

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Crl.MC.No. 2999 of 2015 ()

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CC 2683/2010 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOLLAM
CRIME NO. 65/2010 OF ERAVIPURAM POLICE STATION , KOLLAM DISTRICT
=====**

PETITIONERS/ACCUSED 1 TO 5:

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- 1. UNUS A.H., AGED 48 YEARS
POKALAKKARAN HOUSE, THARA NAGAR, 2ND STREET
CHANDRA NAGAR P.O., PALAKKAD - 678 007.**
 - 2. AMEENA, AGED 70 YEARS
W/O.HAMSA, POKALAKKARAN HOUSE, THARA NAGAR
2ND STREET, CHANDRA NAGAR P.O., PALAKKAD -678 007.**
 - 3. USMAN, AGED 36 YEARS
POKALAKKARAN HOUSE, THARA NAGAR, 2ND STREET
CHANDRA NAGAR P.O., PALAKKAD - 678 007.**
 - 4. AZIYA, AGED 30 YEARS
D/O.AMEENA, ERLAPURI HOUSE, ERLAPURI DESOM
WARD NO.XI, ELAPUNDI VILLAGE, PALAKKAD.**
 - 5. FAZEELA, AGED 43 YEARS
POKALAKKARAN HOUSE, CHANDRA NAGAR, THARA NAGAR
IIND STREET, MARUTHA ROAD VILLAGE, PALAKKADDISTRICT.**

**BY ADVS.SRI.ALAN PAPALI
SRI.J.VIMAL
SRI.ANTONY ROBERT DIAS**

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

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- 1. STATE OF KERALA (DY.S.P.DCRB KOLLAM
CRIME NO.65/2010 OF ERAVIPURAM POLICE STATION)
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 31.**
 - 2. ASEEDA SHIHABUDHEEN, HILL VIEW, 193,
BHARATH NAGAR, ERAVIPURAM P.O., KOLLAM.**
- R2 BY ADV. SRI.M.RAJENDRAN NAIR
R2 BY ADV. SMT.M.SANTHY
R1 BY PUBLIC PROSECUTOR SMT. REMA R.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09-09-2015
ALONG WITH Crl.M.C.No.5662/2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

ANNEXURE-I: TRUE COPY OF THE JUDGEMENT IN CC NO.2683/2010 OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE - II, KOLLAM DATED 29.10.2012

ANNEXURE-II: TRUE COPY OF THE APPEAL MEMORANDUM IN CRL.APPEAL NO.304/2012 OF THE SESSIONS COURT, KOLLAM DATED 9.11.2012

ANNEXURE-III: TRUE COPY OF THE COMPROMISE ENTERED INTO BETWEEN THE FIRST PETITIONER AND THE 2ND RESPONDENT IN LOK ADALAT CASE NO.1732/2014 OF THE LEGAL SERVICES AUTHORITY, KOLLAM DATED 19.12.2014

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.Nos.2999 & 5662 of 2015

Dated this the 9th day of September, 2015

O R D E R

Two prosecutions that arose out of a matrimonial dispute are sought to be quashed under Section 482 Cr.P.C. One is now at the stage of appeal against conviction, and the other has reached nowhere. C.C.2683/2010 wherein the Judicial First Class Magistrate Court-II, Kollam made a conviction under Section 498A and other sections, is now pending in appeal before the Court of Session, Kollam as Crl.Appeal No.304/2012. The appellants therein (accused) are the petitioners in Crl.MC.No.2999/2015. The defacto complainant is the 2nd respondent in the said proceeding. The parties now seek orders on the ground of amicable settlement of the whole dispute out of court. A prosecution brought by the brother of the victim in C.C.No.2683/2010 is the other case which is sought to be quashed. It was registered as Crime No.1440/2011 at the Eravipuram Police Station, Kollam District. The 2nd respondent in Crl.M.C.No.2999/2015 has filed affidavit to the effect that the

whole matrimonial dispute stands resolved forever, including the connected dispute involved in Crime No.1440/2011. As part of the settlement outside, the 1st petitioner herein has made deposit of Rs.20,25,000/- in the Family Court, Kollam in O.P.No.85/2010. The 2nd respondent seeks orders permitting her to withdraw the amount without any objection. The 1st petitioner has filed an affidavit to the effect that he has no objection in releasing the said amount to the 2nd respondent (his wife), in Crl.M.C.No.2999/2015. Her brother who is the defacto complainant in Crime No.1440/2011 has also filed affidavit that he does not want to proceed with the matter, that he has no grievance or complaint now in view of the resolution of the whole matrimonial dispute involving his sister, and that he would not object to the police report referring the crime No.25/2013 of the Eravipuram Police Station. In the present circumstance of amicable settlement involving resolution of the whole dispute forever, the said affidavit and also the affidavit of the victim in the convicted matter are accepted. The Honourable Supreme Court has held in so many decisions that even in cases involving

non-compoundable offences, the High Court can quash the prosecution; whatever be the stage of it, if the parties have come to terms amicably out of court, and continuance of the prosecution will either cause harm and hardship to the parties, or will cause only waste of the precious time of the court. Here, I find that there is a genuine settlement between the parties, and all the grievance of the victim of offence in the main case stands legally and effectively redressed. She does not want to continue the prosecution now. In such a situation, it is appropriate that both the prosecutions be quashed.

In the result, both the petitions are allowed. Accordingly, the prosecution against the petitioners in Crl.M.C.2999/2015, now pending in appeal as Crl.Appeal No.304/2012 in the Court of Session, Kollam, including the whole appeal proceedings will stand quashed under Section 482 Cr.P.C. Accordingly, the conviction and sentence imposed by the trial court will stand set aside. The petitioners (appellants) will stand released from prosecution, and the bail bond, if any, executed by them will stand discharged. So also, the FIR and all further proceedings in

Crime No.1440/2011 of the Eravipuram Police Station, whatever be the stage of it, will stand quashed under Section 482 Cr.P.C. The 2nd respondent in Crl.M.C. No.2999/2015 is permitted to withdraw the amount of Rs.20,25,000/- deposited in the Family Court, Kollam in O.P.No.85/2010 unconditionally. The police report in crime No.25/2013 of Eravipuram Police Station will stand confirmed.

Furnish a copy of this order to the counsel on both sides without delay.

Sd/-

P. UBAID, JUDGE

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