

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

Cr1.MC.No. 8003 of 2015

IN C.C 439/2014 OF THE SPECIAL JUDICIAL FIRST CLASS
MAGISTRATE COURT VI, (MARAD CASES), KOZHIKODE

CRIME NO. 425/2013 OF FEROKE POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED:

ABDUL NASER, AGED 48 YEARS,
S/O.ABOOBACKER, CHERANCHERYPADAM,
FERODE.P.O, KOZHIKODE.

BY ADVS.SRI.P.SAMSUDIN

SRI.K.C.ANTONY MATHEW
SRI.JITHIN LUKOSE

RESPONDENTS/STATE AND DE-FACTO COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
2. FARHANA.T.C,
D/O.AHAMMED.T.C, HOUSE NO.12/377,
NEAR CHARAKKADAVU PALAM, MUNNUR.P.O-673631,
FEROKE
KOZHIKODE DISTRICT.

R1 BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 23-12-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

Cr1.MC.No. 8003 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: CERTIFIED COPY OF THE FINAL REPORT IN CRIME
NO.425/2013 OF FEROKE POLICE STATION

ANNEXURE-A2: COPY OF THE JUDGEMENT DATED 24-06-2015 IN
CC.439/2014 ON THE FILES OF JUDICIAL FIRST CLASS
MAGISTRATE (MARAD CASES) KOZHIKODE.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No. 8003 of 2015

Dated this the 23rd day of December, 2015

O R D E R

The petitioner herein is the original third accused in C.C No.439/2014 of the Special Judicial First Class Magistrate Court (Marad Cases), Kozhikode, involving the offences under Sections 406 and 498A of the Indian Penal Code. The other two accused faced trial before the learned Magistrate and obtained a judgment of acquittal on 24.6.2015. The case against the petitioner herein was split up and refiled as C.C No.659/2015. The petitioner now seeks orders quashing the prosecution as against him on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the other accused. Annexure A2 judgment in C.C No.439/2014 shows that the prosecution examined six witnesses, including the defacto complainant and marked Exts.P1 to P4 documents. As the prosecution could not prove the offence alleged by satisfactory and convincing evidence, the learned Magistrate found the accused 1 and 2 not guilty. As regards the allegation under Section 406 IPC, the learned Magistrate found thus in paragraph 9 of the Annexure 2 judgment.

"PW1 or PW2 could not say which are the items of gold ornaments entrusted to A2 and they did not mention the same in the complaint or in the box. So there is no specific allegation and they had no particular case that such and such gold ornaments had entrusted to A2 as per the direction of A1. In order to attract Sec. 406 IPC, the prosecution has to prove that PW1 had entrusted the gold ornaments to A2 and the accused misused the same for their needs. Here, apart from the evidence of PW1 there is no other documentary evidence to prove the above fact. PW2, the father of PW1 claimed that PW1 had entrusted 17.1/2 sovereigns of gold ornaments to A2, but he has no direct knowledge about the incident and he has only a hearsay knowledge from PW1."

2. The court's finding is that there is absolutely no evidence to prove the alleged entrustment of ornaments.

3. As regards the other evidence given by the complainant and the others to prove the allegations under Section 498A of the IPC, the learned Magistrate found that the evidence given by the defacto complainant is not fully believable, and the whole evidence is really suspicious. The learned Magistrate found thus in paragraph 10 of the judgment.

"10. PW1 claimed that, all the accused physically and mentally harassed her demanding balance dowry. According to her, these accused had demanded 50 sovereigns of gold ornaments as dowry before the marriage but, she was given only 26 sovereigns of gold ornaments at the time of marriage. So these accused demanded the balance dowry which was demanded by these accused. Since she was not given the balance dowry, all the accused physically and mentally harassed her demanding balance dowry. Though she claimed she was physically and mentally harassed by these accused, there is no documentary evidence to prove she was

assaulted by these accused demanding more gold ornaments. Though PW1 claimed that these accused assaulted her and she was admitted in the hospital. No document is produced before the court. The main argument put forward by the learned Assistant Public Prosecutor is that, she was driven out at Chungam demanding balance dowry on the way for pilgrimage to Ervady. Though she claimed that she was driven out at Chungam demanding balance dowry, she admitted in cross examination that she had 4 months child at that time and she was not in a position to go there due to weakness. She claimed that she was driven out at Chungam on the way to Ervady in the month of December 2012 and she was not taken to the matrimonial home by these accused. Thereafter she filed this complaint in the year 2013. Though she claimed that, first accused did not come to her house to look after her, she admitted during the cross examination that, the accused came to her house two times and she was taken to shopping and stayed in the house of the sister of the first accused. She claimed that the accused did not come and reside with her and there was no cohabitation with the first accused after December 2012. But she was forced to admit in the cross examination that she conceived in the year 2013 from the first accused. She was also admitted that she was taken to gynecologist during the year 2013 and subsequently she miscarried. At that time, she claimed that, she miscarried when she took the medicine given by the first accused. But, she admitted that, the balance medicine allegedly given by the accused is not with her and the prescription given by the gynecologist also. These facts are not mentioned in the complaint or in her affidavit. There are so many contradictions and omissions in the evidence of PW1. The evidence of PW1 cannot be taken as substantive evidence. There is no corroborative evidence to corroborate the evidence of PW1, PW3, the neighbour claimed that, first accused tried to take his child forcefully from PW2 so many times, but he admitted in the cross examination that, he did not see the incident and he has only hearsay knowledge from his wife. Pws2 and 6 have no direct knowledge about the incident. After going through the entire evidence, I hold that, prosecution failed to prove the case against these accused beyond reasonable doubt.

4. It is submitted by the learned Public Prosecutor that the State has not preferred appeal against Annexure 2 judgment of acquittal. On a perusal of Annexure 2 judgment, I find that the prosecution cannot in any manner improve the case as against the petitioner herein, if the case against the petitioner goes to trial, and the witness who once gave evidence practically in favour of the accused, cannot improve their versions at the second round when the case goes to trial. I find that the very substratum of the prosecution case is totally lost by the acquittal of the others, and that continuance of prosecution in such a situation will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in C.C No.659/2015 of the Special Judicial First Class Magistrate Court (Marad Cases), Kozhikode will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

**Sd/-
P.UBAID
JUDGE**

//True Copy//

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P.A to Judge