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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 6TH DAY OF AUGUST 2024 / 15TH SRAVANA, 1946

CRL.MC NO. 8828 OF 2017

CRIME NO.1138/2014 OF THRIKKAKARA POLICE STATION, ERNAKULAM

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.311 OF 2016

OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD

PETITIONER/2ND ACCUSED:

ANITHA ASHOK KUMAR
AGED 51 YEARS, W/O.ASHOK KUMAR, ANIL NIVAS,
VILAYADISSERIL HOUSE, ULLANNOOR MURI,
KULANADA VILLAGE, PATHANAMTHITTA DISTRICT,
EMPLOYED AT DUBAI HOSPITAL, LEVEL 10, WEST
P.O.BOX NO.7272,DUBAI, U.A.E.

BY ADVS.
SRI.K.SHAJ
SRI.RENJIT GEORGE

RESPONDENTS:

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

2 **SUB INSPECTOR OF POLICE,**
THRIKKAKARA POLICE STATION
THRIKKAKARA, ERNAKULAM.

3 **K.S.PRAMEELA**
H.NO.76, EASTERN HOMES, KAKKANAD,

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KOCHI-682030,(FROM KALARICKAL HOUSE, KOONNAMTHANAM MURI, KOONNAMTHANAM VILLAGE, PATHANAMTHITTA DISTRICT).

BY ADVS. SRI.SANGEETHARAJ.N.R, PP
SMT.DHANYA BABU
SMT.P.A.PRIYA
SRI.P.S.SYAMKUTTAN
SRI. M. LIJU - R3

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.8828 of 2017

Dated this the 06th day of August, 2024

O R D E R

This Criminal Miscellaneous Case is filed to quash the proceedings in C.C. No.311/2016 on the file of Judicial First Class Magistrate Court, Kakkanad, arising from Crime No.1138/2014 of Thrikkakara Police Station. The above case is charge sheeted against the petitioner and another alleging offences punishable under Section 498A r/w 34 of IPC.

2. The prosecution case is that the 1st accused, husband, harassed the 3rd respondent/defacto complainant, both physically and mentally, demanding the ATM card and Credit



Card and on the instigation of the petitioner/2nd accused, the 1st accused physically and mentally harassed the 3rd respondent/defacto complainant to transfer 82 cents of property belonging to the 3rd respondent to the petitioner/2nd accused. Hence, it is alleged that the accused committed the offence. According to the petitioner, even if the entire allegations are accepted, no offence is made out against the petitioner who is the 2nd accused.

3. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

4. The counsel for the petitioner submitted that, even if the entire allegations are accepted, no offence is made out against the petitioner who is the 2nd accused. The learned Public Prosecutor and the learned counsel for the 3rd respondent takes me through Annexure-A1 complaint which leads to the



registration of the case. The Public Prosecutor takes me through some paragraphs of Annexure-A1 complaint and submitted that, there are specific allegations against the petitioner regarding the theft of certain articles. It is true that, in Annexure-A1 complaint, the offences alleged are under Sections 498A, 379 r/w 34 of IPC. But, in the final report, as evident by Annexure-A3, the Police deleted Section 379 IPC and the offence alleged are only under Section 498A r/w 34 IPC. A perusal of Annexure-A3 final report would show that, the only allegation against the petitioner who is the 2nd accused is that, on her instigation, the 1st accused physically and mentally harass the defacto complainant to transfer 82 cents of property belongs to the 3rd respondent to the petitioner. It will be better to extract the final report of the Police:



"1-)ơ പ്രതിയും 1-)ơ സാക്ഷിയും തമ്മിൽ ഹിന്ദു ഈഴവ മതാചാരപ്രകാരം 27-10-2004 തിയതി മുതൽ വിവാഹം കഴിഞ്ഞു ഭാര്യ ഭർത്താക്കന്മാരായി താമസിച്ചു വന്ന നാൾ മുതൽ കാക്കനാട് വില്ലേജ് കാക്കനാട് കരയിൽ കിഴക്ക് പടിഞ്ഞാറായി കിടക്കുന്ന പൊയ്യച്ചിറ-കാക്കനാട് റോഡിന്റെ വടക്കു വശത്തു തെക്ക് ദർശനത്തിൽ സ്ഥിതിചെയ്യുന്ന തൃക്കാക്കര മുനിസിപ്പാലിറ്റി 24-)ơ വാർഡിൽ 76-)o നമ്പർ ദിനപ്പറമ്പ് വീട്ടിൽ ജോർജ്കുട്ടി വക ഇരുനിലകളായി പണിതിട്ടുള്ള വീടിന്റെ ഗ്രൗണ്ട് ഫ്ലോറിലെ ബെഡ് റൂമിൽ വച്ച് 1-)ơ സാക്ഷി വക ATM കാർഡിനും credit card -നു വേണ്ടിയും 1-)ơ പ്രതി 1-)ơ സാക്ഷിയെ മാനസികമായും ശാരീരികമായും പീഡിപ്പിച്ചും വിദേശത്തു ജോലി ചെയ്യുന്ന 1-)ơ പ്രതിയുടെ സഹോദരിയായ 2-)ơ പ്രതിയുടെ പേരിലേക്ക് 1-)ơ സാക്ഷിയുടെ ഉടമസ്ഥതയിലുള്ള 82 സെന്റ് സ്ഥലം എഴുതികൊടുക്കുന്നതിനുവേണ്ടി 2-)ơ പ്രതിയുടെ പ്രേരണയാൽ 1-)ơ പ്രതി 1-)ơ സാക്ഷിയെ ശാരീരികമായും മാനസികമായും പീഡിപ്പിക്കുന്നതിനു ഇടയാക്കി പ്രതികൾ കൃത്യത്തിന് പരസ്പരം ഉത്സാഹികളും സഹായികളുമായി വർത്തിച്ചു Sec. 498A & 34 IPC പ്രകാരം ശിക്ഷിക്കത്തക്ക കുറ്റം ചെയ്ത കാര്യം."

5. From the above, it is clear that the only



allegation is that the petitioner instigated the 1st accused and thereafter the 1st accused harassed the defacto complainant to transfer the property in the name of the petitioner. Even if these allegations are accepted, there is absolutely nothing to show that the petitioner who is the 2nd accused had done anything to attract Section 498A IPC. All the allegations are against the 1st accused. Therefore, I am of the considered opinion that the continuation of prosecution against the petitioner who is the 2nd accused is unnecessary. But, I make it clear that, I have not considered the case of the 1st accused and the court concerned will consider the same separately, untrammeled by any observation in this order.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the

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petitioner alone in C.C. No.311/2016 on the files of Judicial First Class Magistrate Court, Kakkanad, arising from Crime No.1138/2014 of Thrikkakara Police Station are quashed.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

nvj

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APPENDIX OF CRL.MC 8828/2017

PETITIONER ANNEXURES

ANNEXURE A1	**TRUE COPY OF CMP NO.809/2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD**
ANNEXURE A2	**TRUE COPY OF THE FIR IN CRIME NO.1138/2014 ON THE FILES OF TEH THRIKKAKARA POLICE STATION.**
ANNEXURE A3	**TRUE COPY OF THE FINAL REPORT IN C.C.NO.311/2016 ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD**

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE