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**(2000) 03 SC CK 0153**

**In the Supreme Court Of India**

**Case No :** Criminal Appeal No. 535 of 1992 with Criminal MP No's. 6579-80 of 1992

C. Gopinathan

APPELLANT

Vs

Krishnan Ayyappan and Others

RESPONDENT

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**Date of Decision :** 28-03-2000

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 360  
Penal Code, 1860 (IPC) — Section 498A

**Citation :** (2000) 3 ACR 2283 : (2000) 3 BLJR 2233 : (2001) 1 DMC 478 :  
(2000) 9 JT 595 : (2000) 9 SCC 430

**Hon'ble Judges :** Shivaraj V. Patil, J;G. B. Pattanaik, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

G.B. Pattanaik, J.

Crl. M.P. Nos. 6579-80/1992

1. In this application which was filed after lapse of 1344 days, the petitioner assails the legality of the order of the conviction recorded by the Kerala High Court by interfering with an order of acquittal recorded by the learned Trial Judge. It appears that when State moved the High Court against the order of acquittal, the High Court on re-appreciation of the materials, set aside the order of acquittal, convicted the appellant u/s 498A of the I.P.C. and remitted the matter to the learned trial judge for considering the question of sentence. The accused never assailed that order in this Court until after remand the Magistrate sentenced the accused for a period of 3 years and against that sentence the accused moved the district judge in Revision and the Revision having been dismissed moved the High Court and after the order of the High Court which is being assailed by the informant in the connected matter, the present application has been filed. We see no justification for condoning inordinate delay and, therefore, the application for condonation of delay stands dismissed. The SLP

accordingly stands dismissed.

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2. This appeal is by the informant. The short question that arises for consideration in this appeal is whether the High Court was justified in remitting the matter to the Magistrate for the purpose of getting a report from the Probation Officer and then hear the accused persons and pass appropriate sentence thereon. Instead of elaborating the facts, suffice it to state that against an order of acquittal, the State having preferred Criminal Appeal No. 357/1981, the High Court by its judgment dated 28th October, 1998 set aside the order of acquittal and convicted the accused persons of the offence u/s 498A of the I.P.C. But instead of sentencing the accused persons for the offence committed, the High Court remitted the matter to the learned Magistrate with following observation :

The case is sent back to the Magistrate for exercising the sentencing discretion. In exercising the sentencing discretion, the Magistrate will be at liberty to call for a report from the District Probation Officer and consider the feasibility of applying the benevolent provisions of the Act.

3. In view of the aforesaid material, the Magistrate considered the matter on the question of sentence and then examined the question of applicability of the Probation of Offenders Act as well as Section 360 of the CrPC and ultimately came to the conclusion that this is a case where the provisions of aforesaid Acts need not be applied and accordingly passed the sentence for rigorous imprisonment for 3 years. This order of the Magistrate on the question of sentence has been affirmed by the learned sessions judge. When the matter was carried to the High Court, by the impugned order, the High Court remitted the matter again to the Magistrate, being of the opinion that the Magistrate has not followed the specific direction in the earlier order of the High Court. We are unable to accept this conclusion of the High Court inasmuch as the High Court while interfering with an order of acquittal and convicting the accused persons of the offence u/s 498A, merely granted liberty to the Magistrate while considering the question of sentence to call for a report from the District Probation Officer and consider the feasibility of applying the benevolent provisions of the Act. The order of Magistrate indicates that he did consider the question of applicability of the Act but thought it fit that under the circumstances the Act need not be applied to. Merely because he had not called a report, it cannot be said that there has been dereliction on the part of the Magistrate in applying that direction of the High Court while remitting the matter. In that view of the matter, we see no justification for the High Court to remit the matter again to the trial court for consideration on the question of applicability of the provisions of Probation of Offenders Act. We, therefore, set-aside the impugned order of the High Court and allow this appeal.