

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Crl.Rev.Pet.No. 3348 of 2009 ()

AGAINST THE ORDER IN CRL.M.P.2143/2009
IN CC 295/2008 of J.M.F.C.,AMBALAPUZHA

REVISION PETITIONER/ACCUSED:

ANIL KUMAR,
S/O.RADHAKRISHNAN NAIR, SANKARAMANGALAM, KALARCODE
SANATHANAPURAM, ALAPPUZHA.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS/DEFACTO COMPLAINANT & STATE:

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1. RAMYA.P.R., D/O.RAMACHANDRA PANICKER,
THRIKARTHIKA, SANATHANAPURAM, ALAPPUZHA.
 2. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH
R1 BY ADV. SRI.SHAIJAN C.GEORGE
R1 BY ADV. SMT.S.REKHA KUMARI
R1 BY ADV. SMT.SAJITHA GEORGE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
30-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.3348 of 2009

Dated this the 30th day of October 2015

O R D E R

The revision petitioner is the accused in C.C. No.295 of 2008 on the files of the Court of the Judicial Magistrate of First Class, Ambalapuzha, facing indictment in a prosecution under Section 498A I.P.C.

2. The revision petitioner filed Crl.M.P. No.2143 of 2009 before the court below praying for a discharge under Section 239 of the Code. The court below dismissed the said application, against which this revision petition has been filed.

3. Heard both sides.

4. The learned counsel for the revision petitioner has argued that the court below had taken cognizance of the offence after the period of limitation, without considering the legal aspect on this point, and in the said circumstances, the order impugned is not legal, proper and correct.

5. It is borne out from the records that the complaint was filed by the complainant on 9.10.2007. It is alleged in the complaint that the last cruelty was committed by the revision petitioner on 19.5.2005. However, in two statements of the *de-facto complainant* recorded by the police under Section 161 of the Code, she stated that the last cruelty was committed by the revision petitioner on 19.5.2004. The learned Magistrate forwarded the complaint to the Police for investigation and report. The

final report was filed by the Police before the court on 14.12.2007. Therefore, it was clearly barred by limitation under Section 468(2)(c) of the Code.

6. The Apex Court in **Arun Vyas v. Anita Vyas** (1999 CrI.L.J. 3479) held in paragraph 14 thus:

“It is true that the expression in the interest of justice in Section 473 cannot be interpreted to mean in the interest of prosecution. What the Court has to see is 'interest of justice'. The interest of justice demands that the Court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the Courts, in case of delayed complaints, to construe liberally Section 473 Cr.P.C. in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interest of justice. When the conduct of the accused is such that applying rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the Court may take cognizance of an offence after the expiry of period of

limitation in the interest of justice. This is only illustrative not exhaustive.”

7. The Apex Court further in **Vanka Radhamanohari v. Vanka Venkata Reddy and others** [(1993) 3 SCC 4], held in paragraph 7 thus:-

“It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, courts while considering the question of limitation for an offence under Section 498-A, i.e., subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether “it is necessary to do so in the interest of justice”.

8. In view of the above decisions of the Apex Court, the court must take cognizance of the offence under Section 498A I.P.C. even after the period of limitation, in the interests of justice. Considering the facts and circumstances of the case, including the nature of allegations in this case, I am of the view that the interest of justice requires that the Court should take cognizance of the offence even after the expiry of the period of limitation in this case, being an offence under Section 498A I.P.C. Therefore, the argument in this regard advanced by the learned counsel for the revision petitioner fails.

9. It has been further argued by the learned counsel for the revision petitioner that there is no allegation in the complaint constituting the offence under Section 498A

I.P.C. and in the said circumstances, the revision petitioner ought not have been directed by the trial court to face the trial. I have gone through the complaint and I am satisfied that the complaint discloses the commission of the offence under Section 498A I.P.C. and in the said circumstances, the argument in this regard also fails. In the said circumstances, the court below was correct in dismissing the application filed by the revision petitioner pleading for discharge.

11. Having gone through the relevant inputs, I do not find any reason to hold that the order impugned suffers from any infirmity warranting interference by this court.

In the result, this revision petition stands dismissed. However, I make it clear that I have not made any

observation regarding the merits of the case and the observations made in this order are only for the purpose of disposing of this revision petition and not for any other purpose.

This being a matter of the year 2009, the court below is directed to dispose of the case as expeditiously as possible and at any rate within six months from the date of receipt of a copy of this order by the court below. Transmit the records to the court below forthwith.

SD/

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/31.10.2015

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PA to Judge