

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

FRIDAY, THE 28TH DAY OF JUNE 2013/7TH ASHADHA, 193

Crl.MC.No. 2649 of 2013

**[AGAINST C.C. NO.779/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, KOYILANDY]**
.....

PETITIONER/ACCUSED:

**RASHEED, S/O.UMMER KOYA, AGED 38 YEARS,
PALAYATH HOUSE, ELATHOOR POST, KOZHIKODE DT.,**

**BY ADVS.SRI.P.R.SREEJITH,
SRI.M.PROMODH KUMAR.**

RESPONDENTS/COMPLAINANT & STATE:

- 1. SAHIRA, W/O.RASHEED, AGED 32 YEARS,
EELATTUPARAMBIL, EDAKKULAM POST,
KOYILANDY, KOZHIKODE DISTRICT - 673 306.**
- 2. AISHABEE, W/O.UMMERKOYA, AGED 50 YEARS,
PALAYATH HOUSE, ELATHOOR POST, KOZHIKODE DISTRICT- 673 303.**
- 3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM -682 031.**

**R1 BY ADV. SRI.K.B.SAJEESH,
R3 BY PUBLIC PROSECUTOR SRI. N. SURESH.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28-06-2013, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Prv.

CRL.M.C. NO.2649/2013:

APPENDIX

PETITIONER'S ANNEXURES:

**ANNX.1 - TRUE COPY OF THE F I R IN CRIME NO.71/2009 OF
ELATHUR POLICE STATION.**

**ANNX.2 - THE NOTARIZED AFFIDAVIT DATED 22-6-2013 SWORN BY THE 1ST
RESPONDENT IN ORIGINAL.**

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.A. TO JUDGE.

Prv.

V.K.MOHANAN, J.

Crl.M.C.No.2649 of 2013

Dated this the 28th day of June, 2013

O R D E R

The above petition is filed under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C.') at the instance of the petitioner, who are accused in C.C.No.779/2009 of the Judicial First Class Magistrate Court, Koyilandy which is a case instituted upon the police report [in Crime No.71 Of 2009 of Elathur Police Station] for the offences punishable under Sections 498(A), 406 r/w 34 of I.P.C. with a prayer to quash Annesure-I FIR in Crime No.71/2009 of Elathur Police Station registered at the instance of the first respondent and terminate the proceedings against the petitioner and the 2nd respondent in C.C.No.779/2009 of the Judicial First Class Magistrate Court, Koyilandy as the matter is settled out of court.

2. The allegation in the above case is that the accused married the defacto complainant on 22.09.2003 in accordance with the custom and rites prevailing among the Islam religion and while living as husband and wife in her matrimonial house, she was subjected to harassment, both physically and mentally, demanding more dowry and thereby committed the offences punishable under Sections 498(A) and 406 r/w 34 of

Indian Penal Code and now, the case of the petitioner is that the matter is settled out of court.

3. Heard the learned counsel for the petitioner as well as the respondents one and two. I have also heard the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted that during the pendency of the above case, the matter is settled amicably between the parties to the dispute which is the subject matter of the above case. Therefore, the continuation of the proceedings in the above case is abuse of process of law and proceedings.

5. The learned counsel for the respondents one and two who on the basis of specific instruction received from the respondents submitted that the above respondents, who are the de facto complainant/victim/injured do not intend to proceed any further against the petitioner and they have no grievance against him.

6. I have carefully considered the above submissions of the respective counsel. I have verified the documents and materials produced along with the above petition. In the given facts and circumstances of the case and especially in the light

of the settlement arrived between the parties to the dispute, the learned Public Prosecutor has also no objection in allowing the above petition.

7. Having regard to the facts and circumstances involved in the case, it can be seen that the offences involved in the above case are only Sections 498(A) and 406 r/w 34 of Indian Penal Code which are more or less personal in nature and no public interest is involved. It is pertinent to note that though such offences are involved, the real parties to the dispute approached this Court after having amicably settled the matter. From the submission made by the counsel for the respondents one and two, it appears to me that the injured/the victim/the de facto complainant has no further grievance against the petitioner/s accused in the light of the settlement arrived by them. In this juncture, it is relevant to note the decisions of the Honourable Apex Court reported in **Gian Singh v. State of Punjab** [2012(4) KLT 108(SC)] and **Jitendra Raghuvanshi and Others v. Babita Raghuvanshi and another** [2013 (1) KLD 817 (SC)]. In Gian Singh's case, the Supreme Court has held as follows:-

"57. The position that emerges from the above discussion can be summarised

thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under S.320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz;(i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed..

It is further held as follows:-

"..... But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial,mercandile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and

compromise with the victim.....”

Further, in **Jitendra Raghuvanshi's case**, the Apex Court has held as follows:-

“7. It is not in dispute that matrimonial disputes have been on considerable increase in recent times resulting in filing of complaints under Sections 498A and 406 of I.P.C. not only against the husband but also against the relatives of the husband. The question is when such matters are resolved either by the wife agreeing to rejoin the matrimonial home or by mutual settlement of other pending disputes for which both the sides approached the High Court and jointly prayed for quashing of the criminal proceedings or the FIR or complaint by the wife under Sections 498A and 406 of I.P.C., whether the prayer can be declined on the sole ground that since the offences are non-compoundable under Section 320 of the Code, it would be impermissible for the court to quash the criminal proceedings or FIR or complaint.

8. It is not in dispute that in the case on hand subsequent to the filing of the criminal complaint under Sections 498A and 406 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, with the help and intervention of family members, friends and well-wishers, the parties concerned have amicably settled their differences and executed a compromise/settlement. Pursuant thereto, the appellants filed the said compromise before the Trial Court with a request to place the same on record and to drop the criminal proceedings against the appellants herein. It is also not in dispute that in addition to the mutual settlement

arrived at by the parties, respondent/-wife has also filed an affidavit stating that she did not wish to pursue the criminal proceedings against the appellants and fully supported the contents of the settlement deed. It is the grievance of the appellants that not only the Trial Court rejected such prayer of the parties but also the High Court failed to exercise its jurisdiction under Section 482 of the Code only on the ground that the criminal proceedings relate to the offences punishable under Sections 498A and 406 of IPC which are non-compoundable in nature."

"12. In our view, it is the duty of the Courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

13. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law, in order to do complete justice in the matrimonial matters, the Courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to

state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed."

Considering the particular facts and circumstances in this case, it can be seen further that the criminal proceedings are initiated consequent to the matrimonial dispute arose among the parties and both the disputes are now amicably settled between the parties. According to me, in the light of the facts and circumstances involved in the present case and particularly in view of the settlement arrived in the present case, the dictum laid in the above decisions will be squarely applicable in the present case. According to me, as the parties to the dispute settled the issues amicably, it is the duty of this Court to promote such settlement, instead of compelling the parties to go on with the dispute. It is pertinent to note that since the matter is settled out of court, in the event of proceeding with the trial, there would not have any fruitful prosecution, resulting the conviction of the accused, rather the net result would be sheer waste of judicial time and abuse of

process of the court and proceedings. Thus, according to me, following the decisions cited supra, this Crl.M.C.can be allowed granting the relief as sought for.

In the result, this Crl.M.C. is allowed, quashing Annexure-I F.I.R and all further proceedings pending against the petitioners in C.C.No.779 of 2009 of the Judicial First Class Magistrate Court, Koyilandy and all further proceedings thereto.

V.K.MOHANAN
Judge

mns/