

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C., SEDAM**

**PRESENT: Smt. Lalita Kudarimati
B.Com. LL.B.,
Civil Judge & JMFC, Sedam.**

Dated this the 19th day of August-2024.

CC No. 598/2016

COMPLAINANT	The State Represented by Sedam Police Station.
(By APP)	
V/S.	
ACCUSED	1. Jagadish S/O Mareppa Kallur Age: 21 years, Occ: Coolie R/o Surwar, Tq: Sedam 2. Mareppa S/O Sabanna Kallur, Age: 50 years, Occ: Coolie R/o Surwar, Tq: Sedam 3. Mahadevi W/o Mareppa Kallur Age: 45 years, Occ: Coolie R/o Surwar, Tq: Sedam 4. Ragappa S/O Sangappa Kallur Age: 30 years, Occ: Coolie R/o Surwar, Tq: Sedam



	5. Sabu S/O Sangappa Kallur Age: 32 years, Occ: Coolie R/o Surwar, Tq: Sedam
(By Shri. S.R.P Adv)	

**ORDERS ON APPLICATION FILED BY THE
ACCUSED U/S 239 OF CRPC**

This case is registered against the accused persons by the Sedam PS for the offences punishable U/S 3498(A), 504,506 R/W 149 of IPC.

2. The application is filed by the accused no 5 at the stage NBW against Accused No 4. It is stated in the application that, the complainant complainant falsely got involved the accused no 5 in the case to harass and malign the reputation of the accused no5. Accused no 5 has nothing to do with alleged offences and he is nowhere concerned with the family affairs of the accused no 1 to 3. Accused no 5 is the son of elder brother of accused no 2. Accused no 5 went to Muscat(country) on 16-03-2015 for his livelihood and returned on 09-03-2017. He was not present at the time of marriage of the complainant with



accused no 1. It is falsely allege that accused no 5 along with accused no 2 to 5 joined and abused complainant in a filthy language. And expelled her from home. But complainant never disclosed any involvement of overt act of the accused and any further involvement in the case as he was not at all present in India at the time of the alleged incident. As the accused no 5 is the relative of accused no 1, complainant has falsely got involved the accused no 5 in the case and hence prayed for the discharge of accused no 5 for the offences punishable U/S 498(A), 504, 506 R/W 149 of IPC.

3. Per Contra, Ld. APP filed the objections for the applications and submits that, Accused no 5 is the close relative of Accused no 2. He was rightly present at the time of incident and directly joined hands with the other accused in commission of the offences. As the Accused no 5 is claiming the *plea of alibi* that requires full fledge trial. The documents produced like passport and air ticket requires strict proof of authentication. Therefore prosecution prays for the rejection of the application.

4. Heard arguments by the learned APP and the Ld. Counsel for the accused.



5. Perused all materials placed on record.
6. The points arise for my consideration are as follows;

Point No.1. Whether the Accused no 5 has made out sufficient grounds to allow the application?

Point No.2. What order?

7. My answer to the above points are as hereunder:

Point No.1: In the Negative

Point No.2: As per the following:

REASONS

8. PROLOGUE

Before venturing into the reasons for the order, this court is of opinion to discuss the reasons in the light of the guiding principles laid down in the landmark decision of the Hon'ble SC in **P.Vijayan VS State of Kerala (2010) 2 SCC**



398 wherein it has been held by the Hon'ble Supreme Court that,

*“13) In a subsequent decision i.e. in **Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4**, this Court after adverting to the conditions enumerated in **Section 227** of the Code and other decisions of this Court, enunciated the following principles in para 13 is herein below:-*

- (1) That the Judge while considering the question of framing the charges under **Section 227** of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is*



difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) *That in exercising his jurisdiction under [Section 227](#) of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

9. In the backdrop of this decision and in the light of guidelines laid down by the Hon'ble SC (supra), the application has to be weighed with the prima facie case of the prosecution. In this case, it is vital to discuss the complaint averments, FIR and chargesheet. In the para 2 of the complaint, it is



specifically alleged by the complainant that, Accused no 1 to 5 abused her in a filthy language and also demanded money. The private complaint was filed U/S 200 of CrPC and referred for police investigation. Based on this complaint, Sedam PS lodged FIR against Accused no 1 to 5. After completion of investigation, IO filed the Final Report as per sec 173 of CrPC against Accused no 1 to 5.

10. On perusal of the complaint averments, there are allegations against Accused no5 that he also abused in filthy language and demanded money from the complainant along with other accused. Here the Accused no 5 has taken the specific point of defence that he was there in the Mucat at the time of alleged incident i.e *Plea of alibi*.

11. Alibi is only a rule of evidence recognized in Sec 11 of Indian Evidence Act, that facts which are inconsistent with the fact in issue become relevant.

12. In a *plea of alibi*, it is the burden of the Accused to prove with the absolute certainty that the presence of the accused at the scene of the crime at the time of occurrence was rather an impossibility. He has to adduce positive evidence to prove the *plea of alibi*, and that opportunity arises only



when the prosecution discharges its burden to prove the incident, and participation of accused in the incident. *Plea of alibi* is a defence available for the accused, when prosecution establishes a case against him. Hence it has to be used as a shield, and not as a sword. So a *plea of alibi* taken by the accused need not be entertained, till prosecution establishes its case satisfactorily. Therefore *plea of alibi* cannot be entertained, before prosecution is given an opportunity to establish its case.

13. On perusal of all the prosecution documents, there are prima facie materials against Accused No 5 to frame charge against him. The real test for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted make out no case whatsoever. But here, there are materials to frame charges against the accused no 5 and also as discussed above, *plea of alibi* cannot be invoked at this stage as it is a point of defense. Therefore for these aforesaid reasons (supra) this court answers **Point No 1** in **NEGATIVE**

14. POINT No 2: In view of foregoing discussion and reasons assigned above, this court proceed to pass the following:



ORDER

The application filed by Accused
No 5 U/S 239 of CrPC is hereby
rejected.

(Typed and corrected by me, then pronounced in the open
court on this 19th day of August 2024)

Sd/-
(Lalita Kudarimati)
Civil Judge & JMFC., Sedam
