the very inception. Therefore, the entire prosecution is unwarranted.

12. Even though the learned Public Prosecutor opposed the quashment submitting that an offence under Section 420 of IPC is made out prima facie, it is discernible that as per the admitted case of the defacto complainant, she earlier married one Shaji 18 years before. Thereafter, the said marriage was separated and she had no connection with her husband or the children for the last 14 years.

13. It is relevant to note that at the instance of the defacto complainant, Crime No.175/2019 of Chittarikkal Police Station was registered alleging commission of offence under Section 498A read with Section 34 of IPC by accused Nos.1 to 3 therein on the allegation that the defacto complainant was subjected to cruelty and harassment by the husband, his mother and sister, where the assertion of the



defacto complainant is that there was a marriage at Siva Temple near Mangalapuram Railway Station and their status is that of husband and wife. Whether the earlier marriage of the defacto complainant was legally divorced before solemnising the religious marriage at Shiva Temple, as alleged by the defacto complainant, is a matter of evidence in the said crime.

14. Therefore, at this stage, it cannot be held that the offence under Section 498A read with Section 34 of IPC, alleged to have committed by accused Nos.1 to 3 in Crime No.175/2019 of Chittarikkal Police Station would not sustain *prima facie*. On the contrary, the prosecution materials would show *prima facie* that the ingredients to attract offence under Section 498A read with Section 34 of IPC are made out in the said crime. The prosecution also would show that the defacto complainant alleged misappropriation of 5 sovereigns of gold ornaments and Rs.7 lakh belonged to her. The allegation in



Crime No.175/2019 of Chittarikkal Police Station is true, whereas the allegation in Crime No.105/2019 of Chittarikkal Police Station alleges commission of offence punishable under Section 420 of IPC by the accused that the accused misappropriated 5 sovereigns of gold ornaments and Rs.7 lakh belonged to the defacto complainant and his failure to solemnise legal marriage would not sustain. The offence under Section 420 of IPC is not incorporated in Crime No.175/2019. Thus it appears that whether the allegation of commission of offence under Section 498A read with Section 34 of IPC would lie or for want of marriage, the same would not lie; and also whether there was cheating by misappropriating 5 sovereigns of gold ornaments and Rs.7 lakh belonged to the defacto complainant by her husband are matters of evidence. In such view of the matter, the quashment prayer is liable to fail, leaving open the contentions raised by the petitioners to be raised during trial.



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15. Considering the fact that both cases are connected, the trial court is directed to consider joint trial of the two cases and dispose of the same.

16. In view of the above discussion, both petitions fail and the same are dismissed. The interim order granted by this Court in both cases shall stand vacated.

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

Sd/-
A. BADHARUDEEN
JUDGE

bpr



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CrI.M.C.Nos.1002 of 2022 & 3351 of 2022

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APPENDIX OF CRL.MC 1002/2022

PETITIONER'S ANNEXURES

- | | |
|-------------|---|
| Annexure 1 | CERTIFIED COPY OF THE FIR AND FIS IN
CRIME NO. 105/2019 OF CHITTARIKKAL
POLICE STATION IN C.C NO. 857/2019
BEFORE THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, HOSDURG |
| Annexure 2 | CERTIFIED COPY OF THE FINAL REPORT IN
CC NO. 857/2019 BEFORE THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-II,
HOSDURG |
| Annexure 3 | A TRUE COPY OF FIR IN CC NO. 912/19 ON
THE FILE OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, HOSDURG |
| Annexure 4 | A TRUE COPY OF FINAL REPORT IN CC NO.
912/19 ON THE FILE OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-II,
HOSDURG |
| Annexure A5 | CERTIFIED COPY OF THE MEMO OF EVIDENCE
DATED 31-08-2019 IN CRIME NO. 105/2019
OF CHITTARIKKAL POLICE STATION IN CC
NO. 857/19 BEFORE JFCM-II, HOSDURG. |



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APPENDIX OF CRL.MC 3351/2022

PETITIONERS' ANNEXURES

Annexure A1 CERTIFIED COPY OF THE FINAL REPORT IN
CRIME NO. 175/2019 OF CHITTARIKKAL
POLICE STATION IN C.C NO. 912/19
JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, HOSDURG

Annexure A2 A TRUE COPY OF FIR AND FIS IN CC
NO.857/19 ON THE FILE OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-II,
HOSDURG