

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. 8016 of 2015

IN CC 1876/2015 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, KODUNGALLUR

CRIME NO. 366/2015 OF VALAPPAD POLICE STATION, TRISSUR

PETITIONER/4TH ACCUSED:

SHEBENA, AGED 36 YEARS,
W/O.MUJEEB, PUZHANKARAYILLATH HOUSE,
CHALINGAD DESOM,
KAIPAMANGALAM VILLAGE.

BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENTS/DEFACTO COMPLAINANT:

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1. STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING THE S.I.OF POLICE
VALAPPAD-680 003.
 2. RASHEEDA, AGED 35 YEARS,
D/O.AKBAR, NEDIYAPARAMBIL HOUSE,
17TH KALLU, CHENTRAPPINNI EAST,
EDATHIRUTHI VILLAGE-687 512.

R1 BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

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. 8016 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A- CERTIFIED COPY OF THE FINAL REPORT IN
CR.366/2015 DT. 20.6.2015 FILED BY VALAPPAD POLICE BEFORE
THE JFCM COURT, KODUNGALLUR.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.8016 of 2015

Dated this the 23rd day of December, 2015

O R D E R

The petitioner herein is the fourth accused in C.C No.1876/2015 of the Judicial First Class Magistrate Court, Kodungallur, involving the offence under Sections 498A, 406 and 494 of the Indian Penal Code. The second respondent herein is the defacto complainant in the said case. The first accused is her husband and the accused Nos.2 and 3 are the parents-in-law. Her allegation is that she had been mentally and physically harassed by her husband and the parents-in-law, and that recently the petitioner herein (4th accused) along with the others compelled the first accused to marry another lady without the consent of the complainant. Thus practically what is alleged against the petitioner herein is abetment of the offence under Section 494 of the Indian Penal Code.

2. On a perusal of the final report, I find that the final report does not contain any allegation of mental or physical harassment as against the petitioner herein, though there is a casual statement in the first information statement. But there

also the allegations are not definite as against the petitioner herein. On a perusal of the final report, I find that the prosecution allegation as against the petitioner herein is only abetment of an offence punishable under Section 494 of the Indian Penal Code. As regards investigation or trial of the offence under Section 494 IPC without complaint, or along with other offences, the legal position stands settled by the Hon'ble Supreme Court. Anyway, here a prosecution under Section 494 IPC will be quite unsustainable; the parties being Muslims. I fail to understand who advised the police to bring such a charge against the petitioner and the others under Section 494 IPC.

3. As already observed, the final report does not contain any definite allegation against the petitioner herein under Section 406 and 498A of IPC. The only allegation practically is abetment of the offence under Section 494 IPC, which, as found earlier, cannot be sustained. I find that continuance of the prosecution as against the petitioner herein under Section 494 IPC r/w 109 IPC will be an abuse of legal process.

In the result, this petition is allowed. The prosecution against the petitioner as the fourth accused in C.C No.1876/2015

of the Judicial First Class Magistrate Court, Kodungallur will stand quashed under Section 482 of the Code of Criminal Procedure. The prosecution can proceed against the others.

**Sd/-
P.UBAID
JUDGE**

//True Copy//

P.A to Judge

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