



2025:KER:7886

CRL.MC NO.10313 OF 2024

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 28TH DAY OF JANUARY 2025 / 8TH MAGHA, 1946

CRL.MC NO. 10313 OF 2024

CRIME NO.206/2024 OF NALLALAM POLICE STATION, KOZHIKODE
AGAINST THE ORDER/JUDGMENT DATED IN CC NO.230 OF 2024 OF
JUDICIAL MAGISTRATE OF FIRST CLASS -V, KOZHIKODE

PETITIONERS/ACCUSED 1 AND 2:

- 1 UMMERKOYA
AGED 30 YEARS
S/O HASSAN KUDALIL HOUSE, VELIMUKKU CHELARI P.O.,
MALAPPURAM DT, PIN - 673636
- 2 BEEPATHUMMA
AGED 64 YEARS
W/O USMAN KUDALIL HOUSE, VELIMUKKU CHELARI P.O.
MALAPPURAM DT, PIN - 673636

BY ADV SMT.PRAJISHA M.

RESPONDENTS/STATE-DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 THE S.H.O.
NALLALAM POLICE STATION, KOZHIKODE DT.,
PIN - 673027.



2025:KER:7886

CRL.MC NO.10313 OF 2024

2

**3 NILOOFAR SITHARA K.P
D/O MUHEMMAD RAFI K.P AGED 23 YEARS SAFIYA MANZIL
KUNDAYITHODU KOLATHARA KOZHIKODE DT, PIN - 673513**

**BY ADV SAHEERA K.
MAYA -PP**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28.01.2025, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**



2025:KER:7886

CRL.MC NO.10313 OF 2024

3

C.JAYACHANDRAN, J.

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CrL.M.C No.10313 of 2024

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Dated this the 28th 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:



2025:KER:7886

CRL.MC NO.10313 OF 2024

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:7886

CRL.MC NO.10313 OF 2024

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 the accused persons in Crime No.206/2024 of Nallalam Police Station, Kozhikode, now pending as C.C.No.230/2024 before the Judicial First Class Magistrate Court-V, Kozhikode. The offences alleged are under Section



2025:KER:7886

CRL.MC NO.10313 OF 2024

6

498A, 406 and 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 3rd 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 out of the Court and that she is no longer interested to prosecute the case. 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-3, wherein she



2025:KER:7886

CRL.MC NO.10313 OF 2024

7

would unequivocally state that the issues between the petitioners and the defacto complainant have been settled and that the complaint stemmed from misunderstanding. Moreover, the defacto complainant has got Talaq from the 1st petitioner and that she is now residing with her father. The defacto complainant would also swear that she has voluntarily agreed to withdraw the prosecution case and that 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



2025:KER:7886

CRL.MC NO.10313 OF 2024

8

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. This Court also notice that 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-1 FIR & FIS, Annexure-2 Final Report and all further proceedings in C.C.No.230/2024 of the Judicial First Class Magistrate Court-V, Kozhikode, are hereby quashed.

Sd/-

C. JAYACHANDRAN, JUDGE

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2025:KER:7886

CRL.MC NO.10313 OF 2024

9

APPENDIX OF CRL.MC 10313/2024

PETITIONER'S ANNEXURES

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| ANNEXURE 1 | CERTIFIED COPY OF THE FIR &FIS IN CRIME NO. 206/2024 OF NALLALAM POLICE STATION, KOZHIKODE DISTRICT DATED 14.03.2024 |
| ANNEXURE 2 | CERTIFIED COPY OF TRUE COPY OF THE CHARGE SHEET AND FINAL REPORT FILED IN CC NO 230/2024 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT V, KOZHIKODE. |
| ANNEXURE 3 | 3. ORIGINAL AFFIDAVIT SWORN BY THE 3RD RESPONDENT DATED 19.11.2024 |