

Crl.M.C. No. 3035 of 2014



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 22<sup>ND</sup> DAY OF MAY 2025 / 1ST JYAISHTA, 1947

CRL.MC NO. 3035 OF 2014

AGAINST THE ORDER DATED 02.05.2014 IN CC NO.128 OF 2010 OF  
JUDICIAL MAGISTRATE OF FIRST CLASS-II, KANNUR

PETITIONER/ACCUSED:

BY ADVS.  
SRI.M.RAMESH CHANDER (SR.)  
SRI.ANEESH JOSEPH  
SMT.DENNIS VARGHESE

RESPONDENTS/RESPONDENTS & STATE:

1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM - 682 031.

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SRI.SANGEETHA RAJ, PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
22.05.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**"CR"**

## **ORDER**

This Crl.M.C has been filed under Section 482 of the Criminal Procedure Code (Cr.P.C.) challenging Annexure A4 order passed by the Judicial First-Class Magistrate Court - II, Kannur (for short, 'the trial court'), adding the charge invoking Section 216 of Cr. P.C.

2. The petitioner is the sole accused in C.C. No.128/2010 pending on the files of the trial court. He faces indictment for the offence punishable under Section 498A of the Indian Penal Code (IPC). The 2<sup>nd</sup> respondent is the de facto complainant and the mother-in-law of the petitioner. The petitioner married the daughter of the 2<sup>nd</sup> respondent on 14.08.2005. After the marriage, they resided in the parental house of the petitioner. On 03.11.2005, the wife of the

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petitioner committed suicide by jumping into the well near the house where she was residing. The 2<sup>nd</sup> respondent filed Annexure A1 complaint against the petitioner, his brother and his friends before the trial court, alleging offences punishable under Sections 498A and 306 of IPC. The trial court forwarded the complaint to the Police. The Police registered the FIR and conducted the investigation. After the investigation, the Police filed the final report before the trial court against the petitioner alone, alleging an offence under Section 498A of the IPC. The allegation in the final report is that the petitioner subjected the deceased to cruelty, both physically and mentally, and on account of the said cruelty, she committed suicide. The trial court received the final report on file and numbered the case as C.C. No.128/2010. The petitioner appeared before the trial court. The trial court framed charge under Section 498A of the IPC against the petitioner. He pleaded not guilty. On the side of the

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prosecution, PWs 1 to 11 were examined. Thereafter, the Assistant Public Prosecutor filed a petition as C.M.P. No.1175/2014 before the trial court under Section 216 of Cr.P.C. to add Section 306 of IPC as well. The trial court, after hearing both sides, found that the materials on record would show that Section 306 of IPC was also involved, and accordingly, the said Section was added, invoking power under Section 216 of Cr.P.C. as per Annexure A4 order. This Crl. M.C. has been filed challenging the said order.

3. I have heard Sri. M. Ramesh Chander, the learned counsel for the petitioner and Sri.Sangeetha Raj, the learned Public Prosecutor. Even though notice was issued to the 2<sup>nd</sup> respondent, there is no appearance.

4. The learned counsel for the petitioner submitted that a petition for alteration/ addition of charge under Section 216 of Cr.P.C. cannot be entertained at the instance of the Public Prosecutor or the accused or the de facto complainant, and

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the addition/alteration of charge is strictly in the domain of the court. The learned counsel further submitted that there is absolutely no material on record to attract the offence under Section 306 of IPC against the petitioner, and hence, the impugned order is not legally sustainable. On the other hand, the learned Public Prosecutor submitted that initially the crime was registered incorporating the offence under Sections 498A and 306 of IPC and at the time of filing the final report, Section 306 of IPC was deleted without any valid reason. The learned Public Prosecutor further submitted that the evidence let in by PWs 1 to 3, coupled with other materials on record, *prima facie* shows that Section 306 of IPC has also been attracted and hence the trial court was absolutely justified in invoking Section 216 of Cr. P.C.

5. Section 216 of Cr.P.C (Section 239 of BNSS) confers jurisdiction on all courts to alter or add to any charge framed earlier, at any time before the judgment is pronounced. The

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alteration/addition of a charge may be done, if in the opinion of the court, there was an omission in the framing of charge or if upon *prima-facie* examination of the material brought on record, it leads the court to form a presumptive opinion, as to the existence of the factual ingredients constituting the alleged offence [***Dr. Nallapareddy Sridhar Reddy v. State of Andhra Pradesh and others*** [(2020) 12 SCC 467]. Sub-sections 2 to 5 of Section 216 of Cr.P.C (Section 239 of BNSS) prescribe the procedure which has to be followed after that addition or alteration. The Supreme Court in ***P.Kartikalakshmi v. Sri Ganesh and another*** [(2017) 3 SCC 347] has held that the power vested under Section 216(1) is exclusive to the court and there is no right in any party to seek for addition or alteration of charge by filing any application as a matter of fact. It was further held that Section 216(1) of Cr.P.C. is an enabling provision for the court to exercise its power under certain contingencies which come

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to its notice or are brought to its notice. It was made clear in that decision that neither the de facto complainant, nor the accused, nor the prosecution has any vested right to seek any addition or alteration of the charge. However, a subsequent decision of a co-equal bench of the Supreme Court [**Anant Prakash Sinha @ Anant Sinha v. State of Haryana and another**, (2016) 6 SCC 105] took the view that even any informant/victim can seek alteration or addition of charge invoking Section 216(1) of Cr.P.C. It is settled that in case of conflicting decisions by the two Benches of equal strength, the decision later in point of time will prevail over the earlier one. In view of the subsequent judgment of the co-equal bench of the Supreme Court, the contention raised by the learned counsel for the petitioner that the trial court ought not to have entertained an application filed by the Public Prosecutor under Section 216 of Cr.P.C. cannot be accepted. That apart, as rightly held by the trial court, the

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court can very well invoke Section 216 of Cr.P.C, if the requirement for alteration or addition of a charge is brought to the notice of the court by the Public Prosecutor by way of an application.

6. PW1 is the mother, PW2 is the brother, and PW3 is the father of the victim. All of them gave evidence that the accused No.3 in Annexure A1 complaint came to the house of the deceased, handed over a draft divorce agreement to PW2, who, in turn, handed it over to the deceased, who, after reading it, became upset and committed suicide three days thereafter. In paragraph 5 of Annexure A1 complaint, the allegation is that accused Nos. 2 to 4 came to the house of the deceased on 02.11.2005 and handed over a draft of an agreement for divorce and seeing this, the deceased was mentally shattered. The trial court found in the impugned order that the averments in paragraph 5 of Annexure A1 and the evidence let in by PWs 1 to 3 mentioned above are



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sufficient to show that there was abetment of committing suicide by the petitioner. I cannot subscribe to the said finding.

7. The legal position as regards Section 306 of IPC (Section 108 of BNS) is well settled. It says that if any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine. The essential ingredients of the offence under Section 306 I.P.C (Section 108 of BNS) are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The offence of abetment is a separate and distinct offence in IPC. Section 107 of IPC (Section 45 of BNS) defines abetment of a thing. A person abets the doing of a thing, when (i) he instigates any person to do that thing; or (ii) engages with one or more other person or persons in any conspiracy for the doing of that thing; (iii) intentionally

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aids, by any act or illegal omission, the doing of that thing. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid as provided in Clause (3) of Section 107 IPC (Section 45 of BNS). Under all three situations, an active or direct act which leads to the deceased committing suicide is essential to bring the offence under Section 306 IPC (Section 108 of BNS). The Supreme Court has consistently taken the view that in order to bring a case within the purview of Section 306 IPC (Section 108 of BNS), there must be a case of suicide and the accused must have played an active role in the commission of suicide by an act of instigation or doing certain act to facilitate the commission of suicide [See: **Kishori Lal v. State of M.P.**, (2007) 10 SCC 797, **Kishangiri Mangalgiri Goswami v. State of Gujarat**, (2009) 4 SCC 52, **Amalendu Pal @ Jhantu v. State of West Bengal**, AIR 2010 SC 512, and **Velladurai v.**

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***State represented by Inspector of Police***, 2021 (5) KLT OnLine 1007 (SC)]. In ***Amalendu Pal*** (supra), it was specifically held that mere harassment without any positive action on the part of the accused proximate to the time of occurrence, which led to the suicide, would not amount to an offence under Section 306 of IPC. In ***Ude Singh and Ors. v. State of Haryana*** [(2019) 17 SCC 301] and in ***Geo Varghese v. State of Rajasthan and Another*** [(2021) 19 SCC 144], it was held that in the case of abetment of suicide, mere allegation of harassment of the deceased by the accused would not suffice unless there be such action on his part which compels the deceased to commit suicide. In ***Randhir Singh and Another v. State of Punjab*** [(2004) 13 SCC 129], it was held that "Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also, it would involve that mental process of entering into conspiracy for the doing of that thing. More

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active role, which can be described as instigating or aiding the doing of a thing, is required before a person can be said to be abetting the commission of offence under S.306 IPC". In ***State of W.B. v. Orilal Jaiswal and Another*** (AIR 1994 SC 1418), the Supreme Court has observed that the Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. Thus, the law is clear that to constitute an offence of abetment of suicide under Section 306 IPC (Section 108 of BNS), there must be proof of either instigation or conspiracy or intentionally aiding or direct or indirect act of incitement to the commission of the offence of suicide. A mere allegation of humiliation, harassment or threat unaccompanied by any incitement or instigation is not at all sufficient to attract the offence.

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8. There is no averment in Annexure A1 complaint or in the evidence of PWs 1 to 3 that by handing over the Annexure A2 draft agreement for divorce, there was any instigation or intentional aiding or direct or indirect act of incitement to the commission of the offence of suicide by the petitioner. What was deposed by PWs 1 to 3 is that by reading Annexure A2 draft agreement, the deceased was mentally shattered, and she committed suicide three days thereafter. They did not state that the petitioner played any active role in either instigating or intentionally aiding the commission of suicide. The prosecution has no case that the petitioner, through accused No.3 in Annexure A1 complaint, handed over the Annexure A2 draft agreement with the intention to drive the deceased to commit suicide. The alteration or addition of a charge must be for an offence that is made out by the evidence recorded during the trial before the Court. Though the power under S.216 Cr.P.C (Section

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239 of BNSS) to alter or add to the existing charge is very wide, to exercise the said power, there must be some material existing before the Court which has some connection or link with the charges sought to be added [***Central Bureau of Investigation v. Karimullah Osan Khan***, (2014) 11 SCC 538]. Since the 2<sup>nd</sup> respondent does not have a case at all in Annexure A1 complaint or PWs 1 to 3 did not have a case at all when they gave evidence that the petitioner played an active role either in instigating or intentionally aiding the commission of suicide, the addition of charge sought by the prosecutor should not have been allowed. The trial court also noted that PW11, who filed Ext. P4 report to delete the charge under Section 306 of IPC, did not conduct the investigation worth the name; he only recorded the statement of the Panchayat Secretary. However, Ext.P4 would show that he perused the entire case diary and found that Section 306 was not attracted.

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For the aforementioned reasons, the impugned order is not sustainable, and it is accordingly set aside. The Crl. M.C. stands allowed.

Sd/-  
**DR. KAUSER EDAPPAGATH**  
**JUDGE**

APA

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APPENDIX OF CRL.MC 3035/2014

PETITIONER ANNEXURES

- ANNEXURE A1 : TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT HEREIN BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE - II KANNUR
- ANNEXURE A2 : TRUE COPY OF THE AGREEMENT SEIZED BY THE POLICE
- ANNEXURE A3 : TRUE COPY OF THE APPLICATION FILED BY THE A.P.P GR.I TO SECTION 306 IPC DATED 12.03.2013
- ANNEXURE A4 : TRUE COPY OF THE ORDER PASSED BY THE JFCM-II KANNUR IN CC 128/2010 DATED 02.05.2014
- ANNEXURE A5 : TRUE COPY OF THE SUMMONS FROM THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, THALASSERY DATED 26.10.2024