

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

CrI.MC.No. 2213 of 2014 ()

C.C. NO. 1064/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOCHI

PETITIONERS/ACCUSED NOS.1 & 2:

- 1. NABEESA, AGED 68 YEARS,
W/O. MOHAMMED KUTTY, KATTUMMAL PARAMBIL HOUSE, 20/33,
KACHERIPPADY BHAGOM, PALLURUTHY VILLAGE,
ERNAKULAM DISTRICT.**
- 2. RAMLATH, AGED 51 YEARS,
D/O. MOHAMMED KUTTY, KATTUMMAL PARAMBIL HOUSE, 20/33,
KACHERIPPADY BHAGOM, PALLURUTHY VILLAGE,
ERNAKULAM DISTRICT.**

BY ADV. SRI.IEANS.C.CHAMAKKALA

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. BEEVI ,
D/O. KASIM, VAZHAKUTTAM, HOUSE NO.20/112,
POURASAMITHI ROAD, PALLURUTHY, PIN-682 005.**

**R2 BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)
R2 BY ADV. SRI.C.Y.VINOD KUMAR
R BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

AK

Crl.MC.No. 2213 of 2014 ()

APPENDIX

PETITIONER(S)'ANNEXURE:

ANNEXURE A1 : CERTIFIED COPY OF THE COMPLAINT.

ANNEXURE A2 : CERTIFIED COPY OF THE FIR.

ANNEXURE A3 : CERTIFIED COPY OF THE CHARGE SHEET.

**ANNEXURE A4 : CERTIFIED COPY OF JUDGMENT IN CC NO.1155/2004 OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOCHI.**

**ANNEXURE A5 : CERTIFIED COPY OF THE JUDGMENT IN CRL.APPEAL NO.3/2009 OF
THE VITH ADDITIONAL SESSIONS COURT, ERNAKULAM.**

**ANNEXURE A6 : CERTIFIED COPY OF THE PROCEEDINGS SHEET IN CC NO.1064/2008
OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOCHI.**

RESPONDENT(S)' ANNEXURE: **NIL**

/TRUE COPY/

P.A. TO JUDGE

AK

P.UBAID, J.

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Crl.M.C.No.2213 of 2014
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Dated this the 6th day of November, 2015

ORDER

The petitioners herein are the original accused Nos.3 and 4 in C.C.No.1155 of 2004 of the Judicial First Class Magistrate Court-II, Kochi involving the offence under Section 498(A) IPC. The other accused Nos.1, 2 and 5 faced trial before the learned Magistrate in C.C.No.1155 of 2004. On trial, the learned Magistrate found the first accused guilty, but found the accused Nos.2 and 5 not guilty. Accordingly, the accused Nos. 2 and 5 were acquitted under Section 248 (1) Cr.P.C., and the first accused was convicted under Section 498A IPC. He was sentenced to undergo rigorous imprisonment for two years, and to pay a fine amount of ₹10,000/-. The case against the petitioners herein was split up and refiled as C.C.No.1064 of 2008. The aggrieved first

accused preferred appeal before the Court of Session, Ernakulam as Crl.Appeal No.3 of 2009. In appeal, the learned Sixth Additional Sessions Judge, Ernakulam found the first accused not guilty. Accordingly, the conviction against him was set aside, and he was acquitted in appeal. Now the petitioners seek orders quashing the prosecution as against them on the ground that the main witnesses including the defacto complainant have not given any evidence against them at the first round of trial, and that the very substratum of the prosecution case stands totally lost by the acquittal of the first accused by the appellate court.

2. On hearing both sides, and on a perusal of the Annexure A4 and A5 judgments, I find that continuance of present prosecution against these petitioners will not serve any purpose other than wasting the precious time of the trial court. As regards the first accused, who stands acquitted in appeal, the learned appellate Judge found thus in Paragraph 9 of the Annexure A5 judgment.

“9. xxxxxx A specific incident spoken was about the incident allegedly took place on 10.03.2003 and that was the day she was kept out of the house with the child and thereafter the accused did not care to maintain the wife and child. xxxxxx

No evidence is there before court to come to the conclusion that the appellant had harassed her to meet any unlawful demand for in dowry and that was even after fathering a child. Hence I hold that the prosecution has not proved beyond reasonable doubt that accused had subjected PW2 to cruelty warranting a conviction u/s.492(A) IPC. xxxxxx”

3. The Annexure A4 judgment shows that the evidence given by the material witnesses including the defacto complainant examined as PW2 is mainly against the first accused. As regards the complainant's case against the accused Nos.2 and 3, the learned Magistrate found thus in Paragraph 14 of the Annexure A4 judgment.

“14. xxxxxx On going through her testimony, no incident was spoken by her. A mere allegation does not suffice the purpose. The incident ought to have been spoken. Though there was no proper cross examination to challenge this aspect, court need not embark upon the same, on seeing, there is circumstances that it projects to be artificial. Therefore the available are not adequate to prove that accused No:2 to 5 committed any cruelty upon PW2 either physically or mentally.”

4. The accused Nos.2 and 3 were arraigned as accused, as persons who prompted the first accused to commit acts of cruelty. But the learned Magistrate found that those allegations are not substantiated by evidence, and that

the accused Nos.2 and 3 cannot be found guilty. As regards the evidence given by the defacto complainant(PW2), the learned Magistrate found thus in Paragraph 13 of the Annexure A4 judgment.

“13. xxxxxx Therefore her testimony itself would prove that the 1st accused used to beat her after consuming alcohol and she was sent out of his house to take Rs.25,000/- from her house as dowry for his personal needs. Thus testimony of PW2 would prove that the accused committed cruelty against her for his unlawful demands.”

5. This finding shows that her evidence is mainly against the first accused, and not against the others. There is reason to believe that the in-laws were unnecessarily or baselessly arraigned as accused in her complaint. Her main grievance was against the first accused, but he stands acquitted by the appellate court on merits. On a perusal of the two judgments, I find that the prosecution, or the defacto complainant, cannot improve the case at the second round, when it goes to trial against these petitioners. I find that the substratum of the prosecution case, which is practically and mainly against the first accused, stands lost by the acquittal of the first accused. I am well satisfied that no definite

evidence was given by the defacto complainant against the other accused. Definite, it is, that she cannot improve the case against these petitioners, when the case against them goes to trial.

In the result, this petition is allowed. The prosecution against the petitioners in C.C.No.1064 of 2008 of the Judicial First Class Magistrate Court-II, Kochi will stand quashed under Section 482 Cr.P.C.

Sd/-
P.UBAID
JUDGE

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//TRUE COPY//

P.A. TO JUDGE