

**(2018) 01 KL CK 0019**  
**In the High Court Of Kerala**  
**Case No : 1951 of 2016**

SASIDHARA KURUP

APPELLANT

Vs

THE STATE OF KERALA & ANR.

RESPONDENT

**Date of Decision :** 15-01-2018

**Acts Referred:**

[Indian Penal Code, 1860](#), [Section 497](#) -  
Adultery  
[Hindu Marriage Act, 1955](#), [Section 13](#) -  
Divorce

**Citation :** (2018) 01 KL CK 0019

**Hon'ble Judges :** B.Kemal Pasha

**Bench :** Single Bench

**Advocate :** V.N.SANKARJEE, V.N.MADHUSUDANAN, AMJAD ALI, JOHN JUDE  
ISSAC

## Judgement

1. Petitioner is the accused in C.C.No.47 of 2016 of the Judicial First Class Magistrate's Court-II, Cherthala, for the offence under Sections 497

IPC. The case before the court below is as a result of Annexure-V private complaint filed before the court below on 10.11.2014. The 2nd

respondent herein is the complainant. The petitioner is none other than the Uncle of the divorced wife of the 2nd respondent.

2. The wife of the 2nd respondent had filed O.P.No.1183 of 2013 before the Family Court, Alappuzha under Section 13 of the Hindu Marriage

Act, seeking divorce and return of gold ornaments. O.P.No.1183 of 2013 was allowed in favour of the wife of the 2nd respondent, vide judgment

dated 01.09.2015. On going through the matter, it has come out that the 2nd respondent and his divorced wife were in loggerheads and a series of

litigations were there in between them. With the very same allegations as

contained in Annexure-V private complaint, the 2nd respondent had preferred Annexure-I petition before the Family Court, Alappuzha, seeking a divorce. Thereafter, the 2nd respondent did not turned up before the said court and consequently, the said OP was dismissed through Annexure-III.

3. According to the 2nd respondent, on 15.09.2013, he could see the sexual act between the petitioner and the wife of the 2nd respondent.

4. The learned counsel for the petitioner has invited the attention of this Court to the decision in Sowmithri Vishnu v. Union of India and another

[AIR 1985 SC 1618], wherein, the following observations were made by the Apex Court in paragraph 13:

13. There was general agreement before us that since the petitioner's husband has already obtained divorce against her on the ground of

desertion, no useful purpose will be served by inquiring into the allegation whether she had adulterous relationship with Dharma Ebenezer, against

whom the husband has lodged a complaint u/s 497 of the Penal Code. Accordingly, we quash that complainant and direct that no further

proceedings will be taken therein.

5. This is a case, wherein, the facts are almost the same in Sowmithri Vishnu's Case (Supra). The wife of the 2nd respondent had obtained a

divorce, and that divorce has become final. Even after that the 2nd respondent wants to continue with the private complaint alleging offence under

Section 497 IPC. Following the guidelines given by the Apex Court, the complaint against the petitioner is liable to be quashed. There is no merit in

the matters contained in C.C.No.47 of 2016.

6. In the result, this CrI.M.C. is allowed and all further proceedings in C.C.No.47 of 2016 of the Judicial First Class Magistrate's Court-II,

Cherthala, as against the petitioner, are quashed.