

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

Crl.MC.No. 2643 of 2015 ()

AGAINST CC 3131/2013 of J.M.F.C.,CHITTUR

PETITIONER(S)/ACCUSED:

SHAMSUDHEEN, S/O.CHELLA @ MUHAMMED YOUSUF AGED 39 YEARS
NANDANKIZHAYA, ANAMARI, KOLLENGODE
PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA REPRESENTING THE
SUB INSPECTOR OF POLICE
KOLLENGODE POLICE STATION.

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
31-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 2643 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNX.A1 - A TRUE COPY OF THE FINAL REPORT IN CRIME NUMBER 236/2006 OF THE KOLLENGODE POLICE STATION

ANNX.A2 - A TRUE COPY OF THE JUDGMENT DATED SEPTEMBER 25, 2013 IN CALENDAR CASE NUMBER 448/2006 OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, CHITTUR.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
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**Crl.M.C No.2643 of 2015**  
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Dated this the 31st July, 2015

ORDER

The petitioner herein is the original first accused in C.C No.448 of 2006 of the Judicial First Class Magistrate Court, Chittur. The offence involved in this case is under Section 498A read with 34 of Indian Penal Code. The other two accused faced trial before the learned Magistrate and obtained a judgment of acquittal on 25.9.2013. The case against the petitioner herein was split up and refiled as C.C No.3131 of 2013. The petitioner seeks orders quashing the prosecution on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others, and continuance of prosecution against him will not serve any purpose.

2. In Annexure-A2 judgment in C.C No.448/2006, the learned Magistrate found thus as regards the evidence given by PW1, the complainant:

“PW1 would say that when she preferred a complaint before the Vanitha Cell her husband

was ready to take her with him and ultimately she resided with her husband in the year 2002. So it could be seen that the first accused has issued a lawyer notice to PW1 demanding her to reside with him and she has also received the notice and in fact she was ready to reside with the first accused. She also deposed that her husband sent money from Gulf country in order to take back the ornaments which were pledged and she is not remembering as to how much amount was sent by her husband. She also deposed that she used to sent letters to her husband. She was not good relationship with the second and third accused.

3. As regards the evidence given by PW2, the father of the complainant, the learned Magistrate found thus:

“During cross-examination PW2 deposed that in Ext.D1 which is the complaint which was given by him to the mosque committee the allegation with regard to the illtreatment by the accused was mentioned. On a perusal of Ext.P2, it is clear that the allegation with regard to cruelty is not at all mentioned in the same. On a perusal of Ext.D2, it is also clear that such a complaint was filed with an intention to resolve the disputes between PW1 and the first accused and to somehow reunited them.

So from the evidence of PW2, it is clear that he is not having any direct knowledge with regard to the alleged cruelty by the accused and it is also clear that till the year 2004 the first accused used to send money in order to take back the gold ornaments of PW1.

4. PW3 was examined as an independent witness. But his evidence was also not in favour of the prosecution. As regards his evidence, the learned Magistrate found in paragraph 10 of the judgment thus:

“Pw3 would say that he was one of the mediators who intervened in the dispute between the first accused and PW1 and after the mediation talks PW1 was taken to the house of the accused by the second and third accused. During cross-examination PW3 deposed that almost 10 to 30 persons went to the house of the accused in order to take PW1 to her own house at the time of her pregnancy and ceremonies were also conducted with regard to the same.”

5. In paragraph 10 of the judgment, the learned Magistrate concluded the findings thus:

“Moreover from Ext.D2 which is the complaint made by PW2 in the mosque committee there is no allegation with regard to the cruelty by the accused against PW1. From Ext.D1 which is the letter sent by PW1 to the first accused, it is clear that till the year 2003 they were in good relationship and the averments in the letter would show that she is more concerned about the first accused.”

6. Thus, on an examination of the Annexure-A2 judgment, I find that the material witnesses could not have given any satisfactory evidence during trial in C.C No.448 of 2006. It is definite that if they again examined, it will not in any manner improve the case, and the prosecution also cannot bring out anything against the accused. In such a situation I find that the very substratum of the prosecution case stands totally lost, and continuance of the prosecution as against the petitioner herein will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner herein in C.C No.3131 of 2013 of the Judicial First Class Magistrate's Court, Chittur will stand quashed under Section 482 of the Code of Criminal Procedure.

Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge