

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

THURSDAY, THE 27TH DAY OF JUNE 2013/6TH ASHADHA, 1935

Crl.MC.No. 2626 of 2013

**AGAINST THE ORDER/JUDGMENT IN CC NO. 661/2013 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT I, ALUVA**

....
**CRIME NO. 787/2011 OF ALUVA WEST POLICE STATION (ALANGAD) ,
ERNAKULAM**
....

NAME AND ADDRESS OF THE PETITIONER:ACCUSED:

1. SUBAIR, AGED 36 YEARS,
S/O. KHADERPILLA, KANIYAMKODATH HOUSE, NARAYANATH ROAD,
KARUMALLOOR KARA, KARUMALLOOR VILLAGE, PARUR TALUK.
2. AMINA, AGED 62 YEARS,
W/O. KHADERPILLA, KANIYAMKODATH HOUSE, NARAYANATH ROAD,
KARUMALLOOR KARA, KARUMALLOOR VILLAGE, PARUR TALUK.

**BY ADVS.SRI.V.K.SIDHIK
SMT.SAJITHA SIDHIK
SRI.M.M.ALIKUNJU**

**NAME AND ADDRESS OF THE RESPONDENT:
STATE & DEFACTO COMPLAINANT:**

1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, KERALA HIGH COURT.
2. THE SUB INSPECTOR OF POLICE,
ALUVA WEST POLICE STATION-683 101.
3. HAFILA, AGED 27 YEARS,
D/O. BASHEER, PALLIPPADATH HOUSE, KAIPPAMANGALAM KARA,
KAIPPAMANGALAM VILAGE, KODUNGALLOOR TALUK,
THRISSUR DISTRICT-680 664.

**R1 & R2 BY PUBLIC PROSECUTOR SMT. S.HYMA
R3 BY ADV. SRI.T.K.NAZAR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-06-2013, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Crl.MC.No. 2626 of 2013

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A1: A TRUE COPY OF THE F.I.R IN CRIME NO.787/11 OF ALUVA WEST
POLICE STATION.**

**ANNEXURE 2: A TRUE COPY OF THE F.I.S IN CRIME NO.787/11 OF ALUVA WEST
POLICE STATION.**

**ANNEXURE 3: A TRUE COPY OF THE CHARGE SHEET IN CRIME NO.787/11 OF
ALUVA WEST POLICE STATION.**

**ANNEXURE 4: PHTOCOPY OF THE AGREEMENT DATED 04/02/12 EXECUTED
BETWEEN THE DEFACTO COMPAINANT AND THE PETITIONERS.**

ANNEXURE 5: THE AFFIDAVIT FILED BY THE 3RD RESPONDENT DATED 22/06/13.

RESPONDENT(S)' ANNEXURES:

N I L

/TRUE COPY/

P.A.TO JUDGE

Kss

V.K.MOHANAN, J.

CrI.M.C. No. 2626 of 2013

Dated this the 27th day of June, 2013

ORDER

The above petition is filed under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C.') at the instance of the petitioners, who are accused in Crime No. 787/2011 of Aluva West Police Station for the offences punishable under Section 498A of I.P.C., with a prayer to the Annexure A1 FIR and Annexure A3 charge sheet in Crime No. 787/2011 of Aluva West Police Station in C.C.No.661/13 on the file of the Judicial First Class Magistrate Court-I, Aluva as the matter is settled out of court.

2. The allegation in the above case is that the first petitioner married the 3rd respondent, defacto complainant on 23/11/2009 according to the Islamic law and custom. After the marriage the 3rd respondent was residing along with the petitioners till June 2011 and during that period the petitioners 1 and 2, physically and mentally tortured her by demanding more money towards dowry. Thus the accused has committed offences punishable under Section 498A. Now, the case of the petitioner is that during pendency of the above case the matter is settled out of court and the spouses are now residing

together.

3. Heard the learned counsel for the petitioners as well as the third respondent. I have also heard the learned Public Prosecutor.

4. The learned counsel for the petitioners 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 third respondent who on the basis of specific instruction received from the respondent submitted that the above respondent, who is the de facto complainant does not intend to proceed any further against the petitioners and she has no grievance against them.

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 Section 498A of I.P.C., 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 third respondent, it appears to me that the de facto complainant has no further grievance against the petitioners accused in the light of the settlement arrived by them. In this juncture, it is relevant to note that the Honourable Apex Court, in the decision reported in **Jitendra Raghuvanshi and Others v. Babita Raghuvanshi and another** [2013 (1) KLD 817(SC)], 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."

In the present case, the only offence involved is under Section 498A of I.P.C. The criminal proceedings for the said offence originated from the matrimonial issues, which are now settled. Consequently, the parties want a quietus to the criminal case as well.

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 decision 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 Annexures - A1 & A3 and all further proceedings pending against the petitioners in C.C.No.661/13 of the Judicial First Class Magistrate Court-I, Aluva.

Sd/-

**V.K.MOHANAN,
JUDGE**

AS