

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE
AMBALAPUZHA**

Present : Aiswarya Ann Jacob

Judicial Magistrate of First Class

Dated this, the 23rd day of April, 2026

C. M. P. No 01/2026 in C. C. No. 1059/2023

(Crime No.371/2021 of Ambalapuzha Police Station)

Petitioner/Accused : Adharsh S Nair, aged 36 years,
S/o. Surendran Nair, Cheriyaipothullil House,
Chirakkavu Kara, Ponkunnam PO,
Kannjirappilly Taluk, Kottayam.
(Rep. by Adv. Rayin K R)

Respondent : State of Kerala represented by the Sub
Inspector of Police, Ambalapuzha Police
Station
Rep. by A.P.P., Ambalapuzha

This petition having been heard on 30.03.2026 and the court on 23.04.2026 passed the following :

ORDER

1. This is a petition filed u/s. 239 Cr.P.C/262 of BNSS filed by the first accused for discharging him from the aforesaid case pending before this court. The case was charge sheeted by Ambalapuzha Police station for the offence u/s. 498A, 109 r/w 34 of IPC.
2. Petition averments in brief is as follows : The marriage between the first accused and CW1 was solemnized on 24.05.2023 as per religious rites and

ceremonies and since then they had lived together as husband and wife. The first accused thereafter maintained an illicit relationship with the second accused. When CW1 confronted first accused about this fact, he in furtherance of the abetment of second accused neglected and abandoned CW1 thereby causing her severe mental agony. The accused even made false accusations suggesting that CW1 suffers from mental issues and always depicted a suspicious behaviour. This facts was even circulated by him. Thereby the accused persons were alleged to have committed the offences under Section 498A, 109 r/w 34 of IPC. Hence this petition.

3. According to the petitioner the allegations against him are baseless and hence continuation of proceedings would only be an abuse of process of court. It was contended that the marriage between the petitioner and CW1 was irretrievably broken down and a divorce petition was already filed by him. The current case was instituted to countenance the afore said divorce petition. The case is solely based on a suspicion of illicit relationship. But a mere suspicion cannot constitute an offence of cruelty as contemplated u/s. 498A of IPC. The petitioner had also submitted copy of anticipatory bail order dated 26.04.2023 in CrI.M.P 820/2023 pronounced by the Hon'ble Sessions Court, Kottayam as well as the copy of stay order granted by the Hon'ble High court of Kerala in CrI.M.C. 3782/2023. It was also submitted that the Hon'ble High court of Kerala via its order in CrI.M.C 3782/2023 dated 21.06.2024 had quashed the entire proceedings against the second accused herein and hence when the case against the alleged abettor stands already quashed, the prosecution case automatically falls to the ground. Moreover it was argued that the allegations raised against the petitioner is vague and omnibus and lack specifications. The learned counsel had also placed reliance on the decisions of **Preeti Gupta & Another v. State of Jharkhand & Another(2010 7 SCC 667)** and **Geeta Mehrotra & Another v. State of UP**

& Another(2012 KHC 4612) Giridhar Shankar Tawade v. State of Maharashtra(2002 5 SCC 177).

4. The learned APP objected to the above arguments and contended that prima facie materials to proceed with the case already stands established. It was further submitted that quashing of case against the co-offender will not automatically absolve the other accused persons from their liability. Reliance was placed on the decision of **Laxman Ram Mane v. State of Maharashtra** **Parallel citation(s) : 2010 KHC 2019: 2010(13) SCC 125 : 2011 (111) Cut LT 623: 2011 (2) SCC (Cri) 782: 2011 (97) AIC 135** Case No: Crl.A.No. 19 of 2005 dated 07.10.2010 wherein it was held that “an illicit relationship of a married man with another woman would clearly amount to cruelty within the meaning of S. 498-A”.

5. Heard Learned counsel for the petitioner and the learned APP.

6. Perused the records.

7. The following points arose for determination :

- i. Whether there are sufficient grounds to proceed against the petitioner under Section 498A, 109 r/w 34 of IPC.?
- ii. Whether the petitioner can be discharged under Section 239 Cr.P.C./ 262 BNSS ?
- iii. Order ?

8. Points (i) and (ii) : It is settled law that at the initial stage, the duty of the court is to consider the materials on record, including the documents submitted therewith, and to hear the submissions of the prosecution and the accused in that regard. At the stage of framing of charge, the court is not required to evaluate whether there is sufficient ground for conviction or whether the trial is likely to result in conviction. If, at that stage, there exists a strong suspicion which leads the court to form a presumptive opinion that the accused

has committed an offence, it is not open for the court to conclude that there is no sufficient ground for proceeding against the accused. The touchstone is therefore not “proof beyond reasonable doubts”.

9. The prosecution in this case has arrayed 8 witnesses out of which the first witness is the defacto complainant and 2nd to 7th witnesses are those who allege to have knowledge about the incidents. On going through the statement of witnesses it is seen that the allegations against the petitioner/ first accused is not general in nature. A perusal of records further discloses that CW1 has made specific allegation of neglect, abandonment, mental harassment and deliberate circulation of false imputations about her mental health. These are not vague or omnibus allegations. Instead they constitute acts of cruelty falling within the ambit of Section 498 A of IPC. The question as to whether they will in fact be proved is a matter for trial and cannot be adjudged at this stage.

10. The prosecution case is not solely founded upon the allegation that the first accused maintained an illicit relationship but reflects the neglect and the consequential abandons of CW1 as well as circulation of falls imputation against her. Hence there exist prima facie allegation of cruelty.

11. With regard to the fact that quashing of proceedings against the second accused would lead to the failure of prosecution case, it is well established that quashing of proceeding against one accused does not ipso facto exonerate the co-accused as they depend upon their individual acts and the evidence which are available against them separately. The allegations against the first accused/petitioner is primarily directed at his on conduct towards CW1 and does not rely entirely on the involvement of second accused. Hence the quashing proceeding against the second accused cannot operate as a shield for the petitioner. The dictum laid down in **Laxman Ram Mane v. State of Maharashtra** Parallel citation(s) : 2010 KHC 2019: 2010(13) SCC 125 : 2011 (111) Cut LT 623: 2011 (2) SCC (Cri) 782: 2011 (97) AIC 135 Case No: Crl.A.No. 19 of 2005 dated 07.10.2010 where in it was held

that “an illicit relationship of a married man with another woman would clearly amount to cruelty within the meaning of S. 498-A”.is also given due relevance.

12. In the result, view of the findings in point 1 and 2 this court is of the view that the allegations levelled against the petitioner/first accused are prima facie well founded. There is sufficient ground to proceed against the petitioner and this court does not find it feasible to discharge the petitioner of the offences alleged against him.

13. Hence the petition is dismissed.

(Typed, corrected and pronounced by me in open court on this the 23rd day of April, 2026)

Sd/-

Judicial Magistrate of First Class
Ambalapuzha

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Judicial Magistrate of First Class
Ambalapuzha