IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 03RD DAY OF DECEMBER 2020 / 12TH AGRAHAYANA, 1942

Crl.MC.No.721 OF 2018

AGAINST THE ORDER/JUDGMENT IN CC 98/2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,SULTHANBATHERY

CRIME NO.707/2016 OF Ambalavayal Police Station , Wayanad

PETITIONER/2ND ACCUSED IN CC 98/2017 OF JUDICIAL FIRST CLASS MAGISTRATE-I, SULTHAN BATHERY:

FASEELA
D/O. ABOOBACKER, AGED 28 YEARS,RESIDING AT EDAVALATH HOUSE, VETTUVADY,KONNACHAL P.O., ERUMAD, NILGIRI DISTRICT,TAMIIL NADU.

BY ADV. SRI.NIRMAL V NAIR

RESPONDENT/STATE AND DE FACTO COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTEE BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI - 682 031.

2 **SHAFEEK**
S/O.KASIM, AGED 37 YEARS, KUNNEKKAATTU HOUSE, CHULIYODU P.O.,MADAKKARA VILLAGE, SULTHAN BATHERY TALUK, WAYANAD DISTRICT -673 592.

R2 BY ADV. SRI.DEEPAK RAJ
R1 BY ADV. SRI.SANTHOSH PETER, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ALEXANDER THOMAS, J.

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Crl.M.C No.721 of 2018

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Dated this the 03rd day of December, 2020

ORDER

The prayer in the aforecaptioned Crl.Miscellaneous Case filed under Sec.482 of the Cr.P.C is as follows:

> *"..... to quash Annexure A9 final report and all further proceedings in C.C.98/2017 on the files of the Judicial Magistrate of First Class-I, Sulthan Bathery as against the 2nd accused, the petitioner herein."*

2. Heard Sri.Nirmal V.Nair, learned counsel appearing for the petitioner (A2), Sri.Santhosh Peter, learned Public Prosecutor appearing for the 1st respondent-State of Kerala and Sri.Deepak Raj, learned counsel appearing for the contesting respondent No.2 (de facto complainant).

3. The petitioner herein has been arrayed as the 2nd accused among the two accused in the instant Anenxure-A2 FIR in Crime No.707/2016 of Ambalavayal Police Station of Wayanad District, for offences punishable under Secs.341, 323, 497, 506 (i) read with Sec.34 of the Indian Penal Code and Sec.75 of the Juvenile Justice (Care & Protection of Children) Act, 2000. Pursuant to Annexure-A1 private

criminal complaint dated 10.11.2016 filed by the 2nd respondent, in which the learned Magistrate had directed the police to register crime and conduct an investigation into the allegations thereof. Thereafter, the police has filed the impugned Annxure-A9 final report/charge sheet in the said Crime No.707/2016 of Ambalavayal Police Station by deleting the offence as per Sec.497 & Sec.506 of the IPC, including the offence as per Secs.341, 323 read with Sec.34 of the IPC read with Sec.75 of the Juvenile Justice (Care & Protection of Children) Act on 26.01.2017 and the case is now pending as calendar case, C.C No.98/2017 on the file of the Judicial First Class Magistrate's Court-I, Sulthan Bathery. It appears that the charges have not been framed. The main contention raised by the petitioner is that there are no materials to disclose the alleged offences and further that the abovesaid allegations have been made against the petitioner (A2) by the 2nd respondent (who is her husband) falsely and maliciously in view of the matrimonial disputes between them, etc. The abovesaid submissions made by the petitioner has been opposed by the learned Public Prosecutor appearing for the 1st respondent-State of Kerala and the learned counsel appearing for the 2nd respondent.

4. After hearing both sides, this Court is of the view that proper judicial evaluation of the facts and circumstances may be necessary based on the evidentiary materials on record to determine the issues at hand. Moreover, now it is apprised to this Court by the office of the Judicial First Class Magistrate's Court-I, Sulthan Bathery that after institution of the abovesaid calendar case, charges have not so far been framed by the said court. If that be so, the petitioner could file proper application seeking discharge, which could be considered on merits by the learned Magistrate, after hearing the petitioner (A2) as well as the prosecution. Hence, it is ordered that in the event of the petitioner filing application for discharge without any further delay along with the certified copy of this order, then the learned Magistrate shall consider the said plea for discharge on merits, after affording reasonable opportunity of being heard to the petitioner's counsel and the learned Public Prosecutor, without much delay, preferably within a period of six weeks from the date of receipt of filing of such discharge application along with a certified copy of this order, provided the charges have not been framed by the court as on the date of filing of the discharge application. All contentions available to the petitioner in law are left open to be raised in appropriate proceedings, as aforestated. After the

orders are passed by the learned Magistrate on discharge, if any of the parties have any legally justiciable grievances thereto, it is for them to work out their remedies in the manner to law and such liberty is also reserved.

With these observations and directions and with the said liberty, the above Crl.M.C will stand disposed of.

Sd/-
ALEXANDER THOMAS
JUDGE

vgd

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A1	**A TRUE COPY OF C.M.P 10917/2016 ON THE FILES OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I, SULTHAN BATHERY**
ANNEXURE A2	**A TRUE COPY OF THE FIR IN CRIME NO.707 OF 2016 OF THE AMBALAVAYAL POLICE STATION**
ANNEXURE A3	**A TRUE COPY OF THE STATEMENT OF SHAMIL MINHAJ**
ANNEXURE A4	**A TRUE COPY OF THE STATEMENT OF SRI.IBRAHIM**
ANNEXURE A5	**A TRUE COPY OF THE STATEMENT OF SRI.JOY T.P**
ANNEXURE A6	**A TRUE COPY OF THE STATEMENT OF SMT.KAMALA**
ANNEXURE A7	**A TRUE COPY OF THE STATEMENT OF SRI.ABDUL MAJEED**
ANNEXURE A8	**A TRUE COPY OF THE REPORT DATED 26.01.2017 SUBMITTED BY THE INVESTIGATING OFFICER**
ANNEXURE A9	**THE CERTIFIED COPY OF THE FINAL REPORT IN C.C.98/2017**