

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA,
1937

Cr1.MC.No. 6329 of 2015

IN CC 169/2015 of JUDICIAL FIRST CLASS MAGIST. COURT,
KOOTTHATUKULAM (TEMPORARY)

PETITIONER/ACCUSED:

JOSE.K.JOHN, AGED 55 YEARS,
S/O.JOHN, KOCHERY HOUSE, ANTHYAL KARA,
PERUMBADVAM P.O., ELANJI VILLAGE,
MUVATTUPUZHA TALUK
PIN: 686 665.

BY ADVS.SRI.ANTONY MATHEW
SRI.M.N.SASIDHARAN

RESPONDENTS/COMPLAINANT AND DE-FACTO COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.
2. BINU, AGED 39 YEARS,
D/O.LUKOOSE, KOCHERY HOUSE, ANTHYAL KARA,
PERUBADVAM P.O., ELANJI VILLAGE,
MUVATTUPUZHA TALUK
PIN: 686 665.

R1 BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 25-11-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

Cr1.MC.No. 6329 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

A1: CERTIFIED COPY OF THE FIRST INFORMATION REPORT DATED
12/11/2014 OF KOTHATTUKULAM POLICE STATION

A2: COPY OF THE STATEMENT DATED 12/11/2014 GIVEN BY THE
2ND RESPONDENT TO THE POLICE

A3: COPY OF THE WOUND CERTIFICATE DATED 8/11/2014 ISSUED
BY DR.PRIYADARSINI.N., TALUK HOSPITAL, PIRAVOM.

A4: COPY OF THE DEPOSITION OF THE 2ND RESPONDENT IN M.C
NO.3/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, KOTHATTUKULAM.

A5: CERTIFIED COPY OF THE CHARGE SHEET DATED 29/4/2015 IN
CRIME NO.1479/2014 BEFORE THE HON'BLE JUDICIAL FIRST
CLASS MAGISTRATE COURT, KOTHATTUKULAM.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.6329 of 2015

Dated this the 25th day of November, 2015

O R D E R

The petitioner herein is the sole accused in C.C No.169/2015 of the Judicial First Class Magistrate Court, Koothattukulam. The offences involved in this case are under Sections 498A, 188, 341, 323 and 506(1) r/w 34 of the Indian Penal Code. The petitioner seeks orders quashing the prosecution on the ground that the whole prosecution is based on a false complaint.

2. On hearing the learned counsel and the learned Public Prosecutor, and also on a perusal of the materials like the complaint and the final report, I find that the petitioner's allegation that the complaint is false or baseless will have to be looked into and decided by the trial court. On a perusal of the Annexure A2 complaint, I find that the defacto complainant has a genuine grievance to be heard by the trial court. Of course, she remained absent in this proceeding inspite of notice. The second respondent has already initiated proceeding against the petitioner under the provisions of Protection of Women from

Domestic Violence Act (for short 'the DV Act'), and the learned Magistrate has already granted an interim order of protection. What is alleged in the final report under Section 188 of the Indian Penal Code is violation of the said protection order. Of course it is true that for a prosecution under Section 188 of the Indian Penal Code, there must be a complaint from the court, whose order is violated, but the learned Magistrate can frame appropriate charge under Section 31 of the DV Act. What is made punishable under Section 188 of the Indian Penal Code is only the simple violation of the court order, whereas violation of the protection given by the court is made specifically punishable under Section 31 of the DV Act. If the allegation is that the protection order granted by the learned Magistrate is violated by the petitioner, it will definitely come under Section 31 of the DV Act, and charge also will have to be appropriately framed by the trial court under the said section. Just because the charge under Section 188 of IPC without a proper complaint, is not sustainable, the whole prosecution cannot be quashed.

3. Annexure A3(a) wound certificate shows that on one occasion the defacto complainant was seriously assaulted by her husband, and she had to undergo treatment at the hospital.

It was after the said incident, she moved the learned Magistrate under the DV Act. I find no reason or ground to quash the prosecution at this stage. The complainant's grievance will have to be heard by the trial court, and let appropriate decision be taken by the trial court.

In the result, this petition is dismissed in limine, without being admitted to files.

**P.UBAID
JUDGE**

ab