

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST  
CLASS-II, PARAVUR**

**Present: Smt. Chithralekha. N.S.  
Judicial Magistrate of the First Class**

**Tuesday, the 21<sup>st</sup> day of April, 2026/ 1<sup>st</sup> Vaisakham, 1948**

**CMP. 1351/2025 IN CC 597/2022  
(Crime No. 435/2022 of Parippally Police Station)**

Petitioner : Shensi, Aged 36, D/o. Abdul Salam,  
Bahiyas, Mukkada, Parippally Village,  
Kollam now residing at S S Flat,  
Varkala Taluk, Thiruvananthapuram – 695 141.  
*(By Adv. Soudh N Nujum)*

Counter petitioner : State of Kerala represented by the Station House  
Officer, Parippally Police Station in Crime no.  
435/2022.  
*(By Assistant Public Prosecutor, Paravur)*

Order : CMP is dismissed.

This petition coming on for today's proceedings, the court on the same day passed the following:-

**ORDER**

1. This petition stands filed seeking order for further investigation u/s. 193(9) BNSS in CC 597/2022 (crime no. 435/2022 of Parippally Police Station) taken cognizance for the offence punishable u/s. 498A IPC.

2. The contentions revealed through the petition are that :-  
Currently the accused was charge sheeted in the case for the offence u/s. 498A IPC who was the husband of CW1. The allegations of physical, mental cruelty in the name of education qualification, appearance, dowry etc are alleged. There is misappropriation of her gold and property gifted by her parents at the time of marriage. She was physically assaulted for refusing to sell the 20 cent property of her parents. On 01.10.2021 she was evicted from the matrimonial house and Talaq was pronounced on 13.03.2022. For the reason the accused is a police officer, on 30.10.2021 though the accused was summoned to the police station and he was made to comply certain direction which he submitted in writing, that would not form part of the First Information Report and final report. He committed forgery of her signature and transferred the ownership of three of her vehicles and such offence was disclosed to her after the registration of First Information Report. Though specific overt act against the parents of the accused were alleged, there was neither proper investigation nor incorporation of said persons as accused. The offences u/s. 406, 420, 323, 506, 468 r/w 34 IPC and sec. 4 of Dowry Prohibition Act are ought to have been incorporated in addition to sec. 498A IPC. The independent witnesses were omitted from the list. Though the father of the petitioner did not give any statement before police, there was produced a statement in his name and he has been falsely shown as a witness. Though the petitioner's mother was

listed as prosecution witness, her vital statements were ignored. Hence further investigation may be ordered in this case.

3. Heard learned Assistant Public Prosecutor and learned counsel for the petitioner and learned counsel for the accused.

4. The learned counsel cited the ruling of the Hon'ble Supreme Court in *Midhilesh Kumar Singh v. State of Rajasthan* (2015 (9) SCC 795) of Hon'ble High Court of Kerala in *Abdul Sathar P K v. State of Kerala and Another* (2021(4) KHC 491), the High Court of Kerala in *Kunjan Chacko v. State of Kerala* (2022 ICO 2914) and the Hon'ble High Court of Madras in *Ganesan v. SHO, Districts of Crime Branch, Villupuram* (2022 ICO 1548).

5. It was held by Hon'ble Supreme Court in **Vinu Bhai Hari Bhai Malaviya and others v. State of Gujarat and Another** in 2019(5)KHC 352 that *“There is no good reason given by the Court in these decisions as to why a Magistrate’s powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh*

*(supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the Cr. PC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo moto by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for*

*example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled.”*

6. The case currently pending before court as CC 597/2022 await evidence of CW1 after framing charge for the offence u/s. 498A IPC against the husband of the petitioner. The charge was framed on 05.08.2022 and this petition is filed thereafter 31.10.2025. The specific contention of the petitioner/CW1 is that her statement was not recorded in full, as in the case of her mother, which were forwarded along with the final report. The statement purportedly recorded in the name of her father was not his statement at all.

7. The definition of cruelty u/s. 498A IPC is read as follows:-  
“Whoever, being the husband or the relative of the husband of a woman,

*subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.Explanation.— For the purpose of this section, “cruelty” means*

*(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

8. The materials placed on behalf of the petitioner include a petition lodged before the SHO concerned on 11.06.2022 alleging physical and mental harassment at the hands of the parents of the respondent in the name of dowry, hurtful remarks with respect to her appearance, financial background etc. Also compulsion from accused no. 2 for selling her 55 cent property, on 01.10.2021 the accused evicted her from the house, the mother-in-law allowed her to starve at the time when she was pregnant etc are alleged. In the First Information Statement recorded and produced before court which is signed by CW1 has alleged that her property including gold ornaments were sold out at various instances and spent by the parents of the respondent.

9. The First Information Statement is devoid of any detail particularly in disclosing the exact overt acts of the parents of the accused. The petitioner would submit that though in the petition dated 11.06.2022 specific allegations against the parents of accused were made they were excluded from the final report without any justification. It may be seen that the allegations so made in such petition when seen through the purview of sec. 420 or 498A IPC are too bald or stray statements devoid of detailing as to their exact involvement in committing any physical assault or any act harmful her life, limb, or if capable for driving her to commit suicide within the ambit of sec. 498A IPC. The investigation has happened subsequently and it cannot be stated that in spite of prima facie material existed against them in the very petition CW1 lodged at the outset the investigation, intentionally omitted said persons to be charge sheeted. After an investigation final report is filed and when the document on behalf of the petitioner itself would not point to any solid material to hold them prima facie indulging in any specific act under the ambit of sec. 498A IPC, being merely present in the house and living together, to have involvement in the entire developments in said house, by itself is not a ground to order investigation against the parents of the accused.

10. Eventhough it was stated that only the relatives of the respondents were made witnesses who could testify in favour of the respondent due to his

previlage as a police officer, the petitioner equally failed to put forward the persons who had direct knowledge regarding the incident who ought to have been included in the final report of witnesses.

11. The First Information Statement was signed by the petitioner. Hence her request after three years from such date that she had disclosed other facts which did not reflect in her signed statement, regarding which she has not made any complaint for refusal to incorporate her full statement until today, will not hold good cannot be entertained.

12. CW1 has alleged that the accused had transferred ownership of her motorcycle bearing no. KL-02-AW-7518 in the name of accused. The copy of application for intimation and transfer of ownership has shown that the vehicle bearing no. KL-02-AW-7518 is being transferred from the registered ownership of the petitioner to accused in the case. Such independent allegations are subsequent development and are separable from the one narrated under the ambit of offence u/s. 498A IPC. There is no impediment in petitioner taking independent recourse against said offences as per law. But that would not warrant further investigation in the case registered for the offence u/s. 498A IPC.

13. The spirit of the judgment of the Hon'ble Supreme Court is that the Magistrate is empowered to entertain a petition for further investigation until prior to the stage of commencement of trial. In the case at hand the trial has commenced by framing the charge against the accused on 05.08.2022 and this petition is filed in the year 2025 much belatedly. The trial has commenced three years prior to the petition seeking further investigation. This court has not found merit in the submission to entertain application for further investigation for the reasons aforementioned. In light of the dictum laid by Hon'ble Supreme Court in the decision above it is reasonably beyond the scope of jurisdiction of this court to entertain the petition after framing the charge and having issued summons to CW1. In light of the discussion the petition stands dismissed.

In the result, CMP is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 21<sup>st</sup> day of April, 2026).

Sd/-  
Judicial Magistrate of the First Class-II,  
Paravur