

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

Crl.MC.No. 5823 of 2014

**C.C.NO.497/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I,
NORTH PARAVUR**

PETITIONER(S)/ACCUSED 1 TO 4 AND CW2 :

- 1. JANEESH, AGED 30 YEARS,
S/O.JOSE, PANJIKKARAN HOUSE, HOSPITAL JUNCTION,
KARUMALLOOR P.O, ERNAKULAM.**
- 2. SHINTO, AGED 27 YEARS,
S/O.PURUSHOTHAMAN, VATTAPARAMBIL VEEDU,
HOSPITAL JUNCTION, KARUMALLOOR P.O, ERNAKULAM.**
- 3. PRASANTH, AGED 29 YEARS,
S/O.THANKAPPAN, VATTAPARAMBIL VEEDU, HOSPITAL JUNCTION,
KARUMALLOOR P.O, ERNAKULAM.**
- 4. JAYAKUMAR K.K @ JAYAN, AGED 35 YEARS,
S/O.KANNAN, KARMAMTHODU VEEDU, PUTHIYA ROAD BHAGOM,
ALANGAD, ERNAKULAM.**
- 5. REMYA, AGED 31 YEARS,
W/O.JANEESH, PANJIKKARAN HOUSE, HOSPITAL JUNCTION,
KARUMALLOOR P.O, ERNAKULAM.**

**BY ADVS.SRI.K.NIRMALAN
SRI.A.RAJASIMHAN**

RESPONDENT(S)/STATE :

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**

BY PUBLIC PROSECUTOR SMT.LISHA.M.G

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- A1: CERTIFIED COPY OF THE FIR IN CRIMENO. 269/2011 OF
PUTHENVELIKKARA POLICE STATION.**
- A2: CERTIFIED COPY OF THE STATEMENT OF CW2.**
- A3: CERTIFIED COPY OF THE CHARGE SHEET IN CC NO. 497/2011
PENDING BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, NORTH PARAVUR.**
- A4: TRUE COPY OF THE JUDGMENT IN OP NO. 384/12 OF FAMILY
COURT, ERNAKULAM.**
- A5: TRUE COPY OF THE CERTIFICATE OF MARRIAGE.**
- A6: TRUE COPY OF THE RELEVANT PAGES OF FAMILY REGISTER.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 5823 of 2014

Dated 29th June, 2015

ORDER

1. This is a petition filed under Section 482 of the Code of Criminal Procedure.
2. The petitioners 1 to 4 are the accused and the 5th petitioner is the victim in Crime No.269 of 2011 which was originally registered on 6.5.2001 under Section 365 and 341 r/w Section 34 of the Indian Penal Code. The case was later charge sheeted by the Sub Inspector of Police, Puthanvelikara police station for offence punishable under Section 365 and 341 r/w Section 34 of Indian Penal Code.
3. The gist of the allegation is that on 6.5.2011 at 7.30 pm while the de facto complainant , who is the erstwhile husband of the 5th petitioner , was traveling with the 5th petitioner in a motor bike bearing

registration No.KL-45-B-8972, petitioners 1 to 4 restrained them at Vazhavalappu Colony and abducted the 5th petitioner.

4. According to the learned counsel appearing for the petitioners, the crime was registered on a mistaken premise and the 5th petitioner had not given the F.I. Statement based on which the said crime was registered. According to him, the 1st petitioner and the 5th petitioner were in love and she had on her free will and consent had gone with the 1st petitioner. To substantiate this fact, the learned counsel submitted that the 5th petitioner was produced before the learned Magistrate on 7.5.2011 and she had given a statement that she had gone with the 1st petitioner on her own free will. Certified copy of the statement given by the 5th petitioner is produced along with the case. The learned counsel has also produced the judgment in O.P.No.384 of 2012, which is a petition filed under Section 13B of the Hindu Marriage Act, between the 5th petitioner and the de facto complainant. The order

mentions that the 5th petitioner and her husband were not on good terms and they had been residing separately from 12.7.2010. On these grounds, it was submitted by the learned counsel for the petitioners that the registration of the crime is not based on actual facts and the final report submitted based on the above crime is not correct.

5. The learned counsel for the petitioners has also filed an affidavit filed by the 5th petitioner in which it is stated that the 5th petitioner has married the 1st petitioner herein on 8.12.2012 and a daughter was born out of the said wedlock. She has asserted in the affidavit that there was no incident of kidnapping or wrongful restraint on 6.5.2011 as alleged in Annexure-A1 FIR. It has also been asserted in the affidavit that the 5th petitioner has been living separately from her former husband since 12.7.2010 and therefore, the finding of the police in the final report that on 6.5.2011 at 7.30 pm she was abducted, is false.

6.I have heard the learned Public Prosecutor as well and have perused the records.

7.The final report laid on 7.5.2011 would reveal that the case has been registered against the petitioners 1 to 4 herein under Sections 365, 341 r/w Section 34 Indian Penal Code. The judgment in O.P.384 of 2012 and the statement submitted by the 5th petitioner, when she was produced before the learned Magistrate, would reveal that the conclusions arrived at by the Investigating Officer in the final report are not correct. It is obvious from the Judgement in O.P. No 384 /12 that the parties were residing separately owing to marital discord since 12.7.2010 and if that be so, there cannot be any abduction or kidnapping on 7.5.2011, as contended. Further more, the affidavit filed by the 5th petitioner would also reveal that the offence under Sections 365 or 341 of the Indian Penal Code are not made out in the facts and circumstances of this case.

8.Though the powers under S 482 of the Code are to be

exercised with care and circumspection and that too in exceptional cases , it is also equally settled that the power will have to exercised when it is revealed that the allegations raised against the accused are merit less and when the offenses alleged are not attracted .In this case in view of the material placed by the petitioners , it can be seen that the offense either under S 341 or S 365 is not made out . Hence, I am of the considered view that continuation of the prosecution is an unwanted exercise and has to be brought to an halt to secure the end of justice.

9.In the result, this Crl.M.C. is allowed, and all further proceedings in C.C. No.497 of 2011 on the file of the Judicial First Class Magistrate Court-I, North Paravur are quashed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

//True Copy//