

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 3RD DAY OF JULY 2014/12TH ASHADHA, 1936

Crl.Rev.Pet.No. 1515 of 2013 ()

AGAINST THE ORDER IN Crl.Rev.Pet 2371/2012 of HIGH COURT OF KERALA

REVISION PETITIONER(S)/ACCUSED 2-6:

1. SUDHEESH, AGED 23 YEARS,
S/O.J.RAMACHANDRAN, 'POURNAMI', PAZHAKUTTY P.O.
NEDUMANGADU, THIRUVANANTHAPURAM.
2. SUDHA KUMARI AGED 45 YEARS
W/O.RAMACHANDRA, 'POURNAMI', PAZHAKUTTY P.O.
NEDUMANGADU, THIRUVANANTHAPURAM.
3. RAMACHANDRAN J. AGED 53 YEARS
'POURNAMI', PAZHAKUTTY P.O., NEDUMANGADU
THIRUVANANTHAPURAM.
4. SANTHAMMA AGED 79 YEARS
'POURNAMI', PAZHAKUTTY P.O., NEDUMANGADU
THIRUVANANTHAPURAM.
5. ANISH AGED 21 YEARS
S/O.RAMACHANDRA, 'POURNAMI', PAZHAKUTTY P.O.
NEDUMANGADU, THIRUVANANTHAPURAM.

BY ADV. SMT.MARY BENJEMIN

RESPONDENTS/COMPLAINANTS:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. SARITHA
SARITHA MANDIRAM, MUTTAPPALAM P.O.
CHEMMARUTHY VILLAGE, VARKALA
THIRUVANANTHAPURAM-695145.

R2 BY ADV. SRI.C.R.SIVAKUMAR
R1 BY PUBLIC PROSECUTOR SMT.REMA.R.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-07-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

ANNEXURE-I: TRUE COPY OF THE PETITION DATED 28.6.2009 SUBMITTED BEFORE THE SUB INSPECTOR OF POLICE, VARKARA POLICE STATION

ANNEXURE - II: TRUE COPY OF THE PETITION IN CMP 4381 OF 2009 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, VARKALA

ANNEXURE - II: TRUE COPY OF THE COMPLAINT DATED 29.07.2009 IN C.C.656 OF 2009 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, VARKALA.

ANNEXURE - IV: TRUE COPY OF THE DISCHARGE PETITION FILED BY THE PETITIONERS 2 TGO 5 IN C.C. 656/2009 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, VARKALA

ANNEXURE V: TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONERS 2 TO 5 IN C.C 656/2009 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, VARKALA

ANNEXURE VI: TRUE COPY OF THE ORDER DATED 2ND DAY OF NOVEMBER 2012 DISMISSING DISCHARGE PETITION FILED UNDER SECTION 245 (1) CR.P.C. IN C.M.P. 6037 (A)/2012 IN C.C 656/2009 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, VARKALA.

ANNEXURE VII: TRUE COPY OF CRIMINAL M.C NO.1154 OF 2009 FILED BEFORE THE SESSIONS COURT, THIRUVANANTHAPURAM.

ANNEXURE - VIII: TRUE COPY OF THE ORDER IN CRIMINAL M.C NO.1154 OF 2009

ANNEXURE - IX: TRUE COPY OF THE DISCHARGE PETITION FILED BY THE 1ST PETITIONER IN C.C 656/2009 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, VARKALA.

ANNEXURE X: TRUE COPY OF THE ORDER DATED 27.11.2012 DISMISSING DISCHARGE PETITION FILED UNDER SECTION 245 CR.P.C. IN C.M.P. NO.6457 (A)/2012 IN C.C 656/2009 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS, VARKALA

ANNEXURE XI: TRUE COPY OF THE MEDICAL RECORD ISSUED BY THE MENTAL HEALTH CENTRE, THIRUVANANTHAPURAM

ANNEXURE XII: TRUE COPY OF THE REQUISITION FOR RADIOISOTOPE INVESTIGATIONS ISSUED BY THE REGIONAL CANCER CENTRE, THIRUVANANTHAPURAM.

ANNEXURE XIII: TRUE COPY OF THE DISCHARGE CARD ISSUED IN THE NAME OF THE 4TH PETITIONER

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ANNEXURE XIV: TRUE COPY OF THE VOTER'S IDENTITY CARD ISSUED IN THE NAME OF THE 4TH PETITIONER

ANNEXURE XV: TRUE COPY OF THE COMMON JUDGMENT OF HIGH COURT DATED 18.3.2013 IN CRIMINAL REVISION PETITION NO.2371 OF 2012, AND CRIMINAL REVISION PETITION NO.2435 OF 2012

ANNEXURE XVI: CERTIFIED COPY OF ORDER DATED 31.5.2013 IN C.M.P. NOS.6037(a) & 6457/2013 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, VARKALA

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.

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**Crl.R.P. No.1515 of 2013**

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Dated this the 3rd July, 2014

O R D E R

The revision petitioners herein are the five accused in C.C No.656 of 2009 of the Judicial First Class Magistrate-I, Varkala, wherein, they are being prosecuted under Section 498(A) of the Indian Penal Code. The complainant in the case was married by the 1st revision petitioner herein on 18.1.2009, but the matrimony did not last long. On 29.7.2009, the wife filed a complaint before the learned Magistrate, alleging that she had been mentally and physically ill-treated by her husband and the in-laws. The 1st petitioner herein is the husband, and the petitioners 2 and 3 are the parents-in-law. The 4th petitioner is the grand-mother of the 1st petitioner, and the 5th petitioner is the brother of the 1st petitioner. All the inmates of the matrimonial home were arraigned as accused in the complaint. Anyway, cognizance was taken after necessary enquiry, and summons was ordered to the accused. Before commencement of pre-charge evidence under Section 244

of Cr.P.C, the petitioners filed application before the trial court for discharge under Section 245 of Cr.P.C. C.M.P.6037 (A) of 2012 was filed by the accused Nos.2 to 5 and C.M.P. No.6457 of 2013 was filed by all the five accused.

2. On hearing both sides, the learned Magistrate found that order of discharge cannot be passed. The learned Magistrate found some materials in the complaint, prima facie justifying the allegations, and so decided that an order of discharge before recording pre-charge evidence cannot be made. Accordingly, the two applications were dismissed by order dated 31.5.22013. The said order is under challenge in this revision petition.

3. On hearing both sides and on a perusal of the case records including the complaint filed by the 1st petitioner's wife in the court below, I find that the question of discharge can be decided by the court below under Section 245 (1) of Cr.P.C, after pre-charge evidence is recorded under Section 244 of Cr.P.C, Of course, the de facto complainant has some grievance, and she has some genuine complaint against her husband, but whether her act

in arraigning all the in-mates of the matrimonial home as accused in the complaint is improper and illegal, or whether she has genuine complaint against the in-laws, is a matter to be looked into by the Court after recording pre-charge evidence, and while proceeding to take decision in the matter of discharge under Section 245 (1) of Cr.P.C.

4. On a perusal of the complaint, I could see some allegations against the in-laws also but, the Court will have to examine the whole materials including the evidence adduced under Section 244 of Cr.P.C to find whether the complainant's complaint in fact contains definite allegations of mental and physical harassment by a course of cruel conduct. The learned Magistrate will have to find whether the in-laws were unnecessarily dragged to Court and arraigned as accused for some sort of satisfaction. If definite and satisfactory materials are not there against the in-laws, the question of discharge under Section 245 (1) can be thought of by the trial court. However, allegations are there against the husband, and it is submitted that other proceedings are also pending, in connection with the

matrimonial dispute. The trial court will have to bear-in-mind the unhealthy practice these days to arraign all the in-laws or all the inmates of the matrimonial home when the aggrieved wife proceeds to file complaint against her husband. Of course, let proper and judicious decision be taken by the trial court when moved for discharge under Section 245 (1) of Cr.P.C. As rightly held by the trial court, discharge under Section 245 (2) of Cr.P.C, before recording pre-charge evidence under Section 244 of Cr.P.C cannot be considered, when some materials are there. Whether those materials are sufficient to frame charge, can be decided while proceeding under Section 245 (1) of Cr.P.C. Thus, I find that this revision petition can be closed without prejudice to the right of the revision petitioners to make application under Section 245 (1) of Cr.P.C, after pre-charge evidence is recorded by the trial court under Section 244 of Cr.P.C.

In the result, this revision petition is closed without prejudice to the right of the revision petitioners to make proper application under Section 245 (1) of Cr.P.C, after pre-

charge evidence is recorded by the trial court under Section
244 of Cr.P.C.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge