



2025:KER:10151

CRL.MC NO.5182 OF 2023

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 4TH DAY OF FEBRUARY 2025 / 15TH MAGHA, 1946

CRL.MC NO. 5182 OF 2023

CRIME NO.493/2020 OF NILAMBUR POLICE STATION, MALAPPURAM

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.357 OF 2021 OF

JUDICIAL MAGISTRATE OF FIRST CLASS ,NILAMBUR

PETITIONERS/ACCUSED NOS.1 AND 3:

- 1 S.ANIL
AGED 51 YEARS
GOPI SADANAM, PUZHAVATH KARA, CHANGANASSERY P.O.,
KOTTAYAM, PIN - 686101
- 2 JAYASREE SANKARAN NAIR
AGED 78 YEARS
W/O SANKARAN NAIR, GOPI SADANAM, PUZHAVATH KARA,
CHANGANASSERY P.O., KOTTAYAM, PIN - 686101

BY ADVS.
C.R.SYAMKUMAR
HELEN P.A.
ATHUL ROY
ARUN ROY
SOORAJ T.ELENJICKAL
STEPHANIE SHARON

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, KOCHI- (CRIME NO.493/2020 OF NILAMBUR



2025:KER:10151

CRL.MC NO.5182 OF 2023

2

POLICE STATION), PIN - 682031

**2 SABITHA K.V.,
D/O. GANGADHARAN, AGED 48 YEARS, TEACHER, C.S.
ACADEMY CAMPUS, VALLIPURATHANPALAYAM, ERODE,
TAMIL NADU, PIN - 638112**

E.C. BINEESH-PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04.02.2025, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**



2025:KER:10151

CRL.MC NO.5182 OF 2023

3

C.JAYACHANDRAN, J.

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CrL.M.C No.5182 of 2023

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Dated this the 4th day of February, 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:



2025:KER:10151

CRL.MC NO.5182 OF 2023

4

"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



2025:KER:10151

CRL.MC NO.5182 OF 2023

5

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 nos.1 and 3 in Crime No.493/2020 of Nilambur Police Station, Malappuram, now pending as C.C.No.357/2021 before the Judicial First Class Magistrate Court, Nilambur. The offences alleged are under Section 498A, 406 read with Section 34 of the Indian Penal Code. The petitioners



2025:KER:10151

CRL.MC NO.5182 OF 2023

6

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 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 recorded over the phone, 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 the marital tie between the 1st petitioner and the defacto complainant has been severed by way of a divorce by mutual consent. Wherefore, she is disinterested to proceed with the prosecution case, any further and that she has no objection in quashing the criminal proceedings against the petitioners.



2025:KER:10151

CRL.MC NO.5182 OF 2023

7

Moreover, this Court has also perused Annexure-II agreement, executed between the 1st petitioner/ 1st accused and the 2nd respondent/defacto complainant, which also speaks about the amicable settlement between the parties. This Court is therefore convinced that the settlement arrived at is genuine and bonafide.

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



2025:KER:10151

CRL.MC NO.5182 OF 2023

8

secure the ends of justice. This Court also notice that the offence under Section 406 is compoundable, which is all the more a reason to accept the compromise between the parties.

In the circumstances, this Crl.M.C. is allowed. Annexure I Final Report in Crime No. 493/2020, and all further proceedings in C.C.No.357/2021 of the Judicial First Class Magistrate Court, Nilambur, are hereby quashed. This Court choose to quash the Final report and all further proceedings in the above Calender Case against the accused nos.1 and 3. The 2nd accused is no more, as per Annexure-IV death certificate, wherefore, the case against him will stand abated.

Sd/-

C . JAYACHANDRAN, JUDGE

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2025:KER:10151

CRL.MC NO.5182 OF 2023

APPENDIX OF CRL.MC 5182/2023

PETITIONER'S ANNEXURES

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| ANNEXURE -1 | THE CERTIFIED COPY OF THE FINAL REPORT DATED 16.04.2021 IN CRIME NO.493/2020 OF NILAMBUR POLICE STATION |
| ANNEXURE -II | THE TRUE COPY OF THE AGREEMENT DATED 17.02.2022 ENTERED UPON BETWEEN THE 1ST PETITIONER AND THE 2ND RESPONDENT |
| ANNEXURE -III | TRUE COPY OF THE JUDGMENT DATED 17.09.2022 IN O.P. NO. 194/2022 ON THE FILES OF THE FAMILY COURT MALAPPURAM |
| ANNEXURE IV | TRUE COPY OF THE DEATH CERTIFICATE DATED 16.10.2022 |