

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

Crl.MC.No. 4317 of 2015 (E)

CC 389/2015 of J.M.F.C.-I, ALAPPUZHA

CRIME NO. 716/2014 OF MARARIKULAM POLICE STATION, ALAPPUZHA

PETITIONER(S)/4TH ACCUSED :-

**RAKHI KUKKU, AGED 27 YEARS,
D/O.AMBILI, EDACHILATTU THAYYIL,
KANICHUKULANGARA,
CHERTHALA, ALAPPUZHA - 688 582.**

BY ADV. SRI.JOBY CYRIAC

RESPONDENT(S)/COMPLAINANT & STATE :-

- 1. ATHULYA, D/O.THULASIDHARAN,
RITHAM VEEDU, PALLURUTHY VELI,
ERNAKULAM - 682 006.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

**R1 BY ADVS. SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
R2 BY SMT.SHEEBA M.T., PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26-11-2015, ALONG WITH CRL.MC.NO. 5872/2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 4317 of 2015 (E)

APPENDIX

PETITIONER(S)' ANNEXURES :-

**ANNEXURE A1 : THE TRUE COPY OF THE FINAL REPORT IN CRIME NO.716/2014
WHICH WAS STATED ON FILE BY THE COURT BELOW AS CC
NO:389/2015.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

P.UBAID, J.

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Crl.M.C.Nos.4317 & 5872 of 2015
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Dated this the 26th day of November, 2015

ORDER

A prosecution involving the offence under Section 498A IPC is sought to be quashed under Section 482 Cr.P.C. It is now pending as C.C.No.389 of 2015 before the Judicial First Class Magistrate Court-I, Alappuzha. The petitioners in Crl.M.C.No.5872 of 2015 are the accused Nos.1 to 3 in the said case, and the petitioner in Crl.M.C.No.4317 of 2015 is the 4th accused. The defacto complainant is the first respondent in these two proceedings. The petitioners seek orders on the ground that the complaint made by the first respondent does not contain definite materials for a prosecution under Section 498A IPC.

2. On hearing both sides, and on a perusal of the materials including the complaint, I find that the first

respondent has a genuine case, and a genuine grievance to be heard by the learned Magistrate, but as regards the other accused the complaint does not contain definite materials constituting cruelty as meant and defined under Section 498A IPC. A single instance of simple assault will not come under Section 498A IPC. As regards the accused No.4, the petitioners' grievance is that the 4th accused has some illicit connection with her husband (first accused). That the husband has some connection with some other lady cannot be the subject matter of a prosecution under Section 498A IPC. As regards the accused Nos.2 and 3, the allegation is that when the first respondent picked up a quarrel with her husband questioning the connection with the 4th accused, the accused Nos.2 and 3 assaulted her on an occasion. I find that the complaint does not contain definite and acceptable materials and allegations against the accused Nos.2 to 4. This Court has noticed an unhealthy trend in Kerala, that whenever a lady complains of illtreatment by her husband, she would get some advise to arraign all the inmates of the matrimonial home, or all the in-laws, as accused in the complaint under Section 498A IPC. Here also I find such a

situation. Ofcourse, as against the husband, the first respondent has a genuine grievance, and the complaint also contains some materials and allegations of matrimonial cruelty against him.

3. The cruelty meant and defined under Section 498A IPC must be some act of physical or mental harassment in connection with demand for dowry or otherwise, by a course of cruel conduct. There is no such allegation here against the accused Nos.2 to 4. But, as against the first accused such allegations are there in the complaint. I find that if the prosecution proceeds against the accused Nos.2 to 4, it will be an abuse of legal process. But as against the first accused, it will have to continue before the learned Magistrate.

In the result, Crl.M.C.No.4317 of 2015 will stand allowed. The prosecution against the petitioner therein as 4th accused in C.C.No.389 of 2015 of the Judicial First Class Magistrate Court-I, Alappuzha will stand quashed under Section 482 Cr.P.C. Crl.M.C.No.5872 of 2015 will stand allowed only in part. The prosecution against the petitioners 2 and 3 therein as accused Nos. 2 and 3 in C.C.No.389 of 2015 in the court

below will stand quashed under Section 482 Cr.P.C. But, the prosecution against the first accused will continue. Ofcourse, he can make an application for discharge before the learned Magistrate, if he so opts.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE