



2024/KER/35655

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 30<sup>TH</sup> DAY OF MAY 2024 / 9TH JYAISHTA, 1946

CRL.MC NO. 4360 OF 2019

CRIME NO.2502/2017 OF Medical College Police Station,  
Thiruvananthapuram

CC.NO.637/2018 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,  
THIRUVANANTHAPURAM

PETITIONER/ACCUSED NO.2:

SHYAMALA BHASKER, AGED 61 YEARS  
W/O LATE BHASKARAN, HOUSE NO.1003(B), SARANYA,  
KUNJANBAVA ROAD, PONNURUNNI, ERNAKULAM.

BY ADVS.

K.R.VINOD

SMT.M.S.LETHA

KUM.K.S.SREEREKHA

SRI.NABIL KHADER

RESPONDENTS/STATE/COMPLAINANT:

- 1 THE STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, KOCHI-682 031.
- 2 JISHA, AGED 37 YEARS  
D/O SUJAMANI, KARTHIKA, T.C.17/1321, ARCHANA NAGAR,  
PONGUMODU, ULLUR, THIRUVANANTHAPURAM-695 001.  
BY ADVS.  
SRI.GEORGE MATHEW  
SHRI.SUNIL KUMAR A.G  
SENIOR PUBLIC PROSECUTOR SRI RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
22.05.2024, THE COURT ON 30.05.2024 PASSED THE FOLLOWING:



**“C.R”**

***A. BADHARUDEEN, J.***

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*CrI.M.C No.4360 of 2019-D*  
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*Dated this the 30<sup>th</sup> day of May, 2024*

***O R D E R***

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure (‘Cr.P.C’ for short) by the 2<sup>nd</sup> accused in C.C.No.637/2018 on the files of Additional Chief Judicial Magistrate Court, Thiruvananthapuram and the prayers herein are as under:

*“a. Call for records pertaining to Annexure A2 final report and quash the same against the petitioner by invoking the powers of this Hon’ble Court u/s. 482 of Criminal Procedure Code.*

*b. To issue any other order or direction appropriate in the circumstances of this case.”*

2. Heard the learned counsel for the petitioner, the learned



counsel for the defacto complainant and the learned Public Prosecutor in detail. Perused the documents including the decision cited by the learned counsel for the petitioner.

3. It is submitted by the learned counsel for the petitioner that the petitioner, who is the 2<sup>nd</sup> accused in C.C.No.637/2018 is not liable to be prosecuted for the offence punishable under Section 498A of the Indian Penal Code ('IPC' for short), since the prosecution materials do not suggest any overt acts at the instance of the petitioner to attract the ingredients of offence punishable under Section 498A of IPC. It is pointed out by the learned counsel for the petitioner further that as per the F.I statement, the only allegation against the 2<sup>nd</sup> accused is that the 2<sup>nd</sup> accused became a spectator while the defacto complainant was persecuted at the instance of the 1<sup>st</sup> accused and she did not interfere to stop the same. Accordingly, it is submitted that the case against the 2<sup>nd</sup> accused is liable to be quashed. The learned counsel for the



petitioner placed a latest decision of the Apex Court reported in [2024 KHC OnLine 6257 : 2024 (3) KHC SN 24 : 2024 LiveLaw (SC) 343 : 2024 KLT OnLine 1481], *Achin Gupta v. State of Haryana* to canvass the point that the courts must appreciate the materials and all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case. A very technical and hyper sensitive approach would prove to be disastrous for the very intend of the marriage. Paragraph 25 of the decision has been referred to contend that some general and sweeping allegations without bringing on record any specific instances of criminal conduct, is nothing but abuse of the process of the court. In paragraph 25, the Apex Court held as under:

*“If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes 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 certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.”*

4. Resisting the contention raised by the learned counsel for the petitioner, the learned counsel for the defacto complainant would submit that going by the F.I statement itself, there is specific allegation against the mother/2<sup>nd</sup> accused/petitioner. That apart, in the statement of the mother of the defacto complainant, Smt.Shanthamma, it is stated that when she enquired about the details of persecution, she noticed that the mother of the son in law, Smt.Shyamala, also persecuted the defacto complainant demanding more dowry. It is also pointed out by the learned counsel for the petitioner that in the statement of Radhakrishnan, the father of the defacto complaint, also there is allegation that the mother of the accused also subjected the defacto complaint to cruelty demanding more dowry. Therefore, the prayer for quashing the final report, as canvassed by the learned counsel for the petitioner, must fail.

5. The learned Public Prosecutor also reiterated the



argument of the learned counsel for the defacto complainant while opposing quashment as sought for.

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) anywilful 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*'s case (*supra*), 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.

7. Coming to the crux of this matter, it is emphatically clear that in the F.I statement, the allegation against the mother is that when the 1<sup>st</sup> accused beaten the defacto complainant, the 2<sup>nd</sup> accused, became a spectator and she did not interfere to stop the same. The further allegation is that the husband/1<sup>st</sup>accused subjected the defacto complainant to cruelty continuously, both physically and mentally, as abetted by the mother. Apart from that, there is an allegation against the mother in the statements of the mother and father of the defacto complainant, that the mother of the petitioner/2<sup>nd</sup> accused also ill-treated the defacto complainant demanding dowry. But the said statements appear to be hearsay, since it was stated that those imputations were conveyed by the defacto complainant. But in the statement of the defacto





complainant, no such specific allegation is seen narrated. Most importantly, how and why the mother/2<sup>nd</sup> accused/petitioner abetted the crime is not specifically stated.

8. Though it is argued by the learned counsel for the defacto complainant and the learned Public Prosecutor that the statements attributing abetment against the mother/2<sup>nd</sup> accused available from the prosecution records alone are sufficient to go for trial and this is not a case of quashment, it could be seen that only omnibus allegations raised against the mother to the effect that the mother also abetted crime, without narrating any specific overt acts, with certainty how the mother ill-treated or persecuted the defacto complainant. The statements of the mother and father of the defacto complainant are, in fact, hearsay, as already observed.

9. It is noticed that in matrimonial disputes, in order to wreak vengeance against the husband and relatives of the husband, certain wives initiate criminal proceedings on the strength of



vague and omnibus allegations against the parents, sisters, brothers and other relatives of the husband with ulterior motive to put them under the veil of prosecution involving non-bailable offences and to face the ordeal of criminal prosecution and trial by the parents, sisters, brothers and other relatives of the husband, so as to malign and defame their image in the society. In such cases, it is the duty of the court to analyse materials available when quashment is sought whether the allegations specifically state anything dealt under Section 498A so as to prosecute the accused for the said offences, by subjecting themselves for trial. The cases where no specific allegations to go for trial, *prima facie*, such cases shall be quashed by the High Court by invoking power under Section 482 of the Cr.P.C. At the same time, when specific allegations pointing out the overt acts which would attract the offence under Section 498A could be seen, *prima facie*, from the prosecution case, such cases shall not be quashed.



10. In the instant case, as I have already pointed out, only general and sweeping allegations without bringing on record any specific instance of cruelty at the instance of the mother/2<sup>nd</sup> accused is the substratum on which the mother got arraigned as an accused. Therefore, in the facts of the instant case discussed, the quashment as sought by the petitioner is liable to be allowed.

11. Accordingly, this petition is allowed. Annexure A2 final report against the petitioner herein/2<sup>nd</sup> accused is quashed, with direction to the trial court to expedite trial against the 1<sup>st</sup> accused, without fail.

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

*Sd/-*

**(A.BADHARUDEEN, JUDGE)**

*rtr/*



APPENDIX OF CRL.MC 4360/2019

PETITIONER'S ANNEXURES

ANNEXURE A1                    THE        CERTIFIED        COPY        OF        THE        FIR  
NO.2502/2017 AND THE FI STATE OF THE 2ND  
RESPONDENT.

ANNEXURE A2                    THE CERTIFIED COPY OF THE FINAL REPORT  
IN C.C.NO.637/2018 OF ADDITIONAL CHIEF  
JUDICIAL                    MAGISTRATE                    COURT,  
THIRUVANANTHAPURAM.