

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

Crl.MC.No. 4767 of 2014 ()

CC. NO.167/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, RANNI.
CRIME NO. 228/2011 OF PERUNAD POLICE STATION.
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PETITIONER(S):

- 1. RAJITHA, D/O.RAMANAN,
AGED 25 YEARS, THUNDUMANNIL VEEDU,
POOVATHUM MOODU, KAKKAD MURI,
PERUNAD VILLAGE, PATHANAMTHITTA DISTRICT.**
- 2. NALINI, W/O.MADHAVAN,
AGED 70 YEARS, CHARUVILA PUTHEN VEEDU,
PALLIMAN MURI, PALLIMAN VILLAGE, KOLLAM DISTRICT.**
- 3. SHEEJA, W/O.SANTHOSH KUMAR,
AGED 31 YEARS, CHARUVILA PUTHEN VEEDU,
PALLIMAN MURI, PALLIMAN VILLAGE, KOLLAM DISTRICT.**
- 4. PRASANNA, W/O.ANIL KUMAR,
AGED 37 YEARS, CHARUVILA PUTHEN VEEDU,
PALLIMAN MURI, PALLIMAN VILLAGE, KOLLAM DISTRICT.**
- 5. SREELATHA, W/O.MANI,
AGED 37 YEARS, RANI BHAVAN, POOVAMOODU,
KAKKAD MURI, PERUNAD VILLAGE,
PATHANAMTHITTA DISTRICT.**
- 6. MANI, S/O.GOVINDAN,
AGED 38 YEARS, RANI BHAVAN, POOVAMOODU,
KAKKAD MURI, PERUNAD VILLAGE,
PATHANAMTHITTA DISTRICT.**
- 7. RAMANAN, S/O.GANGADHARAN,
AGED 52 YEARS, THUNDUMANNIL HOUSE,
POOMOOD, KAKKAD MURI, PERUNAD VILLGE,
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.V.JAYAPRADEEP,
SRI.SHANE WILFRED MORRIS,
SRI.ABE RAJAN.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE S.I. OF POLICE,
PERUNAD, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. SREEJA, D/O.YASODHA,
AGED 32 YEARS, PUTHENVILA VEEDU,
CHANTHAPURCHERY, DECENT JUNCTION,
THRIKKOVILVATOOM VILLAGE,
KOLLAM TALUK, KOLLAM DISTRICT-691 110.**

R1 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS.

**R2 BY ADVS. SRI.K.SHAJ,
SRI.SAJJU.S,
SRI.RENJIT GEORGE,
SMT.ANJU MOHAN,
SRI.S.K.SUJITH KRISHNA,
SRI.S.VISHNU (ARIKKATTIL),
SRI.M.K.HARIPRIYESH.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 22-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- A1: CERTIFIED COPY OF THE FIR IN THE CRIME NO. 228/2011 OF PERUNAD POLICE STATION.**
- A2: CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.228/2011 OF PERUNAD POLICE STATION.**
- A3: COPY OF THE SUMMONS ISSUED TO THE PETITIONER BY JFMC, RANNY.**

RESPONDENT'S ANNEXURES:- **NIL.**

//TRUE COPY//

P.A TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
Crl.M.C. No.4767 of 2014
.....

Dated this the 22nd day of January, 2015

ORDER

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Accused Nos.2 to 8 in C.C.167/2012 of the Judicial First Class Magistrate's Court, Ranni, which has arisen from Crime No.228/2011 of Perunad Police Station, for the offences punishable under Sections 420 and 494 read with Section 34 IPC, have come up under Section 482 Cr.P.C. to get the proceedings against them in the case quashed.

2. It is alleged that during the subsistence of a valid marriage of the 1st accused with the *defacto complainant*, the petitioners, along with the 1st accused, in furtherance of their common intention to conduct the marriage of the 1st accused with the 2nd accused, by suppressing his subsisting marriage with the *defacto complainant*, conducted the marriage of the 1st accused with the 2nd accused, thereby

committing offences punishable under Sections 420 and 494 read with Section 34 IPC.

3. Heard the learned counsel for the petitioners, the learned counsel for the *defacto complainant* and the learned Public Prosecutor.

4. The learned counsel for the petitioners has pointed out that there are no ingredients for inviting an offence under Section 420 IPC in the matter. Further, it is also pointed out that a prosecution for an offence under Section 494 IPC can be taken cognizance of by the court only upon a complaint made by the person aggrieved by the offence, as per Section 198(1) Cr.P.C. As per Section 198 (1)(c) Cr.P.C., such a complaint can be made on behalf of the aggrieved wife by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or with the leave of the court by any other person related to her by blood, marriage or adoption. Here in this case, the court below has taken cognizance of an offence under

Section 494 IPC on the basis of the police report and, therefore, the cognizance is bad in law.

5. On going through the provisions contained in Sections 198(1) Cr.P.C. and 198(1)(c) Cr.P.C., it is evident that the cognizance is bad in law, as the cognizance has been taken for the offence under Section 494 IPC by the court below on the basis of a police report. The learned counsel for the *defacto complainant* has pointed out that the *defacto complainant* had rightly filed a private complaint before the court below. Instead of proceeding on the private complaint, the court below has chosen to refer the matter to the police under Section 156(3) Cr.P.C. The said course adopted by the court below was also bad in law. The *defacto complainant* should not be left without any remedy. Evidently, the present crime as well as the proceedings in the case against the petitioners as aforesaid are liable to be quashed. At the same time, when the *defacto complainant* had filed a private complaint, the *defacto complainant*

cannot be found fault with in the matter. There cannot be the principle of *res judicata* or *estoppel* on the part of the *defacto complainant* in again directly approaching the court below with a fresh private complaint, if so advised, in the matter.

With the said observations, this CrI.M.C. is allowed and Annexure-A2 final report in Crime No.228/2011 of Perunad Police Station as against the petitioners and all further proceedings based on it in C.C.167/2012 pending before the Judicial First Class Magistrate's Court, Ranni are hereby quashed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/22/01

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PA to Judge