

(2018) 01 KL CK 0007
In the High Court Of Kerala
Case No : 4160 of 2013

PRASAD

APPELLANT

Vs

STATE OF KERALA & ANR

RESPONDENT

Date of Decision : 15-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 498](#),
[Section 406](#), [Section 406](#)

Citation : (2018) 01 KL CK 0007

Hon'ble Judges : Sunil Thomas

Bench : Single Bench

Advocate : JACOB SEBASTIAN, G.KRISHNAKUMARI, M.K.PUSHPALATHA

Judgement

1. The sole accused challenges the prosecution of him in CC No. 308/2012 of the Judicial First Class Magistrate Court, Nilambur for offences

punishable under sections, 406 & 498(A) of IPC

2. The petitioner herein was married to the defacto complainant in 1988. Two children were born to them. The matrimonial relationship got

strained and alleging matrimonial cruelty, FIS was laid by the defacto complainant and crime was registered. After investigation, final report was

laid for offences punishable under sections 498(A), 406 IPC

3. The petitioner has approached this Court to quash the proceedings on the ground that the petitioner was working abroad and the entire earnings

were sent to the wife. When he lost his job and deported to India, his family abandoned him. According to him, the present crime has been

registered at the instance of the second respondent to ensure that the only remaining property of the petitioner herein is assigned to her. It was

further contended that, even from the admitted facts, offences under section 498A and 406 are not made out.

4. The crux of the allegation is that, the petitioner herein was maintaining illicit relationship with another woman and 25 sovereigns of gold

ornaments entrusted with him were misappropriated by him and, thereby he committed offences punishable under sections 498 and 406 IPC.

5. Learned counsel for the petitioner, relying on the decision reported in Girdhar Shankar Tawade v. State of Maharashtra (2002 KHC 600),

contended that, the basic purport of section 498A is to avoid cruelty and the definition of "cruelty; as explained in the above decision, is not

satisfied in the case at hand. It was further contended that the Supreme Court in Prakash Babu K.v.State of Karnataka (2017 (1) KLD 42 (SC)

had held that, solely because the husband is involved in an extra marital relationship and there is some suspicion in the mind of the wife, that cannot

regarded as mental cruelty to attract ingredients under section 306 IPC. It was further contended that, the Supreme Court in Rajesh Sharma and

Others v. State of U.P. and another (2017 (4) KHC 163 (SC) had an occasion to consider the misuse of the statutory provision under section

498A. It was further contended that, there was no material to show that the gold ornaments were entrusted with the husband to show that there

was criminal breach of trust.

6. Essentially, there are specific allegations raised against the petitioner herein. Police after investigation concluded that there were materials to

prosecute the petitioner. Allegations against the petitioner herein are matters of evidence. Having considered these facts, I feel that it is too early at

this stage to quash the criminal proceedings on the basis of the above contentions. I am not inclined to invoke the jurisdiction of this court under

section 482 Cr.P.C.to quash the criminal proceedings.

7. Accordingly,Crl.M.C.is dismissed reserving the right of the petitioner herein to urge all his arguments before the court below and to seek

appropriate reliefs including discharge, if that stage has not reached.