



2025:KER:23588

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 18TH DAY OF MARCH 2025 / 27TH PHALGUNA, 1946

CRL.MC NO. 491 OF 2025

CRIME NO.784/2016 OF NALLALAM POLICE STATION, KOZHIKODE
IN CC NO.385 OF 2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,
KOZHIKODE

PETITIONERS/ACCUSED NOS.2 AND 3:

- 1 MARIYA.T.P
AGED 70 YEARS
W/O. MAMMAD KOYA, THIRUVOTHE HOUSE, IRINGALLUR POST,
KOZHIKODE DISTRICT, PIN - 676304
- 2 MAIMOONATH.T.P
AGED 44 YEARS
D/O. MAMMAD KOYA, KARUVARAPOTTA HOUSE,
IRINGALLUR POST, KOZHIKODE DISTRICT, PIN - 676304

BY ADV P.C.MUHAMMED NOUSHIQ

RESPONDENTS/RESPONDENTS/STATE-DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 STATION HOUSE OFFICER
NALLALAM POLICE STATION,
KOZHIKODE DISTRICT, PIN - 673027
- 3 NISHA MOL
AGED 42 YEARS
D/O. MAMMED KOYA, KUNNATH HOUSE,
KAKKUTH, PERINTHALMANNA .P.O.,
MALAPPURAM DISTRICT, PIN - 679321



Cr1.M.C.No.491 of 2025

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BY ADVS.

SMT.C.SEENA, PUBLIC PROSECUTOR

SRI. ABDUL KAREEM N. FOR R2

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
18.03.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



C. JAYACHANDRAN, J.

Cr1.M.C.No.491 of 2025

Dated, this the 18th day of March, 2025

ORDER

B.S.Joshi and Others v. State of Haryana and another [(2003) 4 SCC 675] held that the offence under Section 498A can be quashed by the High Court exercising its inherent power under Section 482 Cr.P.C (now Section 528 of BNSS, 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 Section 498A and 406 of the Indian Penal Code.

3. In the facts at hand, petitioners are accused no.2 and 3 in Crime No.784/2016 of Nallalam Police Station, Kozhikode, now pending as C.C.No.385/2019 before the Judicial First Class Magistrate Court-I, Kozhikode. As per the final report, the offence alleged is under Section 498A, read with Section 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 defacto complainant/3rd respondent and the learned 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 was handed over. On perusal of the same, it is clear that the issues between the petitioners and the defacto complainant are settled and that she has no objection in quashing the case, as against the petitioners herein. 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-A2, wherein she would unequivocally state that the disputes have been amicably settled out of the Court and that they have decided to live separately. The defacto complainant would also swear that she has no grievance against the petitioners and that she does not intend to proceed against the petitioners, any further. 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. Learned Counsel for the defacto complainant/3rd respondent would also endorse that the quashment sought for can be allowed.



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.

In the circumstances, this Cr1.M.C. is allowed. Annexure-A1 Final Report in Crime No.784/2016 and all further proceedings in C.C.No.385/2019 of the Judicial First Class Magistrate Court-I, Kozhikode, as against the accused nos.2 and 3 (petitioners herein), are hereby quashed.

Sd/-

C. JAYACHANDRAN

JUDGE

SKP



APPENDIX OF CRL.MC 491/2025

PETITIONERS' ANNEXURES:

ANNEXURE A1	CERTIFIED COPY OF THE FINAL REPORT ALONG WITH FIR, FIS, STATEMENT AND MEMORANDUM OF EVIDENCE IN CRIME NO. 784 OF 2016 OF NALLALAM POLICE STATION, KOZHIKODE DISTRICT
ANNEXURE A2	AFFIDAVIT DATED 10.01.2025 OF 3RD RESPONDENT

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.A. TO JUDGE