



2024:KER:85565

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

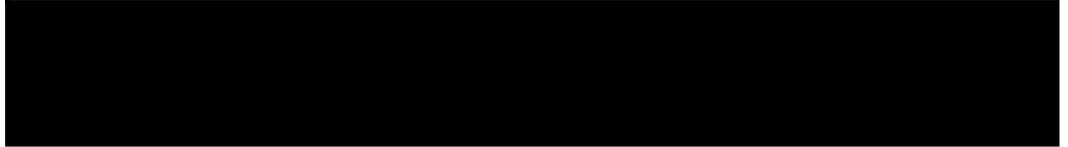
FRIDAY, THE 15TH DAY OF NOVEMBER 2024 / 24TH KARTHIKA,

1946

CRL.MC NO.9443 OF 2022

CRIME NO.218/2022 OF KUTHUPARAMBA POLICE STATION, KANNUR
CC NO.618 OF 2022 OF JUDICIAL MAGISTRATE OF FIRST
CLASS, KUTHUPARAMBA

PETITIONER/3RD ACCUSED:

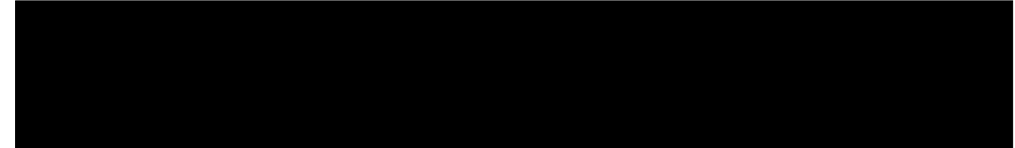


BY ADVS.
THAREEQ ANVER K.
K.SALMA JENNATH
K.SHAMSUDHEEN
K.C.KHAMARUNNISA
RASSAL JANARDHANAN A.
ARUN CHAND
SHAHNOY SHAJI
GOVIND G. NAIR

RESPONDENTS/STATE, DE FACTO COMPLAINANT:

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

2



R1 BY PUBLIC PROSECUTOR SRI.M.P.PRASANTH
R2 BY ADVS.
P.S.BINU
K.SEENA (K/1383/1995)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 7.11.2024, THE COURT ON 15.11.2024, PASSED THE
FOLLOWING:

**CR****ORDER**

Dated this the 15th day of November, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'the Cr.P.C.' hereinafter) to quash Annexure 1 Final Report in C.C.No.618/2022 on the files of the Judicial First Class Magistrate Court, Kuthuparamba, arose out of Crime No.218/2022 of the Kuthuparamba police station, Kannur, and all further proceedings thereof. The petitioner herein is the 3rd accused in the above case.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the de facto complainant and the learned Public Prosecutor.

3. In a nutshell, the prosecution alleges commission of offence punishable under Section 498A r/w Section 34 of the Indian Penal Code (for short, 'the IPC' hereinafter) by the accused and the foundation for the said offence stems from the plank of marriage of the 1st accused and the de facto



complainant on 8.4.2019. The specific allegation is that after the marriage, while the de facto complainant was staying at the matrimonial home, she was subjected to persecution by the 1st accused, who is her husband, the 2nd accused, father-in-law of the de facto complainant and the 3rd accused, who is the wife of the elder brother of the 1st accused.

4. While seeking quashment of the proceedings, the learned counsel for the petitioner pointed out two legal aspects. The first point argued by the learned counsel for the petitioner is that, since the 3rd accused/the petitioner herein is the wife of the elder brother of the 1st accused, she would not come under the purview of the term 'relative' dealt under Section 498A of the IPC. According to the learned counsel for the petitioner, even though the term 'relative' is not defined in the IPC or under Section 498A of the IPC, explanation to Section 176 of the Cr.P.C., the expression 'relative' means parents, children, brothers, sisters and spouse and nobody else. The learned counsel further argued that, in the pari materia provision viz., Section 196 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (for short, 'the BNSS' hereinafter)



also, the same definition is engrafted. According to the learned counsel for the petitioner, as per Section 2(39) of the Bharatiya Nyaya Sashhita, 2023 (for short, 'the BNS hereinafter), it has been provided that, words and expressions used but not defined in Sanhita, but defined in the Information Technology Act, 2000 and the BNSS, 2023 shall have the meanings respectively assigned to them in that Act and Sanhita. Therefore, explanation appended to Section 176 of the Cr.P.C. and Section 196 of the BNSS to be read to understand the word 'relative' mentioned in Section 498A of the IPC. The learned counsel placed decision of the Apex Court in **U.Suvetha v. State & Ors.** reported in [(2009) 6 SCC 757], where the Apex Court considered the expression relative of a husband of the woman occurring in Section 498A of the IPC, while dealing with the case of a concubine. After elaborately considering the other earlier decisions, the Apex Court held that the status of relative must be conferred either by blood or marriage or adoption and if no marriage has taken place, the question of one being relative of another would not arise. In the said decision, the Apex Court dealt



with the term 'relative' in paragraph No.12 as under:

12. In the absence of any statutory definition, the term `relative' must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or grand-daughter of an individual or the spouse of any person. The meaning of the word `relative' would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption.

The word `relative' has been defined in P. Ramanatha Aiyar

Advanced Law Lexicon - Volume 4, 3rd Edition as under :-

"Relative, "RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act].

The expression "RELATIVE" means a husband wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act].

"RELATIVE" means in relation to the deceased,

- a) the wife or husband of the deceased;*
- b) the father, mother, children, uncles and aunts of the deceased,*



and

c) any issue of any person falling, within either of the preceding sub-clauses and the other party to a marriage with any such person or issue [Estate Duty Act].

A person shall be deemed to be a relative of another if, and only if,

a) they are the members of a Hindu undivided family, or

b) they are husband and wife; or

c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].

"RELATIVE" in relation to an individual means-

a) The mother, father, husband or wife of the individual, or

b) a son, daughter, brother, sister, nephew or niece of the individual, or

c) a grandson or grand-daughter of the individual, or

d) the spouse of any person referred to in Sub- clause (b) [Income tax Act].

"RELATIVE" means –

1) spouse of the person ;

2) brother or sister of the person ;



3) *brother or sister of the spouse of the person;*

4) *any lineal ascendant or descendant of the person;*

5) *any lineal ascendant or descendant of the spouse of the person;*

[Narcotic Drugs and Psychotropic Substances Act]."

Random House Webster's Concise College Dictionary defines 'relative' at page 691 to mean :

"Relative n. 1. a person who is connected with another or others by blood or marriage, 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else; not absolute or independent: Happiness is relative.



7. *having relation or connection.* 8. *having reference : relevant; pertinent (usually fol. by to): two facts relative to the case.* 9. *correspondent; proportionate:* 10. *depending for significance upon something else: "Better" is a relative term.* 11. *of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called."* 12. *(of a musical key) having the same key signature as another key: a relative minor."*

The learned counsel for the petitioner also placed single bench decision of the Andhra Pradesh High Court in **Shaik Riayazun Bee v. The State of A.P. and Ors.**] reported in **[MANU/AP/0190/2016]** to contend that, sister-in-law would not come under the purview of 'relative' for the purpose of Section 498A of the IPC.

5. The learned counsel for the de facto complainant pointed out that, in **U.Suvetha's** case (supra), the Apex



Court had not considered the case of brother's wife. Similarly, in **Shaik Riayazun Bee's** case (supra) also, the Andhra Pradesh High Court considered the case of a lady, who is the former wife of the complainant's elder brother, who was arrayed as 6th accused and held that she is not a relative for the purpose of Section 498A of the IPC. It is also pointed out that, in none of the decisions, the ratio laid to hold that the brother's wife living in a family set up along with the aggrieved wife is not a relative so as to attract offence under Section 498A of the IPC.

6. In fact, in **U.Suvetha's** case (supra), the Apex Court did not lay down a ratio that the wife of the brother of the husband is not relative for the purpose of Section 498A of the IPC.

7. Going by the definition of the word 'relative' described in paragraph No.12 in **U.Suvetha's** case (supra), generally, relative is a person related by blood, marriage or adoption. But under the Estate Duty Act, the definition is wide enough to include the wife or husband of the deceased, the father, mother, children, uncles, aunts of the deceased



and any issue of any persons falling, within either of the preceding sub-clauses and the other party to a marriage with any such person or issue. That apart, the Apex Court observed that in the case of members of a Hindu undivided family, parties who are husband and wife; or where one is related to the other in the manner indicated in Schedule I of Companies Act, 1956, the said parties also are relatives. Under the Income Tax Act, the Apex Court found the term 'relative' includes the mother, father, husband or wife of the individual, or a son, daughter, brother, sister, nephew or niece of the individual, or a grandson or grand-daughter of the individual, or the spouse of any person referred to in Sub-clause (b) of the Income Tax Act.

8. The mandate under Section 498A of the IPC is that, the husband or the relatives of the husband of a woman have to subject such woman to cruelty. Then, the question is, who are the relatives of the husband?

9. According to the learned counsel for the petitioner, as per Section 176 of the Cr.P.C., 'relative' means, parents, children, brothers, sisters and spouse and nobody else. But, in



various other definitions, the magnitude of the term 'relative' has been widened and the same confines to members of a Hindu undivided family, or the one who is related to the other in the manner indicated in Schedule I of Companies Act, 1956.

10. When the married woman starts to reside at the matrimonial home, where the siblings of the husband are also residing along with their spouses, it cannot be held that the spouses of the siblings would not fall under the definition of 'relative' for the purpose of Section 498A of the IPC. In such situations, no doubt, the relative of a husband includes the residents at the matrimonial home related to the husband, viz., mother, father, husband or wife of the individual, or a son, daughter, brother, sister, nephew or niece of the individual, or a grandson or grand-daughter of the individual, or the spouse of the siblings of the husband residing at the matrimonial home. Holding the said view, it could not be held in the instant case that the 3rd accused/petitioner herein, who is the wife of the elder brother of the 1st accused, would not come within the purview of the term 'relative' dealt under



Section 498A of the IPC and this challenge is found to be in the negative.

11. Coming to the second point raised by the learned counsel for the petitioner that even going by the allegations in the final report supported by the FIS, the only allegation is that of body shaming. The learned counsel for the de facto complainant read out the allegations in the FIS to contend that the same is cruelty. In the FIS, the allegation against the petitioner is that, the petitioner used to comment that the de facto complainant had no body shape and she was not suitable to Ragesh, who is the 1st accused, and that he could have obtained another beautiful woman as his wife. Further, the petitioner also commented that, whether the de facto complainant obtained degree in Medicine is a matter to be scrutinized and she compelled the mother-in-law to examine the same. Later, she herself collected the certificates and examined the same. Thereafter, due to the cruelty, at the instance of the husband, his father and the petitioner, the de facto complainant left the matrimonial house on 23.2.2022.

12. It is submitted by the learned counsel for the



petitioner that, when reading the explanation for the purpose of Section 498A of the IPC to understand the term cruelty, as defined in explanation (a) and (b), mere body shaming or doubting the educational qualification etc., would not come under the purview of the instances dealt under explanation (a) and (b) to Section 498A of the IPC and therefore, the recitals now available as against the petitioner from the prosecution records by itself would not make an offence. So, even otherwise, the petition is liable to succeed.

13. Explanation to Section 498A of the IPC deals with two contingencies as under:

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.

14. What are the overt acts which constitute cruelty for the purpose of Section 498A of the IPC, is to be gathered from the explanation (a) and (b) to Section 498A of the IPC. Explanation (a) provides that, 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, is cruelty. Similarly, explanation (b) provides that, 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, is cruelty. Therefore, in order to bring home an offence under Section 498A of the IPC, the above ingredients shall be satisfied. If some overt acts which would not in any way be 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, the same would not come within the definition of cruelty dealt under Section 498A of the IPC. Similarly, harassment of a woman by the relative without any element of coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand also would not come under the definition cruelty for the purpose of Section 498A of the IPC. Holding the law as above, when the overt acts herein, at the instance of the petitioner, are evaluated, body shaming and doubting the medical degree of the de facto complainant are the allegations against the petitioner. The overt acts, at the instance of the petitioner, prima facie to be read as wilful conduct which are of such nature to cause injury to the mental and physical health of the woman dealt under explanation (a) to Section 498A of the IPC.

In view of the discussion, this Crl.M.C. is liable to fail.

In the result, this petition stands dismissed.

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



2024:KER:85565

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

Sd/-
A. BADHARUDEEN
JUDGE

Bb



APPENDIX OF CRL.MC 9443/2022

PETITIONER'S ANNEXURES

- Annexure 1 THE TRUE COPY OF THE FINAL REPORT
DATED 14/05/2022 SUBMITTED BY THE SUB
INSPECTOR OF POLICE OF THE
KUTHUPARAMBA POLICE STATION OF KANNUR
DISTRICT BEFORE THE HON'BLE JUDICIAL
FIRST CLASS MAGISTRATE'S COURT,
KUTHUPARAMBA IN C.C.NO.618/2022
- Annexure 2 THE CERTIFIED COPY OF THE CRIMINAL
MISCELLANEOUS PETITION SUBMITTED BY
THE 2ND RESPONDENT ON 04/04/2022
BEFORE THE HON'BLE JUDICIAL FIRST
CLASS MAGISTRATE'S COURT, KUTHUPARAMBA

RESPONDENTS' ANNEXURES : NIL