



2025:KER:3889

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 17TH DAY OF JANUARY 2025 / 27TH POUSHA, 1946

CRL.MC NO. 10277 OF 2024

CRIME NO.216/2023 OF PAYYOLI POLICE STATION, KOZHIKODE
AGAINST THE ORDER/JUDGMENT DATED IN CC NO.325 OF 2023 OF
JUDICIAL MAGISTRATE OF FIRST CLASS, PAYYOLI.

PETITIONERS/ACCUSED 1 TO 4:

- 1 SHUHAIB ABDUL KAREEM,
AGED 31 YEARS
S/O ABDUL KAREEM NEYMATH (HOUSE) KOTTAKKAL(PO)
IRINGAL KOYILANDY TALUK, KOZHIKODE DISTRICT., PIN
- 673521
- 2 JAMEELA,
AGED 55 YEARS
W/O ABDUL KAREEM NEYMATH (HOUSE) KOTTAKKAL(PO)
IRINGAL KOYILANDY TALUK, KOZHIKODE DISTRICT, PIN
- 673521
- 3 ABDUL KAREEM,
AGED 64 YEARS
S/O IBRAHIM NEYMATH (HOUSE) KOTTAKKAL(PO)
IRINGAL KOYILANDY TALUK, KOZHIKODE DISTRICT, PIN
- 673521
- 4 SHABNA,
AGED 35 YEARS
W/O RASHID NEYMATH (HOUSE) KOTTAKKAL(PO)
IRINGAL KOYILANDY TALUK, KOZHIKODE DISTRICT, PIN
- 673521

BY ADVS.
P.ABDUL JALEEL
SHARIKHA C.H.
ATHUL KRISHNA N.S.
ROSHNA K.K.



2025:KER:3889

CRL.MC 10277/2024

2

RESPONDENTS:

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

- 2 **FATHIMATHULBASHARIYA,
AGED 24 YEARS
D/O BASHEER, CHEYANBATH HOUSE, KOTTAKKAL- POST,
IRINGAL KOYILANDY TALUK, KOZHIKODE DISTRICT, PIN
- 673521**

**BY ADVS.
SRI.C.N.PRABHAKARAN (Sr.PP)
SHAHAN K. (FOR R2)**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 17.01.2025, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**



C.JAYACHANDRAN, J.

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CrL.M.C No.10277 of 2024
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Dated this the 17th day of January, 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 the accused nos.1 to 4 in Crime No.216/2023 of Payyoli Police Station, Kozhikode, now pending as C.C.No.325/2023 before the Judicial First Class Magistrate Court, Payyoli. The offences alleged are under Sections 498A and Section 406 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 2nd 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 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 1st petitioner and the defacto complainant are legally separated. The defacto complainant is no longer interested to proceed with the prosecution any more and that she 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 (2nd respondent herein) as Annexure A5, wherein she would unequivocally state that the disputes have been settled amicably and the complaint stemmed from mistake of facts. The defacto complainant would also swear that she has no grievance against the petitioners and that she has no objection in quashing the criminal proceedings against the petitioners. It is also stated that the affidavit is sworn to on her own volition, without any compulsion, whatsoever.



Moreover, I had also perused Annexure A4, notarized agreement between the 1st petitioner/accused no.1 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. Learned counsel for the defacto complainant/ 2nd 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



2025:KER:3889

CRL.MC 10277/2024

8

quashment sought for would secure the ends of justice.

In the circumstances, this Crl.M.C. is allowed. Annexure A1 Final report in Crime No. 216/2023, and all further proceedings in C.C.No.325/2023 of the Judicial First Class Magistrate Court, Payyoli are hereby quashed.

Sd/ -

C.JAYACHANDRAN, JUDGE

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**APPENDIX OF CRL.MC 10277/2024****PETITIONER ANNEXURES**

Annexure A1	THE CERTIFIED COPY OF FINAL REPORT DATED 28.06.23 JFCM PAYYOLI
Annexure A2	THE CERTIFIED COPY OF F.I.R DATED 27.04.2023 IN CRIME NO.216/23 OF PAYYOLI POLICE STATION
Annexure A3	CERTIFIED COPY OF COMPLAINT FILED BY DE-FACTO COMPLAINANT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURTPAYYOLI, KOZHIKODE DISTRICT DATED 20.04.2023
Annexure A4	COPY OF NOTARIZED AGREEMENT DATED 19/11/2024
Annexure A5	THE ORIGINAL AFFIDAVIT OF THE 2ND RESPONDENT DATED 30.11.2024