

Gopakumar Vs. State of Kerala

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Court : Kerala

Decided On : Jul-30-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Gopakumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN TUESDAY, THE 30TH DAY OF JULY 2013 8TH SRAVANA, 1935 CrI.MC.No. 3169 of 2013 ----- AGAINST THE ORDER/JUDGMENT IN SC NO.61/2012 OF ASSISTANT SESSIONS COURT, KOTTARAKKARA CRIME NO. 111/2010 OF KADAKKAL POLICE STATION , KOLLAM PETITIONER(S)/ACCUSED NO.1 TO 4.----- 1. GOPAKUMAR, AGED 3 YEARS, S/O.VASUDEVAN PILLAI, RESIDING UNNI VILASAM, MEKKADU, KOTTUKKAL MURI, KOTTUKKAL VILLAGE, KOLLAM-691 306.

2. SANEESH, AGED 2 YEARS, S/O.BHUVANACHANDRAN, AND RESIDING AT VILAYIL VEEDU, KOTTUKKAL MURI, KOTTAKKAL VILLAGE, KOLLAM-691 306.

3. SREEKUMAR,AGED 2 YEARS, S/O.SASIDHARAN PILLAI, RESIDING AT NEDIYARA PUTHEN VEEDU, KOTTUKKAL MURI, KOTTACKAL VILLAGE, KOLLAM-691 306.

4. SUDHEESH,AGED 3 YEARS, S/O.SURENDRAN, AND RESIDING AT SUNIL BHAVAN, CHELAPPALLY, KOTTUKKAL MURI, KOTTUKKAL VILLAGE, KOLLAM-691 306. BY ADVS.SRI.B.ASHOK SHENOY SMT.C.G.PREETHA SRI.K.V.GEORGE SRI.P.N.RAJAGOPALAN NAIR

RESPONDENT(S)/COMPLAINANT/STATE AND INJURED.:

----- 1. STATE OF KERALA, THROUGH THE SUB INSPECTOR OF POLICE, KADAKKAL POLICE STATION, KADAKKAL-691 536, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031. Kss ..2/- ..2... CRMC.NO.3169/2013 2. SAJEEV,AGED 3 YEARS, S/O.ABDUL SAMAD AND RESIDING AT SHIHAB MANZIL, NEAR KOTTUKKAL UP SCHOOL, PINDI MURI, KOTTUKKAL VILLAGE, KOLLAM, PIN-691 306.

3. DILEEP,AGED 3 YEARS, S/O.ABDUL AZIZ, AND RESIDING AT DEEPAMANZIL, NEAR KOTTUKKAL UP SCHOOL, KOTTUKKAL MURI, KOTTUKKAL VILLAGE, KOLLAM, PIN-691 306. R1 BY PUBLIC PROSECUTOR SMT. S.HYMA R2 & R3 BY ADV. SMT.NISHITHA B.BHAT THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30-07-2013 ALONG WITH CRL.M.C.NO.3170 OF 2013.THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss CrI.M.C.No.3169/2013 APPENDIX PETITIONER'S ANNEXURES: ANNEX.A1: COPY OF THE FIRST INFORMATION REPORT DTD. 24/01/2010 IN CRIME NO.111/2010 OF KADAKKAL POLICE STATION. ANNEX.A2: COPY OF THE FINAL REPORT DTD. 13/07/2010 IN CRIME NO. 111/2010 OF KADAKKAL POLICE STATION. ANNEX.A3: COPY OF THE AFFIDAVIT SWORN IN BY THE 2ND RESPONDENT. ANNEX.A4: COPY OF THE AFFIDAVIT SWORN IN BY THE 3RD RESPONDENT. RESPONDENT'S ANNEXURES: N I L /TRUE COPY/ P.A.TO JUDGE Kss V.K.MOHANAN, J.

----- CrI.M.C.Nos. 3169 & 3170 of 2013

----- Dated this the 30th day of July, 2013

ORDER

As the parties to the above M.Cs are more or less same and especially when the above petitions are arouse out of case and counter case and when the subject

matters are also same, the above two M.C are heard together and being disposed by this common order.

2. The accused Nos.1 to 4 in Crime No.111/2010 of Kadakkal Police Station, are petitioners in Crl.M.C.No.3169/2013 and the above crime was registered at the instance of the second respondent herein and the 3rd respondent is one of the injured in the above crime, who are the accused in Crime No.109/2010 of the very same Police Station and the defacto complainant therein and the injured are respectively respondents 2 and 3, who are accused Nos.1 and 2 in Crime No.111/2010.

3. As I indicated earlier as the above sessions cases are instituted upon in the reports in two different crimes which are case and counter, and while the above cases are pending before the Court below for trial, the matter is settled between Crl.M.C.Nos. 3169 & 3170 o

2. the contesting parties and now both of them are not having any grievance and they do not want to proceed with the prosecution any further. In Crl.M.C.No.3169/2013, the second respondent, defacto complainant has sworn into Annexure-3 affidavit and similarly Annexure-4 affidavit has sworn into by 3rd respondent, who is injured. In Crl.M.C.No.3170/2013, the defacto complainant therein who is the second respondent and the injured who is the 3rd respondent are respectively sworn into Annexure-A3 and A4 affidavit.

4. Heard the learned counsel for the petitioners as well as the respondents. I have also heard the learned Public Prosecutor.

5. The learned counsel for the petitioners submitted that during the pendency of the above crimes, the matter is settled amicably between the parties to the dispute which are the subject matter of the above crimes. Therefore, the continuation of the proceedings in the above crimes are abuse of process of law and proceedings.

6. The learned counsel for the respondents who on the basis of specific instruction received from the respondents submitted that the above respondents, does not intend to Crl.M.C.Nos. 3169 & 3170 o

3. proceed any further against the petitioners and they have no grievance against them.

7. I have carefully considered the above submissions of the respective counsel. I have verified the documents and materials produced along with the above petitions. In the given facts and circumstances of the case and especially in the light of the settlement arrived between the parties to the dispute, the learned Public Prosecutor has also no objection in allowing the above petitions.

8. Having regard to the facts and circumstances involved in these cases, it can be seen that the offences involved in the above cases are only Sections 143, 147, 148, 323, 308 and r/w Section 149 of IPC. which are more or less personal in nature and no public interest is involved. It is pertinent to note that though such offences are involved, the real parties to the dispute approached this Court after having amicably settled the matter. From the submission made by the counsel for the respondents, it appears to me that the the de facto complainants have no further grievance against the petitioners accused in the light of the settlement arrived by them. In this juncture, it is relevant to note the decision of CrI.M.C.Nos. 3169 & 3170 o

4. the Honourable Apex Court reported in Gian Singh v. State of Punjab [2012(4) KLT 108(SC)]. In which case, the Supreme Court has held as follows:- "57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under S.320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz;(i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed.. It is further held as follows:- "..... But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing,

particularly the offences arising from commercial, financial,mercandile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc. or the family Crl.M.C.Nos. 3169 & 3170 o

5. disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim....." According to me, in the light of the facts and circumstances involved in the present cases and particularly in view of the settlement arrived in the present cases, the dictum laid in the above decision is applicable in the present cases. Thus, I am of the view that as the parties to the dispute settled the issues amicably, it is the duty of this Court to promote and encourage such settlement, instead of compelling the parties to go on with the dispute. It is pertinent to note that since the matter is settled out of court, in the event of proceeding with the trial, there would not have any fruitful prosecution resulting the conviction of the accused, rather the net result would be sheer waste of judicial time and abuse of process of the court and proceedings. Thus, according to me, Crl.M.C.Nos. 3169 & 3170 o

6. following the decisions cited supra, these Criminal M.C.s can be allowed granting the relief as sought for. In the result, these Crl.M.C.s are allowed, quashing A2 final report in Crime Nos.111/2010 & 109/2010 of Kadakkal Police Station and all further proceedings thereto, respectively in S.C.No.61/2012 and S.C.No.1480/2011, on the file of the Court of Assistant Sessions Judge, Kottarakara. V.K.MOHANAN, JUDGE AS

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