

Rajesh Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Nov-28-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Rajesh Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS FRIDAY, THE 28^H DAY OF NOVEMBER 2014 7TH AGRAHAYANA, 1936 CrI.MC.No. 5164 of 2014 ()
----- AGAINST THE

ORDER

/

JUDGMENT

IN CC10952009 of JUDL.M.F.C.-I, ERNAKULAM CRIME NO. 108/2007 OF ERNAKULAM NORTH POLICE STATION , ERNAKULAM PETITIONER(S)/PETITIONER/ACCUSED:

----- 1. RAJESH KUMAR (NAME OF THE FIRST PETITIONER IS CORRECTED AND SUBSTITUTED AS "RAJESH KURIAN" AS PER

ORDER

DATED 19.11.2014 IN CRL.M..A.NO.8734/14) S/O. P.JACOB KURIAN, PANCHERIL, EDAPPALLY.

2. ANNAMMA KURIAN AGED 65 YEARS W/O. P.JACOB KURIAN, PANCHERIL, EDAPPALLY. BY ADVS.SRI.S.RAJEEV SRI.K.DHEERENDRA KRISHNAN
RESPONDENTS/STATE/DEFACTO COMPLAINANT:

----- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA-682031
(CR.NO. 108/2007 OF E.T.NORTH POLICE STATION) 2. BABURAJ,
AGED 35 YEARS S/O. CHANDRASEKHARAN NAIR, VAZHAKKALA
KAKKANADU-682030. R2 BY ADV. SRI.VINOD KUMAR.C R1 BY PUBLIC
PROSECUTOR SMT.SAREENA GEORGE THIS CRIMINAL MISC. CASE
HAVING BEEN FINALLY HEARD ON 28.11.2014, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING: CrI.MC.No. 5164 of 2014 ()

----- APPENDIX PETITIONER(S)' EXHIBITS
----- ANNEXURE I- TRUE COPY OF THE FIRST
INFORMATION REPORT DATED 13.02.2007. ANNEXURE II- TRUE COPY OF
THE FINAL REPORT. ANNEXURE III- TRUE COPY OF THE AFFIDAVIT.
ANNEXURE IV- TRUE COPY OF THE POWER OF ATTORNEY.
RESPONDENT(S)' EXHIBITS ----- NIL. sdk+ ///True
copy/// P.S. to Judge ALEXANDER THOMAS, J.

===== CrI.M.C.No. 5164 of 2014 ===== Dated
this the 28th day of November, 2014

ORDER

This Criminal Miscellaneous Case seeking invocation of this Court's inherent powers conferred as per Sec. 482 of the Cr.P.C. has been instituted with the prayer to quash all further proceedings in Calendar Case, C.C.No.1095/2009 pending on the file of the Judicial First Class Magistrate's Court-I, Ernakulam. The said Calendar Case arose out of the Crime No.108/2007 of Ernakulam Town Police Station, in which, the petitioners are the two accused therein and the offences alleged are those under Secs. 406, 420 read with Sec. 34 of the IPC. The case arose out of the private criminal complaint instituted by the 2nd respondent

(defacto complainant) which was directed to be investigated by the Police on the basis of the directions issued by the jurisdictional Magistrate concerned in terms of the provisions of Sec. 156(3) of the Cr.P.C. The brief of the allegations against the accused (petitioners) is that the accused had auctioned chitty from Kizhakkemudom Chits and Crl.M.C.5164/14 - :

2. :- Finance Investments and later did not remit the subscription and the 2nd accused stood as guarantor and cheated the defacto complainant's chit company and thereby committed the above said offences. The complaint was filed by the 2nd respondent in his capacity as the power-of-attorney holder of the chit company. It is now submitted that after investigation, the Police filed final report/charge sheet, which has led to the institution of C.C.No. 1095/2009 on the file of the Judicial First Class Magistrate's Court- I, Ernakulam. It is further stated that now the entire disputes between the petitioners (accused) and the 2nd respondent (defacto complainant) have been settled out of court. Therefore, it is submitted that even if the prosecution is allowed to proceed, it would not serve any purpose. It is in the conspectus of these facts and circumstances that the petitioners have approached this Court by filing the instant Criminal Miscellaneous Case.

2. The 2nd respondent (defacto complainant) has sworn to affidavit dated 4th September, 2014, produced as Annexure-III in this Crl.M.C., wherein it is stated that the chit company/firm has no further grievances in the matter and the money owed to him has Crl.M.C.5164/14 - :

3. :- been fully settled and that the power-of-attorney has authorised the 2nd respondent to collect the amount for and on behalf of the chit company from the petitioners (accused) and that the 2nd respondent has received the said money due from the petitioners (accused) and that there exists no grievance as far as the 2nd respondent or his chit company is concerned. Accordingly, it is submitted that the 2nd respondent does not want to continue the criminal proceedings against the petitioners in the instant crime as the entire disputes have been settled between them and they are now in cordial relationship and the pendency of the case would adversely affect their relationship, etc.

3. Sri.S.Rajeev, the counsel instructed by Sri.K.K.Dheerendra Krishnan, learned Advocate appearing for the petitioners would submit that no useful purpose would be subserved by prolonging the continuance of the prosecution process and that it would amount to sheer wastage of judicial, administrative and other recourses of the State. Sri.C.Vinodkumar, the learned counsel appearing for 2nd respondent (defacto complainant) on the specific instructions from the 2nd respondent would submit that the entire disputes between Crl.M.C.5164/14 - :

4. :- the 2nd respondent and the petitioners have been settled out of court and that the money due to the chit company has been paid by the petitioners/accused and that the accused have no further disputes between them and that the relationship between the parties have been restored and that any further continuance of the prosecution would only detrimentally affect the smooth continuance of the relationship between the parties.

4. The point in issue is no longer res integra as it is covered by a decision of the Supreme Court in the case Gold Quest International Pvt. Ltd. V State of Tamil Nadu and Others reported in 2014(2) KLD738(SC). In the said decision in Gold Quest International Pvt. Ltd.'s case, the appellant company therein had over 60,000 members as consumers in and around Chennai city alone and a complaint was made in 2003 by the private respondent therein against the appellant company alleging noncompliance of the issuance of numismatic gold coin on receipt of Rs.16,800/- from the wife of that party respondent and as per the promise made by the appellant company. Some other customers also had complaints on the basis of which the police registered a case under Crl.M.C.5164/14 - :

5. :- Sec. 420 of the Indian Penal Code r/w Secs. 4, 5 and 6 of the Prize Chits and Money Circulation (Banning) Act, 1978 and the appellant company filed a Writ Petition before the Madras High Court for quashing of the impugned FIR therein and since all the claimants including the complainant settled the dispute with the appellant company and entered into an agreement, the learned Single Judge of the High Court had quashed the FIR and allowed the Writ Petition. However the state challenged the order of the learned Single Judge which quashed the

impugned FIR and the Division Bench allowed the writ appeal filed by the State and directed the police authority to investigate the crime. Aggrieved by this, the company had taken up the matter in Supreme Court in Appeal. After referring to a catena of rulings of the Apex Court as in B.S Joshi and Others v. State of Haryana and Another reported in 2003(4) SCC675 Nikhil Merchant v. Central Bureau of Investigation and Another reported in 2008(9) SCC677 Gian Singh v. State of Punjab reported in 2012(10) SCC603 and other cases, the Apex Court came to the conclusion that in cases which are substantially of civil disputes though with criminal facets, if the parties had entered into settlement and it has become Crl.M.C.5164/14 - :

6. :- clear that there are no chance of conviction, there is no illegality quashing the proceedings under Section 482 of the Code of Criminal Procedure r/w Article 226 of the Constitution of India. But that however such an approach may not apply where the nature of the offence is very serious like those involving offences like rape murder robbery dacoity and cases under the Prevention of Corruption Act, under the NDPS Act etc. in which punishment of life imprisonment or death can be awarded. In this view of the matter, the Supreme Court set aside the judgement of the Division Bench of the Madras High Court and restored the judgment of the learned Single Judge and upheld the quashment of the FIR for offences under Sec. 420 of the Indian Penal Code.

5. On a consideration of the facts and circumstances emerging in this case, this Court is of the considered opinion that the continuance of the prosecution is unwarranted and that the prayer of the petitioners could be allowed in the light of the aforementioned rulings in the Supreme Court as in Gold Quest International Pvt. Ltd. v. State of Tamil Nadu and Others reported on 2014 (2) KLD738(SC). In the result, the Crl.M.C. is allowed. The Crl.M.C.5164/14 - :

7. :- impugned Annexure-II final report/charge sheet in Crime No. 108/2007 of the Ernakulam Town North Police Station, which has led to the institution of the Calendar Case, C.C.No. 1095/2009 on the file of the Judicial First Class Magistrate's Court-I, Ernakulam, and all further proceedings arising therefrom stand quashed. The Crl.M.C. stands allowed as above. Sd/- sdk+ ALEXANDER

THOMAS, JUDGE ///True copy/// P.S. to Judge

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