

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

Crl.MC.No. 1142 of 2015 ()

**C.C. NO. 1338/2014 of JUDICIAL MAGISTRATE FIRST CLASS-II, ATTINGAL
CRIME NO. 773/2013 OF MANGALAPURAM POLICE STATION**

PETITIONER(S)/ACCUSED:

**AJEESH, AGED 31 YEARS,
S/O. ARJUNAN CHETTIYAR, KAIRALI VEETIL,
ORUVATHIKOTTA, AANAYARA, PETTAH,
TRIVANDRUM.**

**BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENT(S)/COMPLAINANT:

**1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**2. K.S. KAVYA, AGED 27 YEARS
D/O. KRISHNANKUTTY CHETTIYAR, KRISHNALAYAM
MURUKKUPPUZHA, VEYILOOR.**

**R1 BY PUBLIC PROSECUTOR SMT. MADHUBEN
R2 BY ADV. SMT. T.M.BINITHA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24-04-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 1142 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1 : COPY OF THE F.I.R AND FINAL REPORT.

ANNEXURE 2 : AFFIDAVIT FILED BY THE 2ND RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

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K.RAMAKRISHNAN, J

Crl.M.C.No.1142 of 2015

Dated this the 24th day of April 2015

ORDER

This is an application filed by the sole accused in C.C. No.1338 of 2014 before the Judicial First Class Magistrate's Court - II, Attingal to quash the proceedings on the basis of settlement under Section 482 of Code of Criminal Procedure (hereinafter called the Code).

2. The case of the petitioner in the petition was that, the petitioner has married the second respondent and they lived as husband and wife for sometime. At the time of marriage, 100 sovereigns of gold ornaments, a car and some cash were given. Due to some mis-understanding between the parties, they started living separately, which lead to the filing of a private complaint by

second respondent, against the petitioner and his relatives, alleging offence under Section 498A read with Section 34 of Indian Penal Code, which was forwarded to the police by the learned Magistrate for an investigation under Section 156(3) of the Code and Annexure-1, First Information Report was registered as Crime No.773 of 2013 of Managalapuram police station, against the petitioner and others alleging offence under Section 498A read with Section 34 of Indian Penal Code. After investigation, Annexure-2 Final Report (wrongly shown as Annexure-I in the petition) was filed against the petitioner alone, alleging offence under Section 498A and it was taken on file as C.C. No.1338/2014 on the file of Judicial First Class Magistrate's Court-II, Attingal. The matter has been settled between the parties and they have decided to separate and they filed a joint petition for divorce and that is pending. In view of the settlement, the second respondent is not interested in further prosecuting the petitioner. Since it is a non-compoundable offence, they cannot file application before the

court below. No purpose will be served by proceedings against the petitioner as well, and as no conviction is possible in this case. So the petitioner has no other remedy except to approach this court for the following relief:

“to quash all further proceedings in Annexure-1 final report in crime No.773/2013 of the Mangalapuram police station, which is now pending as C.C. No.1339/2014 before Judicial First Class Magistrate's Court-II, Attingal against the petitioner and further proceedings thereto”

3. Heard the learned counsel for the petitioner, learned counsel for the second respondent and the learned Public Prosecutor.

4. The learned counsel for second respondent submitted that the matter has been settled between the parties and they have decided to separate and a decision was taken in the mediation held at the intervention of mediators and well wishers and they have filed an application for divorce. The second respondent did not want to prosecute the case in view of the settlement. Annexure - 2

affidavit has also been filed by second respondent stating these facts. (It must be Annexure-3 as final report was marked as Annexure-2 by this court). The learned counsel for the petitioner submitted that in view of the settlement, no purpose will be served by proceeding with the case and he prayed for allowing the application. Public Prosecutor opposed the application.

5. It is an admitted fact that the petitioner married the second respondent and they were living together as husband and wife for sometime. Due to some mis-understanding, they started living separately, which lead to the filing of a private complaint before the Judicial First Class Magistrate's Court-II, Attingal by the second respondent, alleging offence under Section 498A read with Section 34 of Indian Penal Code against the petitioner and his relatives on the basis of which Annexure-1 crime was registered as crime No.773/2013 of Managalapuram police station, alleging offence under Section 498A read with Section 34 of Indian Penal Code. After investigation, Annexure-2 final report was filed

(wrongly shown as Annexure-1 in the petition) against the petitioner alone, for the offence under Section 498A and the case was taken on file as C.C. No.1338 of 2014 on the file of the Judicial First Class Magistrate's Court-II, Attingal, where it is now pending.

6. In the meantime, due to the intervention of some mediators and well wishers of both the parties, the matter has been settled between the parties and they have decided to separate by filing an application for divorce, by mutual consent and accordingly, O.P.(HMA) No.1091 of 2014 was filed before the Family Court, Attingal and that is pending. In view of the settlement, now the second respondent does not want to prosecute the petitioner, who is her husband.

7. In view of the settlement, even if the case is directed to be tried, there is no possibility of conviction, as the witnesses including the *defacto complainant* will not support the case of prosecution. Further, in the decision reported in **Gian Singh v.**

State of Punjab [2012(4) KLT 108], the honourable Supreme Court has held that in appropriate cases where only private disputes are involved and in cases of matrimonial matters, where relatives are involved and the matter has been settled between the parties, though some non-compoundable offences are incorporated, in order to bring harmony between the family members, the court has to invoke power under Section 482 of the Code to quash the proceedings, in such cases. This was followed in the subsequent decisions of the Supreme Court as well.

8. In view of the dictum laid down in the above decision and also by considering the fact that this is a family dispute, which resulted in registration of crime and filing of the final report and also considering the fact that the matter has been settled between the parties due to the intervention mediators and well wishers and filed petition for divorce by mutual consent and proceeding with the case will cause only waste of judicial time, as conviction is not possible, this court feels that it is a fit case where the power under

Section 482 of the code has to be invoked to quash the proceedings to honour the settlement in order to bring harmony between the family members and the pendency of the proceedings will not be a hurdle to the same.

The Crl.M.C. is allowed and further proceedings in C.C. 1338 of 2014 (Crime No.773 of 2013 of Managalapuram police station) now pending before before Judicial First Class Magistrate's Court - II, Attingal, as against the petitioner is quashed.

The office is directed to communicate the order to the concerned court for further action in this regard immediately.

Sd/-

**K.RAMAKRISHNAN, J,
JUDGE**

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