



IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 9TH DAY OF JULY 2024 / 18TH ASHADHA, 1946

CRL.MC NO.8110 OF 2022

CC NO.263 OF 2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS, TALIPARAMBA

PETITIONERS/ACCUSED NOS.2 AND 3:

1 JOY JOSEPH
AGED 74 YEARS
S/O.JOSEPH, KOYIKKAKUDI HOUSE, HOUSE NO.35/1210A, INDIRA
ROAD, NEAR ST.MARTIN CHURCH, PALARIVATTOM P.O., ERNAKULAM
DISTRICT., PIN - 682025

2 BEENA JOY
AGED 64 YEARS
W/O.JOY JOSEPH, KOYIKKAKUDI HOUSE, HOUSE NO.35/1210A,
INDIRA ROAD, NEAR ST.MARTIN CHURCH, PALARIVATTOM P.O.,
ERNAKULAM DISTRICT., PIN - 682025

BY ADVS.

DR.SEBASTIAN CHAMPAPPILLY

DR.ABRAHAM P.MEACHINKARA,

ANNIE GOERGE

GEORGE CLEETUS

MARGARET MAUREEN D ROSE

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY THE STATE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM., PIN - 682031

2 CHINCHU GRACE LUKOSE
AGED 33 YEARS
D/O.P.L.LUKOSE, PALLITHARA HOUSE, VAYATTUPARAMBA P.O.,
VELLAD AMSOM, TALIPARAMBA TALUK, KANNUR DISTRICT., PIN -
670582

BY ADVS.

R1 BY PUBLIC PROSECUTOR SRI.SANAL P.RAJ

R2 BY ADVS.

ABDUL RAOOF PALLIPATH

K.R.AVINASH (KUNNATH) (K/1364/2003)

GRACY POULOSE (K/371/2011)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09.07.2024
ALONG WITH CRL.MC NO.6166 OF 2023, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:



CRL.MC NOS.8110 OF 2022

& 6166 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 9TH DAY OF JULY 2024 / 18TH ASHADHA, 1946

CRL.MC NO. 6166 OF 2023

CC NO.263 OF 2020 OF JUDICIAL MAGISTRATE OF FIRST

CLASS, THALIPARAMBA

PETITIONER/1ST ACCUSED:

VIVEK JOY, S/O.JOY JOSEPH
AGED 37 YEARS
KOYIKKAKUDI HOUSE, HOUSE NO.35/1210A, INDIRA
ROAD, NEAR ST.MARTIN CHURCH, PALARIVATTOM
P.O., ERNAKULAM DISTRICT, PIN - 682025

BY ADVS.
SEBASTIAN CHAMPAPPILLY
ABRAHAM P.MEACHINKARA
GEORGE CLEETUS
ANNIE GEORGE
MARGARET MAUREEN D ROSE

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM., PIN -
682031
- 2 CHINCHU GRACE LUKOSE
AGED 33 YEARS, D/O.P.L.LUKOSE,
PALLITHARA HOUSE, VAYATTUPARAMBA P.O., VELLAD
AMSOM, TALIPARAMBA TALUK, KANNUR DISTRICT.,
PIN - 670582
R1 BY PUBLIC PROSECUTOR SRI.SANAL P.RAJ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 09.07.2024 ALONG WITH CRL.MC NO.8110 OF 2022,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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COMMON ORDER

Dated this the 9th day of July, 2024

Crl.M.C.No.8110/2022 is one filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.' hereinafter), by accused Nos.2 and 3 in C.C.No.263/2020 on the files of the Judicial First Class Magistrate Court, Taliparamba, to quash the said proceedings.

2. Crl.M.C.No.6166/2023 also is a petition filed under Section 482 of the Cr.P.C., by the 1st accused in the above case, to quash the proceedings thereto.

3. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor, in detail. Though the 2nd respondent/de facto complainant was served with notice and filed vakalath, there is no appearance.

4. Coming to the prosecution allegation, precisely



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the same is that, on 30.12.2017, the 1st accused married under the Special Marriage Act, as per Annexure A2 Certificate of Marriage, issued by the Marriage Officer, Maradu Municipality. The case advanced by the complainant before the Magistrate Court was that, at the time when the marriage was solemnized as on 30.12.2017, the marriage between the 1st accused and the de facto complainant was subsisting and therefore, offence under Section 494 of the Indian Penal Code (for short, 'the IPC' hereinafter) was committed by the 1st accused and accused Nos.2 and 3, who are the parents of the 1st accused also abetted commission of the above crime. Accordingly, cognizance taken for the offences punishable under Sections 494 and 109 of the IPC.

5. While seeking quashment of the case, the learned counsel for the petitioners pointed out that, earlier, as on 10.1.2013, the 1st accused married the 2nd respondent. While subsisting the marriage, the 1st accused filed divorce



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petition on 18.8.2014 before the Family Court, Ernakulam. After 3 years, i.e. on 12.5.2017, ex parte decree of divorce was granted. Although petition to set aside the ex parte order was expired on 11.6.2017 and the period for filing appeal against the ex parte order also expired on 10.8.2017, the 2nd respondent did not file either petition to set aside the ex parte decree or appeal. Since the marriage was legally divorced as per ex parte decree, dated 12.5.2017, the 1st accused decided to marry another lady and accordingly, he solemnized marriage on 30.12.2017.

6. It is true that, as on 27.12.2017, i.e. 3 days before the second marriage of the 1st accused, a petition was filed by the 2nd respondent herein, before the Family Court, Ernakulam, seeking to set aside the ex parte decree, as rightly pointed out by the learned counsel for the petitioners. On perusal of the certified copy of the petition so filed as I.A.No.4325/2017 in O.P.No.1582/2014, no notice served to the learned counsel appearing for the 1st



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accused. Similarly, no endorsement also could be noticed to see that any attempt was made to serve copy of the said petition to the 1st accused. However, the ex parte decree of divorce was set aside on 5.3.2018.

7. Now, the question arises for consideration is, whether a marriage solemnized during operation of an ex parte decree of divorce of the earlier marriage, would amount to the offence of bigamy, when the ex parte decree of divorce is subsequently set aside? In this connection, the relevant aspect is, as on the date of the second marriage, as per Annexure A2, there was no legal marriage subsisting in between the 1st accused and the 2nd respondent, in view of operation of the ex parte decree of divorce. To put it more legibly, there was no legal barrier to solemnize a second marriage on the date of the second marriage. In this particular case, the 1st accused did not know about filing of a petition to set aside the ex parte decree of divorce, on the date of his second marriage. Thus, it is to be held that,



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when there is decree of divorce and one among the parties to the decree marries during the subsistence of the ex parte decree, even though the ex parte decree happened to be set aside on a subsequent date, no offence of bigamy would attract. Holding so, here, the 1st accused married during the period of operation of the ex parte decree, that too, after the expiry of the period to set aside the ex parte decree and to file appeal challenging the ex parte decree. In such a case, it is not safe to fast criminal culpability upon the 1st accused, who married for the second time, since no valid marriage subsisting on the date of the second marriage. Now, as per Annexures A8 and A9, the parties obtained mutual divorce also. Since there is no subsisting legal marriage on 30.12.2017, the second marriage solemnized by the 1st accused would not attract penal consequences under Section 494 of the IPC and his parents also could not be penalized under Section 109 of the IPC.

Therefore, the entire proceedings in C.C.No.263/2020



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on the files of the Judicial First Class Magistrate Court, Taliparamba, found to be unsustainable and the same are quashed, accordingly.

In the result, these Criminal Miscellaneous Cases stand allowed.

Sd/-
A. BADHARUDEEN
JUDGE

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APPENDIX OF CRL.MC 8110/2022

PETITIONERS' ANNEXURES

- ANNEXURE A-1 TRUE COPY OF THE EXPARTE DECREE OF DIVORCE DATED 12-05-2017 IN O.P.NO. 1582 OF 2014 OF THE FAMILY COURT, ERNAKULAM
- ANNEXURE A-2 TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 30-12-2017 ISSUED BY THE MARRIAGE OFFICER, MARADU
- ANNEXURE A-3 TRUE COPY OF I.A.NO.4325 OF 2017 FILED BY THE 2ND RESPONDENT HEREIN ON 27-12-2017 IN THE FAMILY COURT AT ERNAKULAM
- ANNEXURE A-4 TRUE COPY OF THE ORDER SETTING ASIDE THE EXPARTE DECREE PASSED IN I.A.NO. 2039/2017 AND I.A.NO.4325/2017 IN O.P. NO.1582 OF 2014 DATED 05-03-2018
- ANNEXURE A-5 TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT HEREIN AS COMPLAINANT BEFORE THE JFCM COURT, TALIPARAMBA ON 22-10-2018
- ANNEXURE A-6 TRUE COPY OF I.A.NO.3 OF 2020 FILED IN MAT.APPEAL NO.753 OF 2018 DATED 23-11-2020
- ANNEXURE A-7 TRUE COPY OF THE JUDGMENT IN MAT. APPEAL NO.753 OF 2018 DATED 08-01-2021
- ANNEXURE A-8 TRUE COPY OF THE ORDER DATED 03-02-2021 IN O.P.NO.1582 OF 2014
- ANNEXURE A-9 TRUE COPY OF THE ORDER DATED 03-02-2021 IN I.A.NO.524 OF 2021 IN O.P.NO. 1582 OF 2014
- ANNEXURE A-10 TRUE COPY OF THE JUDGMENT IN CASE NO. C.C.1061 OF 2016 OF THE JFCM IX,



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ERNAKULAM, DATED 07-02-2019

ANNEXURE A-11 TRUE COPY OF THE JUDGMENT DATED 08-07-2022 IN CRIMINAL APPEAL NO.205 OF 2019 OF THE ADDITIONAL SESSIONS JUDGE-VII, ERNAKULAM

ANNEXURE A-12 TRUE COPY OF THE SUMMONS RECEIVED BY THE 1ST PETITIONER FROM THE JUDICIAL FIRST CLASS MAGISTRATE COURT, TALIPARAMBA

ANNEXURE A-13 TRUE COPY OF THE SUMMONS RECEIVED BY THE 2ND PETITIONER FROM THE JUDICIAL FIRST CLASS MAGISTRATE COURT, TALIPARAMBA

RESPONDENTS' ANNEXURES : NIL



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APPENDIX OF CRL.MC NO. 6166 OF 2023

PETITIONER'S ANNEXURES

- ANNEXURE A-1 TRUE COPY OF THE EXPARTE DECREE OF DIVORCE DATED 12-05-2017 IN O.P.NO. 1582 OF 2014 OF THE FAMILY COURT, ERNAKULAM
- ANNEXURE A-2 TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 30-12-2017 ISSUED BY THE MARRIAGE OFFICER, MARADU
- ANNEXURE A-3 TRUE COPY OF CERTIFIED COPY OF I.A. NO.2039 OF 2017 (SUBSEQUENTLY NUMBERED AS I.A.NO.4325 OF 2017) IN O.P. NO.1582 OF 2014 FILED BY THE 2ND RESPONDENT IN THE FAMILY COURT AT ERNAKULAM
- ANNEXURE A-4 TRUE COPY OF THE ORDER SETTING ASIDE THE EXPARTE DECREE PASSED IN I.A.NO. 2039 OF 2017 (SUBSEQUENTLY NUMBERED AS I.A.NO.4325 OF 2017) IN O.P.NO.1582 OF 2014 DATED 05-03-2018
- ANNEXURE A-5 TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT HEREIN AS COMPLAINANT BEFORE THE JFCM COURT, TALIPARAMBA ON 22-10-2018.
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- ANNEXURE A-7 TRUE COPY OF THE JUDGMENT IN MAT. APPEAL NO.753 OF 2018 DATED 08-01-2021
- ANNEXURE A-8 TRUE COPY OF THE JUDGMENT DATED 03-02-2021 IN O.P.NO.1582 OF 2014
- ANNEXURE A-9 TRUE COPY OF THE ORDER DATED 03-02-



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2021 IN I.A.NO.524 OF 2021 IN
O.P.NO. 1582 OF 2014

ANNEXURE A-10

TRUE COPY OF THE JUDGMENT IN CASE
NO. C.C.1061 OF 2016 OF THE JFCM IX,
ERNAKULAM, DATED 07-02-2019

ANNEXURE A-11

TRUE COPY OF THE JUDGMENT DATED 08-
07-2022 IN CRIMINAL APPEAL NO.205 OF
2019 OF THE ADDITIONAL SESSIONS
JUDGE-VII, ERNAKULAM

RESPONDENTS' ANNEXURES : NIL