2025:KER:21949

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 6TH DAY OF MARCH 2025 / 15TH PHALGUNA, 1946

CRL.MC NO. 109 OF 2025

CRIME NO.634/2022 OF INFOPARK POLICE STATION, ERNAKULAM

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.860 OF 2022 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD

PETITIONER/ACCUSED 1 AND 2:

1 **AJMAL SHA O.S**
AGED 33 YEARS
S/O LATE O.M.SHAHUL, OTTITHOTTATHIL (H),
EDAVETTY, NEAR MARTHOMA CHAPEL,
EDAVETTY VILLAGE,
THODUPUZHA TALUK, IDUKKI, PIN - 68558

2 **THANUJA SHAHUL,**
AGED 51 YEARS
W/O LATE O.M SHAHUL, OTTITHOTTATILL (HOUSE),
EDAVETTY VILLAGE, THODUPUZHA TALUK,
IDUKKI, PIN - 685588

BY ADVS.
V.A.HAKEEM
HABNAM HAKEEM

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 **INSPECTOR OF POLICE**
INFOPARK POLICE STATION,
ERNAKULAM DISTRICT, PIN - 682030

3 **FATHIMA NAFEESA**
AGED 26 YEARS
D/O V.A YAHIYA, VALIYAVEETIL(HOUSE), MANJUMMAL,
ELOOR, PARAVUR, ERNAKULAM, PIN - 683501

BY ADVS. NOUSHAD K.H
C.N.PRABHAKARAN, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.03.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

B.S.Joshi and Others v. State of Haryana and another [(2003) 4 SCC 675] held that the offence under Section 498-A can be quashed by the High Court exercising its inherent power under Section 482 Cr.P.C (now Section 528 of B.N.S.S, 2023), though such offence is not compoundable under Section 320. Relying on ***State of Karnataka v. L. Muniswamy*** [(1977) 2 SCC 699], a two Judges Bench in ***B.S.Joshi*** (Supra) held that ends of justice are higher than ends of mere law, though justice has got to be administered according to laws made by legislature. The fact that there is no reasonable likelihood of conviction, in the wake of settlement between the parties, was taken stock of. The following findings in ***B.S.Joshi*** (supra) are relevant and extracted here below:

> *"What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for*

> *not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband, with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides."*

2. The dictum laid down in ***B.S.Joshi*** (supra) was doubted along with that laid down in other cases and referred to and considered by a three Judges Bench of the Hon'ble Supreme Court in ***Gian Singh v. State of Punjab and another*** [(2012) 10 SCC 303]. ***B.S.Joshi*** (supra), along with other cases, were confirmed by the Supreme Court. It is relevant to note that the subject

matter in ***B.S.Joshi*** (supra) was specifically with reference to the offences under Sections 498-A and 406 of the Indian Penal Code.

3. In the facts at hand, petitioners are accused nos.1 and 2 in Crime No.634/2022 of Infopark Police Station, Ernakulam, now pending as C.C.No.860/2022 before the Judicial First Class Magistrate Court, Kakkanad. As per the Final Report, the offences alleged are under Sections 498-A and 34 of the Indian Penal Code. The petitioners seek quashment of entire proceedings in the above Calendar Case, on the strength of the settlement arrived at by and between the parties.

4. Heard the learned counsel for the petitioners; learned counsel for the 3rd respondent/defacto complainant and the learned Senior Public Prosecutor. Perused the records.

5. When this Crl.M.C was moved, this Court directed to record the statement of the defacto complainant. The said direction was complied and the statement sent via e-mail, was handed

over. On perusal of the same, it is clear that the issues between the petitioners and the defacto complainant are settled amicably; that the 1st petitioner and the defacto complainant are living together comfortably as husband and wife; and that the defacto complainant has no objection in quashing the criminal proceedings against the petitioners. That apart, it is noticed that along with this Crl.M.C, an affidavit has been sworn to by the defacto complainant (3rd respondent herein) as Annexure-3 wherein she would unequivocally state that the disputes have been amicably settled and that she has no grievance against the petitioners. The defacto complainant would also swear that she has no objection in quashing the criminal proceedings against the petitioners and that the affidavit is sworn to on her own volition, without any compulsion, whatsoever. This Court is therefore convinced that the settlement arrived at is genuine and bonafide. Moreover, learned counsel for the 3rd respondent would submit that the relief sought for herein be allowed, in view of the settlement between the parties.



6. In the light of the above referred facts, this Court is of the opinion that the necessary parameters, as culled out in ***B.S.Joshi*** (supra) and ***Gian Singh*** (supra), are fully satisfied. This court is convinced that further proceedings against the petitioners will be a futile exercise, inasmuch as the disputes have already been settled. There is little possibility of any conviction in the crime. *Dehors* the settlement arrived at by and between the parties, if they are compelled to face the criminal proceedings, the same, in the estimation of this Court, will amount to abuse of process of Court. The quashment sought for would secure the ends of justice.

7. In the circumstances, this Crl.M.C. is allowed. Annexure-1 F.I.R, Annexure-2 Final Report, and all further proceedings in C.C.No.860/2022 of the Judicial First Class Magistrate Court, Kakkanad, are hereby quashed.

Sd/-

C.JAYACHANDRAN, JUDGE

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APPENDIX OF CRL.MC 109/2025

PETITIONER ANNEXURES

ANNEXURE 1	**TRUE COPY OF THE FIR NO.634 OF 2022 OF INFOPARK POLICE STATION, ERNAKULAM CITY DATED 1.10.2022**
ANNEXURE 2	**TRUE COPY OF THE FINAL REPORT IN FIR NO.634 OF 2022 OF INFOPARK POLICE STATION, ERNAKULAM CITY DATED 12.11.2022**
ANNEXURE 3	**THE ORIGINAL AFFIDAVIT DATED 9.12.2024 OF THE 3RD RESPONDENT/DEFACTO COMPLAINANT**