

Kerala High Court

Alikoya vs State Of Kerala on 7 March, 2007

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl MC No. 544 of 2007()

1. ALIKOYA, S/O. MOOSA,
... Petitioner
2. SHAMEER, S/O. ALIKOYA,
3. RASHID, S/O. ALIKOYA,

Vs

1. STATE OF KERALA, REPRESENTED BY
... Respondent

2. MUNEERA, D/O. HUSSAINA,

For Petitioner :SRI.M.MUHAMMED SHAFI

For Respondent : No Appearance

The Hon'ble MR. Justice R.BASANT

Dated :07/03/2007

O R D E R

R. BASANT, J.

CRL.M.C.NO. 544 OF 2007

Dated this the 7th day of March, 2007

ORDER

The petitioners are accused 1 to 3 in a prosecution initiated under Secs.498A and 406 read with Sec.34 of the IPC. Proceedings were initiated on the basis of a complaint filed by the 2nd respondent herein. That complaint filed before the learned Magistrate was referred to the police under Sec.156(3) of the Cr.P.C. A crime was registered and after investigation, the final report was filed before the learned Magistrate. Altogether, there were four accused shown in the private complaint and the F.I.R. registered. The petitioners 1 to 3 herein are accused 1 to 3. They are the husband of the 2nd respondent and sons of the 1st petitioner in an earlier marriage of his. The 4th accused shown in the F.I.R./ complaint was a neighbour.

2. The police, after investigation, filed a final report dropping the 4th accused from the array of parties and arraying the petitioners as accused 1 to 3. Cognizance was taken by the learned Magistrate. The petitioners have already appeared before the learned Magistrate, it is submitted.

3. The petitioners have now come to this Court along with the 2nd respondent. They submit that the disputes have already been settled between the parties amicably. Annexure-A2 agreement has been entered into between the 1st petitioner - husband and the 2nd respondent - wife. All the disputes have been harmoniously settled. The spouses have resumed cohabitation. In these circumstances, continuance of the prosecution has now become an unnecessary irritant in the relationship between the parties. It is prayed, in these circumstances, that the powers under Sec.482 of the Cr.P.C. may be invoked and the prosecution against the petitioners may be quashed.

4. The 2nd respondent has entered appearance through counsel. The 2nd respondent confirms that the matter has been settled and the 2nd respondent has compounded the offences allegedly committed by the petitioners. A joint statement has been filed duly signed by the petitioners and the 2nd respondent and counter signed by their respective counsel to satisfy the court that such composition has been effected. The learned counsel for the 2nd respondent vouches for the signature of the 2nd respondent in the joint application for composition.

5. I am satisfied from the material placed before me that the parties have settled their disputes and the 2nd respondent/ complainant has compounded the offences allegedly committed by the petitioners. I am further satisfied that this being a matrimonial dispute, the prayer for premature termination of the proceedings has got to be considered favourably if this Court has such an option available in law. I do further note that the offence under Sec.498A of the IPC is not compoundable; but the counsel relies on the decision in *B.S. Joshy v. State of Haryana* (AIR 2003 SC 1386). I am satisfied that following the dictum in the said case, reckoning this as an exceptional case where the interests of justice transcends the interests of mere law, the prayer for quashing of proceedings on the basis of the facts which have emerged subsequently can be accepted.

6. In the result:

(i) This Crl.M.C. is allowed.

(ii) C.C.No.263/04 pending before the learned Judicial Magistrate of the First Class, Koyilandy, is hereby quashed.

Sd/-

(R. BASANT, JUDGE) Nan/ //true copy// P.S. to Judge