

(2025) 01 KL CK 0117

High Court Of Kerala

Case No: Criminal Miscellaneous Petition No. 8651 Of 2018

V.Karthyayani

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision:** Jan. 17, 2025**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 482
- Indian Penal Code, 1860 - Section 498A, 506(i)

**Hon'ble Judges:** A. Badharudeen, J**Bench:** Single Bench**Advocate:** T.K.Vipindas, Jibu T.S., A.Arunkumar**Final Decision:** Dismissed

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**Judgement**

A. Badharudeen, J

1. Accused Nos.2 and 3 in C.C.No.1326/2018 on the files of the Judicial First Class Magistrate Court-1, Hosdurg, arose out of Crime No.616/2016 of

Hosdurg police station, seek the following relief in this Criminal Miscellaneous Case, filed under Section 482 of the Code of Criminal Procedure (for

short, â€œthe Cr.P.Câ€™ hereinafter):

â€œTo quash all further proceedings as against the petitioners in Crime No.616/2016 of Hosdurg Police Station now pending as C.C.1326/2018 on the file of Judicial First Class Magistrate Court-I, Hosdurg in the interest of Justice.â€

2. Heard the learned counsel for the 2nd petitioner/the 3rd accused, since the 1st petitioner/2nd accused is now no more. Also heard the learned

counsel for the de facto complainant as well as the learned Public Prosecutor, in detail. Perused the case diary.

### 3. Short facts:

This crime was registered on the basis of a complaint lodged by the de facto complainant before the District Police Chief, Kasaragod, when registration of FIR was directed by the District Police Chief, Kasaragod. In the complaint, the allegation is that, the marriage in between the de facto complainant and the 1st accused (who is the husband of the de facto complainant) was solemnized on 16.3.2005 and thereafter, she started to reside along with the parents of the 1st accused and one Vijayakumar, his brother. Later, the 1st accused went abroad and constructed a house in his 5 ½ cents property and the de facto complainant and her child started to reside therein. According to the de facto complainant, the 1st accused used to manhandle her when he returned from Gulf, after consuming alcohol and the other accused also joined in company with him. Further allegation is that, after the house-warming ceremony, when the 1st accused left abroad, the respondents in the complaint reached the house and asked her to go out of the house and commented that the de facto complainant was unfit to reside in such a good house. Later, the 1st accused also asked her to go out of the house, over phone. The further allegation is that, thereafter, on 28.8.2015, the 1st accused came back from Gulf and directed the de facto complainant to give the key of the house to his mother. Later, he went back to Gulf on 6.10.2015. On 27.10.2015, he returned from Gulf without informing the same to the de facto complainant and transferred the property, having an extent of 5 ½ cents and the house therein in the name of his mother and thereafter, the respondents in the complaint sent back the 1st accused to Gulf. Now, the de facto complainant has been staying at the house due to the intervention of Vanitha Cell. On these facts, prosecution alleges commission of offences punishable under Sections 498A and 506(i) of the Indian Penal Code (for short, "the IPC" hereinafter) by the accused persons.

4. While seeking quashment of the proceedings, the learned counsel for the 2nd petitioner/the 3rd accused raised specific contention that, going by

Annexure A1 complaint lodged before the District Police Chief, no specific allegation raised against the 2nd petitioner, in any manner, even though

generally there are allegations. According to the learned counsel, in order to succeed a prosecution against the relatives of the husband, there must be specific allegations and mere general allegations are quite insufficient to array them as accused. Therefore, the entire matter would require quashment.

5. Zealously opposing quashment, the learned counsel appearing for the de facto complainant read out page Nos.3 and 4 of the complaint wherein, it was specifically alleged that all the respondents in the complaint reached the house of the 1st accused where the de facto complainant was residing, on the 5th day of house-warming and asked her to vacate the house, on asserting that she was unfit to reside in such a good house. The learned counsel also relied on the allegations regarding threats on the part of the respondents in the complaint to get the property transferred in the name of the mother and the brothers of the 1st accused in this regard.

6. The learned Public Prosecutor also supported the arguments of the learned counsel appearing for the de facto complainant and pointed out the recitals in the additional statement of the de facto complainant specifically pointing the involvement of Sri.Narayanan, who is the 2nd petitioner/3rd accused in this crime.

7. On perusal of Annexure A1 complaint, as pointed out by the learned counsel appearing for the de facto complainant and the learned Public Prosecutor, specific instance of threat, by asking the de facto complainant to vacate from the newly constructed house on the 5th day of house-warming, is stated in the complaint. In the additional statement also, there is specific allegation that for a period of 45 days, the parents of the de facto complainant also resided at the new house along with the de facto complainant and left after 45 days. Later, the mother of the 1st accused and the 2nd petitioner herein reached the house and abused the de facto complainant, since they were dissatisfied with the residence of her parents along with her. Thereafter, the de facto complainant invited the mother of the 1st accused to reside along with her. But she did not accept and instead, the father of the de facto complainant resided along with her. During her stay at the house along with her father, it is specifically alleged that accused Nos.2 and

3/the petitioners herein came there and threatened her to vacate the house and abused her. Again, there is allegation that, on 28.8.2015, the 1st accused came to the house and stayed for 35 days. During this time, the 1st accused and his brother/the 2nd petitioner herein informed the de facto complainant that the property and the house therein would be transferred in the name of their mother and asked the de facto complainant to leave the house, otherwise she would be killed. Later, transfer of the house in the name of the mother is also alleged.

8. Thus, it appears that, apart from Annexure A1 complaint, in the additional statement, there are specific allegations against the 2nd petitioner and the same are not mere general allegations.

9. Insofar as the law regarding the essentials to consider quashment of proceedings for the offence under Section 498A of the IPC, the law is settled.

In the decision in *Shyamala Bhasker v. State of Kerala* reported in [2024 KHC OnLine 429], this Court considered the essentials to invoke the

inherent powers under 482 Cr.P.C., while dealing with a case where offence under section 498A of IPC, was involved. In paragraph No.6, it was

held as under:

“6. In order to address the rival contentions, reference to Section 498A of IPC is necessary, which reads as under:

“Husband or relative of husband of a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such

woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation. “For the

purposes of this section, “cruelty means” (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave

injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to

coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person

related to her to meet such demand.

Going by the definition, subjecting a woman to cruelty by husband or relative of the husband likely to drive the woman to commit suicide or to cause grave injury

or danger to life, limb or health (whether mental or physical) of the woman or harassment of the woman where such harassment is with a view to coerce her or any

person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet

such demand is an offence. In the decision in Achin Gupta v. State of Haryana [2024 KHC OnLine 6257 : 2024 (3) KHC SN 24 : 2024 LiveLaw (SC) 343 : 2024

KLT OnLine 1481], the Apex Court considered earlier decisions of the Apex Court dealing with Section 498A of IPC and it was held that general and sweeping

allegations without mentioning specific instances of criminal conduct is an abuse of the process of court and in such cases the courts owe a duty to subject the

allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are

made only with the sole object of involving some individuals in a criminal charge, more particularly, when a prosecution arises from a matrimonial dispute.

10. Thus, the legal position is not in dispute that when allegations of cruelty against the relatives of the husband are alleged so as to canvass

commission of offence punishable under Section 498A of the IPC by them, general and sweeping allegations are quite insufficient and there must be

specific allegations with certainty. In such cases, the power of the court to quash the proceedings shall be invoked. But the scenario is different where

the allegations are specific against the relatives of the accused. Such cases, trial is necessary and quashment prayer would necessarily fail. It is

noticed that the relatives of the husband being roped into prosecution alleging commission of offence under Section 498A of the IPC on the basis of

general allegations without specifying the over acts with certainty. At the same time, it is not possible to lay down a ratio that allegations against the

relatives of the husband generally to be viewed as false as a thumb rule and to drop proceedings against them, without addressing the allegations. In

fact, the allegations should be evaluated in a case to case basis.

11. In the instant case, as per the complaint as well as the additional statement given by the de facto complainant, there are specific allegations against

the 2nd petitioner/the 3rd accused prima facie to show that he has committed offence punishable under Section 498A of the IPC as well as under

Section 506(i) of the IPC, warranting trial. Therefore, the quashment prayer is liable to fail.

12. In the result, this petition is dismissed with direction to the 2nd petitioner/the 3rd accused to face trial and take his defence before the trial court.

Since the 1st petitioner/2nd accused is now no more, the case against her stands abated and the petition at her instance stands abated.

The interim order of stay granted by this Court, stands vacated.

Registry is directed to forward a copy of this order to the trial court, for information and further steps.