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Hari Kumar Vs. Ratheesh Unnithan

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Court : Kerala

Decided On : Jul-26-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Hari Kumar

Respondent : Ratheesh Unnithan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN FRIDAY, THE 26TH DAY OF JULY 2013 4TH SRAVANA, 1935 Crl.MC.No. 3118 of 2013 () ---------- CRIME NO. 387/2013 OF KODUMON POLICE STATION , PATHANAMTHITTA. ..... PETITIONER(S):ACCUSED 1 TO 3 ---------- 1. HARI KUMAR, AGED 3 YEARS,S/O.KRISHNAN UNNITHAN RESIDING AT KULATHINTHEKKETHIL PUTHEN VEETIL, PARAKKARA MURI, PANDALAM THEKKEKKARA VILLAGE, ADOOR TALUK, PATHANAMTHITTA DISTRICT.

2. AJITH KUMAR, AGED 4 YEARS,S/O.KRISHNAN UNNITHAN RESIDING AT KULATHINTHEKKETHIL PUTHEN VEETIL, PARAKKARA MURI, PANDALAM THEKKEKKARA VILLAGE, ADOOR TALUK, PATHANAMTHITTA DISTRICT.

3. ANEESH @ ANISH KUMAR, AGED 3 YEARS, S/O.GOPALA KRISHNAN NAIR, NANDANAM, KULATHINTHEKKETHIL PUTHEN VEETIL, PARAKKARA

MURI PANDALAM THEKKEKKARA VILLAGE, ADOOR TALUK PATHANAMTHITTA DISTRICT. BY ADV. SRI.V.SETHUNATH RESPONDENT/COMPLAINANT/DE-FACTO COMPLAINANT/INJURED/STATE ---------- 1. RATHEESH UNNITHAN, AGED 2 YEARS, S/O.RAJAN PILLAI, RESIDING AT KOTTAKKAKATHU VEETTIL, PARAKKARA MURI, PANDALAM THEKKEKKARA VILLAGE ADOOR TALUK, PATHANAMTHITTA DISTRICT

501.

2. THE SUB INSPECTOR , KODUMON POLICE STATION

555.

3. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM PIN 68.031. R1 BY ADV. SRI.S.JUSTUS R21 & R3 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26-07-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: tss Crl.MC.No. 3118 of 2013 () ---------- APPENDIX PETITIONER(S)' EXHIBITS ---------- ANNEXURE 1 TRUE COPY OF THE FIR & FIS IN CRIME NO.387/2013 OF KODUMON POLICE STATION, NOW PENDING ON THE FILE OF THE JFMC ADOOR. ANNEXURE 2 COPY OF THE NOTARIZED AFFIDAVIT FILED BY THE IST RESPONDENT. RESPONDENT(S)' EXHIBITS ---------- NIL TRUE COPY P.A. TO JUDGE tss V.K.MOHANAN, J.

---------- Crl.M.C.No. 3118 of 2013 ---------- Dated this the 26th day of July, 2013

ORDER

The above petition is filed under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C.') at the instance of the petitioners, who are accused in Crime No.387/2013 of Kodumon Police Station which is a case instituted upon the police report for the offences punishable under Sections 452, 323, 341, 324, 427 and 34

of IPC of I.P.C., with a prayer to quash the Annexure-1 proceedings (i.e., Crime No.387/2013 of Kodumon Police Station pending on the file of the J.F.C.M., Adoor as the matter is settled out of court.

2. The allegation in the F.I.S is that the, 1st accused who is the brother of the 2nd accused and 3rd accused is the brother in law of the 1st and 2nd accused,and they, in furtherance of their common intention had trespassed into the house of the defacto complainant and wrongfully restrained the defacto complainant and assaulted him with iron rod and also pushed his mother, who tried to intervene and ransacked the house and caused damage to the tune of Rs.6,000/-. Thus according to the prosecution the accused has committed the Crl.M.C.No. 3118 o

2. offences punishable under Sections 452, 323, 341, 324, 427 and 34 of IPC of I.P.C. Now, the case of the petitioners is that the disputes is settled with the petitioners and the defacto complainant who is the first respondent, who sworn into Annexure-A2 affidavit.

3. Heard the learned counsel for the petitioners as well as the first respondent. I have also heard the learned Public Prosecutor.

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

5. The learned counsel for the first respondent who on the basis of specific instruction received from the respondent submitted that the above respondent, who is the de facto complainant does not intend to proceed any further against the petitioners and he has no grievance against them.

6. I have carefully considered the above submissions Crl.M.C.No. 3118 o

3. of the respective counsel. I have verified the documents and materials produced along with the above petition. 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 petition.

7. Having regard to the facts and circumstances involved in the case, it can be seen that the offences involved in the above case are only Sections 452, 323, 341, 324, 427 and 34 of IPC of I.P.C., 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 first respondent, it appears to me that the de facto complainant has 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 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 Crl.M.C.No. 3118 o

4. 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 disputes where the wrong is basically private or personal in nature and the parties have resolved Crl.M.C.No. 3118 o

5. 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 case and particularly in view of the settlement arrived in the present case, the dictum laid in the above decision is applicable in the present case. 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, following the decisions cited supra, this Criminal M.C. can be Crl.M.C.No. 3118 o

6. allowed granting the relief as sought for. In the result, this Crl.M.C. is allowed, quashing Annexure-A1 and all further proceedings pending against the petitioners in Crime No.387/2013 of Kodumon Police Station and all further proceedings thereto. V.K.MOHANAN, JUDGE AS

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