IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 18TH DAY OF DECEMBER 2020 / 27TH AGRAHAYANA, 1942

Crl.MC.No.6967 OF 2019(A)

AGAINST THE ORDER/JUDGMENT IN CC 1293/2017 OF JMFC, KALAMASSERY (TEMPORARY)

CRIME NO.1116/2017 OF Kalamassery Police Station , Ernakulam

PETITIONER/S:

SAJIN MOHAMMED
AGED 43 YEARS
S/O.KUNJU MOHAMMED, VELLORKODATH HOUSE,
KUTTIKKATTUKARA.P.O, KADUNGALOOR VILLAGE, ERNAKULAM DISTRICT, PIN-683501

BY ADVS.
SRI.JOY GEORGE
SMT.PRAICY JOSEPH
SRI.PRADEESH CHACKO
SRI.VINO JOSE
SMT.TANYA JOY

RESPONDENT/S:

1 **NADIA SAJIN**
AGED 36 YEARS
D/O.N.A.MUHAMMEDKUTTY, BLOSSOMS, COCHIN UNIVERSITY.P.O, KALAMASSERY-682022

2 **SUB INSPECTOR OF POLICE**
KALAMASSERY POLICE STATION, KALAMASSERY, ERNAKULAM, PIN-683104

3 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN-682031

R1 BY ADV. SMT.TEENA CHERIAN

OTHER PRESENT:

SRI.SANTHOSH PETER, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ALEXANDER THOMAS, J.

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Crl.M.C. No.6967 of 2019

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Dated this the 18th day of December, 2020

O R D E R

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

> *"a. That records and proceedings of CC No.1293/2017 pending on the files of the Judicial First Class Magistrate Court, Kalamassery be called for.*
> *b. That this Honourable Court may be pleased to quash all further proceedings against the accused in Crime No.1116/2017 of Kalamassery Police Station which is now pending as CC No.1293/2017 before the Judicial First Class Magistrate Court, Kalamassery."*

2. Heard Sri.Joy George, learned counsel appearing for the petitioner (Sole accused), Sri.Santhosh Peter, learned Public Prosecutor appearing for official respondents 2 and 3 and Smt.Teena Cherian, learned advocate for contesting respondent No.1 (defacto complainant).

3. The petitioner herein has been arrayed as the sole accused in the impugned Annexure-1 FIR in crime No.1116/2017 of Kalamassery Police Station, which has been registered on the basis of petition filed by the 1st respondent- lady defacto complainant and thereby petitioner has been arrayed as the sole accused therein for offences punishable under Sec. 498A of the IPC. Though initially, an additional accused (accused No.2) was also arrayed in Annexure-1, the police after investigation has filed final report/charge sheet as per Annexure-4 on 10.9.2017, whereby the original A2 has been deleted from the accused array and the petitioner herein has

been arrayed as the sole accused therein for the offence punishable under Sec.498 of the IPC. This has later led to the pendency of calendar case, CC No.1293/2017 on the file of the Judicial First Class Magistrate Court, Kalamassery.

4. The brief of the prosecution case is that earlier the petitioner herein had married the 1st respondent and that thereafter, the petitioner had treated the 1st respondent with cruelty and harassment and that he has done various acts by which he has committed the offence punishable under Sec.498 A of the IPC. Later, during the pendency of the above criminal proceedings, the marital relationship between the petitioner and the 1st respondent has been dissolved on 1.1.2020, as per the submission made by the counsel for the petitioner and the learned advocate appearing for R1.

5. Now, it is submitted by Sri.Joy George, learned counsel appearing for the petitioner/accused and Smt.Teena Cherian, learned advocate appearing for R1 (lady defacto complainant) that now the parties have come to a settlement and that the 1st respondent is not interested to continue the criminal proceedings and that the same may be quashed on the ground of settlement. An affidavit dated 30.10.2020 of the 1st respondent has been filed before this Court and para Nos. 2 to 4 of the said affidavit dated 30.10.2020 filed by the 1st respondent before this Court in this case reads as follows :

> *"2. The above Crl.M.C. is filed seeking to quash the proceedings pending against the petitioner taken on file as CC 1293/2017 on the files of the Judicial First Class*

Magistrate Court, Kalamassery for the offences punishable under Sec. 498A of the Indian Penal Code.

2. The above case is registered based on a statement given by me and which was recorded by the Kalamassery Police. The entire dispute has been settled between me and the petitioner and I have no further grievance in the above matter. The above case has been settled out of court by me and the petitioner. I have no objection in the above case against the petitioner being quashed. The Hon'ble Supreme Court in the decision reported in 2003 (2) KLT 1062 (SC) B.S.Joshy & others v. State of Haryana has unambiguously laid down the proposition that in matter relating to matrimonial offence, the bar under Sec.320 Cr.P.C. notwithstanding, the High Court can exercise its powers under Sec.482 Cr.P.C. and quash the proceedings.

3. I therefore mos humbly pray that this Hon'ble court may be pleased to accept this affidavit as proof of my having settled the matter with the petitioners and quash the proceedings against the petitioners failing which I will be put to irreparable injury and loss."

6. In a catena of decisions, the Apex Court has held that, in appropriate cases involving even non-compoundable offences, the High Court can quash prosecution by exercise of the powers under Sec.482 of the Cr.P.C., if the parties have really settled the whole dispute or if the continuance of the prosecution will not serve any purpose. Here, this Court finds a real case of settlement between the parties and it is also found that continuance of the prosecution in such a situation will not serve any purpose other than wasting the precious time of the court, when the case ultimately comes before the court. On a perusal of the petition and on a close scrutiny of the investigation materials on record and the affidavit of settlement and taking into account the attendant facts and circumstances of this case, this Court is of the considered opinion that the legal principles laid down by the Apex Court in the cases as in ***Gian Singh*** *v.* ***State of Punjab*** reported in 2013 (1) SCC (Cri) 160 = (2012) 10 SCC 303 and ***Narinder Singh and others v. State of Punjab and anr***. reported in (2014) 6 SCC 466, more particularly paragraph 29 thereof, could be applied

in this case to consider the prayer for quashment.

7. Taking note of the abovesaid factual aspects that the petitioner/accused and the 1st respondent have now dissolved the marital relationship and as now they have entered into a settlement in respect of their disputes and as the 1st respondent has no objection in quashing the impugned criminal proceedings on the ground of settlement, this Court is inclined to consider the plea for quashment on the ground of settlement. In that view of the matter, it is ordered that the impugned Annexure-A4 final report/charge sheet filed in the impugned Annexure-I FIR in crime No.1116/2017 of Kalamassery Police Station, which has now led to the pendency of calendar case, CC No. 1293/2017 on the file of the Judicial First Class Magistrate Court, Kalamassery as against the petitioner/accused and all further proceedings emanating therefrom as against the petitioner/accused will stand quashed and set aside.

8. The petitioner will produce certified copies of this order before the investigating office concerned as well as the Judicial First Class Magistrate Court, Kalamassery for necessary information.

With these observations and directions, the above Criminal Miscellaneous case will stand finally disposed of.

Sd/-
ALEXANDER THOMAS
JUDGE

SKS

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE I	**THE TRUE CERTIFIED COPY OF THE FIRST INFORMATION REPORT DATED 19.05.2017 IN CRIME NO.116/2017 OF KALAMASSERY POLICE STATION**
ANNEXURE II	**THE TRUE COPY OF THE COMPLAINT FILED BEFORE THE ASSISTANT COMMISSIONER OF POLICE, THRIKKAKARA DATED 24.09.2017**
ANNEXURE III	**THE PHOTOCOPY OF THE MEDICAL REPORT FROM THE AMRITA HOSPITAL, ERNAKULAM DATED 05.10.2017**
ANNEXURE IV	**THE TRUE CERTIFIED COPY OF THE FINAL REPORT DATED 10.09.2017 IN CRIME NO.1116/2017 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY**
ANNEXURE V	**THE COPY OF THE PETITION FILED BEFORE THE FAMILY COURT, ERNAKULAM IN GOP NO.1392/2017 DTED 27.11.2018 TO CONSTITUTE A MEDICAL BOARD TO ASCERTAIN THE METAL CONDITION OF THE 1ST RESPONDENT**
ANNEXURE VI	**THE TRUE COPY OF THE REPORT SUBMITTED BY THE MEDICAL BOARD DATED 07.08.2019 WITH A COVERING LETTER DATED 20.08.2019**
ANNEXURE VII	**THE TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.325/2016 OF KALAMASSERY POLICE STATION DATED 14.03.2016**
ANNEXURE VIII	**THE DETAILS OF THE AMOUNTS RECEIVED BY THE FATHER OF THE 1T RESPONDENT FROM THE PETITIONER**
ANNEXURE IX	**THE PHOTOCOPY OF THE RECEIPT DATED 16.11.2004 IN FAVOUR OF THE PETITIONER'S MOTHER**
ANNEXURE X	**THE COPY OF THE SALE DEED FOR THE PROPERTY PURCHASED IN FAVOUR OF 1ST RESPONDENT BY THE PETITIONER DATED 28.09.2012**
ANNEXURE XI	**THE RECEIPT OF THE AMOUNT RECEIVED BY THE FATHER OF THE 1ST RESPONDENT DATED 02.01.2004**

ANNEXURE XI **THE COPY OF THE SHARE CERTIFICATES FOR THE SHARES PURCHASED BY FAMILY MEMBERS OF THE PETITIONERS FROM THE FALCON INFRASTRUCTURES LTD**