

Gopakumar Vs. State of Kerala

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Court : Kerala

Decided On : Jan-30-2013

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Gopakumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR WEDNESDAY, THE 30TH DAY OF JANUARY 2013 10TH MAGHA 193 CrI.MC.No. 3936 of 2012 () ----- CC.NO.186/2010 (L.P.132/2011) OF JUDICIAL FIRST CLASS MAGISTRATE COURT-V,(SPECIAL COURT FOR MARKLIST CASES) THIRUVANANTHAPURAM CRIME NO.255/92 OF FORT POLICE STATION ----- PETITIONER(S)/ACCUSED 6 9 AND 12.----- 1. GOPAKUMAR, AGED 2 YEARS, S/O.BHASKARAN, TC 39/1612,KURIATHY WARD, MANACAUD VILLGE,THIRUVANANTHAPURAM.

2. BIJU, S/O.JAYACHANDRAN,ODAKKARA VEEDU,MUTTATHARA, SREEVARATHAM,THIRUVANANTHAPURAM.

3. KUMAR, S/O.MANIYAN, T C 50/68,KALADI WARD, MANACUAD, THIRUVANANTHAPURAM BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENTS/COMPLAINANT: ----- 1. THE
STATE OF KERALA, REP.BY ITS PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, ERNAKULAM,PIN-68

2. DR.RAJANATH BASHEER,W/O.BASHEER,AGED 5 YEARS, TC
48/679(1)MAHEEN'S VEEDU,NEAR PAZHANCHIRA PALAM,
AMBALATHARA,MANACAUD, THIRUVANANTHAPURAM-695 034 R1 BY
PUBLIC PROSECUTOR SMT.V.H.JASMINE R2 BY ADV.SRI.K.B.PRADEEP
THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30-01-2013,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts
CRMC.NO.3936/2012 APPENDIX PETITIONER'S ANNEXURES: ANNEX A
COPY OF THE FINAL REPORT IN CRIME NO.255/92 OF FORT PS ANNEX B
COPY OF THE JUDGMENT DATED 29 11/10 IN CC.154/09 ANNEX C COPY OF
THE AFFIDAVIT EXECUTED BY THE 2ND RESPONDENT DATED 15 10/12
ANNEX D COPY OF THE NOTARIZED ID CARD OF THE 2ND RESPONDENT.
RESPONDENT'S ANNEXURES: NIL /TRUE COPY/ P.S.TO.JUDGE sts
T.R.RAMACHANDRAN NAIR, J.

----- Crl. M.C.No. 3936 of 2012 -----
----- DATED THIS THE 30th DAY OF JANUARY, 2013

ORDER

The petitioners are accused 6, 9 and 12 in C.C.No.186/2010 (L.P.No.132/2011) on
the file of the Judicial First Class Magistrate-V, Thiruvananthapuram. The offences
alleged are under Sections 143, 147, 148, 149, 427 and 153A of the Indian Penal
Code. The prayer is to quash the proceedings against them.

2. It is averred in para 2 of the petition that accused 2, 7, 10 and 11 were tried and
acquitted by judgment dated 7.8.2009 and accused 3 to 5, 8 and 13 have also
been acquitted as per judgment dated 2.11.2008. Later, the case against the
remaining accused was refiled as C.C.No.154/2009. Accused 1, 6, 9 and 12
appeared, but only the first accused took part in the trial and he was acquitted by
Annexure B judgment.

3. The allegation mainly is that on 19.7.1992 at 9.40 p.m., the accused due to previous enmity with the defacto complainants, trespassed into their house and caused damaged to the tune of Rs.1,000/-. C.W.2 is the wife of C.W.1. C.W.1 is bedridden and therefore he could not tender evidence at any point of time. It is stated that the cases were settled by the Crl.M.C.No.3936/2012 -2- parties and Anneuxre C is the affidavit filed by the second respondent. The petitioners therefore pray that the proceedings may be quashed.

4. Heard learned counsel for the petitioners, learned counsel for the second respondent and learned Public Prosecutor.

5. In the affidavit filed by the second respondent, it is averred that she does not intend to proceed against any of the accused in the case concerned. The husband is completely bedridden and hence he could not tender evidence in C.C. No.154/2009. It is further averred that there is no element of collusion between the parties in presenting this petition and that she has compounded and settled the case out of her free will. It is also stated that the issue is purely private and she has no objection in compounding or quashing or withdrawing the offences alleged against the accused persons.

6. A reading of Annexure B judgment will show that the court below observed in para 10 that the issues have been settled between the parties. All the witnesses including the injured did not support the case of the prosecution and the prosecution has miserably failed to prove the offence alleged. It was further found that there is no sufficient material to attract the offence and evidence to connect the accused persons. Crl.M.C.No.3936/2012 -3- 7. The above will show that the substratum of the prosecution case has been shattered. Apart from the above, there is a settlement between the parties which is reiterated by the learned counsel for the petitioners and learned counsel for the second respondent.

8. In the light of the settlement between the parties, there will not be any useful purpose in proceeding with the case against the accused, as there cannot be any successful prosecution also. It will be a sheer waste of time of the court also.

9. The matter being purely a private dispute, this Court can exercise the jurisdiction under Section 482 of the Code of Criminal Procedure in quashing the proceedings. Accordingly, the CrI.M.C. is allowed. The proceedings pending against the petitioners in C.C.No.186/2010 (L.P.No.132/2011) on the file of the Judicial First Class Magistrate Court-V, Thiruvananthapuram will stand quashed. No costs. (T.R.RAMACHANDRAN NAIR, JUDGE) kav/

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