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Saji Vs. Neethu

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Court : Kerala

Decided On : Jul-26-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Saji

Respondent : Neethu

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. 3130 of 2013 ---------- [C.C.NO.1471/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT -II, THRISSUR, CRIME NO. 350/2012 OF NEDUPUZHA POLICE STATION , THRISSUR DISTRICT] ..... PETITIONERS/ACCUSED 1 & 2: ---------- 1. SAJI, AGED 3 YEARS, S/O.THANKAPPAN, CHIRACKAL HOUSE, MUTHUVANKUDI DESOM, KUNJITHANNI VILLAGE, IDUKKI DISTRICT.

2. LEELA, AGED 6 YEARS, W/O.THANKAPPAN, CHIRACKAL HOUSE, MUTHUVANKUDI DESOM, KUNJITHANNI VILLAGE, IDUKKI DISTRICT. BY ADVS.SRI.E.C.POULOSE, SMT.BOBBY RAPHEAL.C. RESPONDENTS/DEFACTO COMPLAINANT AND STATE: ---------- 1. NEETHU, AGED 2 YEARS, D/O.MOHANAN, CHEENIKKAPARAMBIL HOUSE, KUTTIPADAM

DESOM, VENGOLA VILLAGE, ERNAKULAM DISTRICT

524.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. R1 BY ADV. SRI.K.I.SAGEER, R2 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: Prv. CRL.M.C. NO.3130/2013: APPENDIX PETITIONERS' ANNEXURES: ANNEXURE A-1: CERTIFIED COPY OF F.I.R. IN CRIME NO.350/2012 OF NEDUPUZHA POLICE STATION. ANNEXURE A-2: CERTIFIED COPY OF THE FINAL REPORT IN C.C. NO.1471/2012 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE - COURT-II, THRISSUR. ANNEXURE A-3: COPY OF THE MEMORANDUM OF AGREEMENT EXECUTED BETWEEN THE P.1. AND R.1. AT DISTRICT MEDIATION CENTRE, ERNAKULAM. ANNEXURE A-4: AFFIDAVIT SWORN BY THE R.1. DTD. 23/07/2013. RESPONDENTS' ANNEXURES: NIL. //TRUE COPY// P.A. TO JUDGE. Prv. V.K.MOHANAN, J.

---------- Crl.M.C.No.3130 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 Nos.1 and 2 in C.C.No.1471 of 2012 on the file of the Judicial First Class Magistrate Court- II, Thrissur which is a case instituted upon the police report in Crime No.350 of 2012 of Nedupuzha Police Station for the offences punishable under Sections 498(A) & 323 read with Section 34 of I.P.C. with a prayer to quash all further proceedings in C.C.No.1471 of 2012 on the file of the Judicial First Class Magistrate Court-II, Thrissur as the matter is settled out of court.

2. The allegation against the petitioners is that the marriage between the 1st petitioner and the 1st respondent was solemnized on 29/10/2006 at the house of the 1st respondent as per the religious rites and customs prevailed in their community and she was mentally and physically harassed by Crl.M.C.No.3130 of 2013 :-2-: the accused persons by demanding more dowry. Now the case of the

petitioner is that, the matter is settled through the Mediation Centre at Ernakulam when the matter was pending before the Family Court at Muvattupuzha. The first petitioner and the first respondent, who is the de facto complainant is residing together and leading a peaceful married life. The first respondent/de facto complainant has sworn into Annexure-A4 affidavit.

3. Heard the learned counsel for the petitioners as well as the 1st respondent. I have also heard the learned Public Prosecutor.

4. The learned counsel for the petitioners submitted that, during the pendency of the above case, the dispute is settled amicably between the parties 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 1st respondent who on the basis of specific instruction received from the respondent Crl.M.C.No.3130 of 2013 :-3-: submitted that the above respondent, who is the de facto complainant does not intend to proceed any further against the petitioners and she has no grievance against them.

6. I have carefully considered the above submissions of the respective counsel. I have verified the documents and materials produced along with the above petition including Annexure-A4 affidavit. 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 under Sections 498(A) & 323 read with Section 34 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 1st respondent, it appears to me that the de facto Crl.M.C.No.3130 of 2013 :-4-: 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 decisions of the Honourable Apex Court reported in Gian Singh v. State of Punjab [2012 (4) KLT 108(SC)] and Jitendra Raghuvanshi and Others v. Babita Raghuvanshi and another [2013 (1) KLD 81.(SC)]. In Gian Singh's 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 Crl.M.C.No.3130 of 2013 :-5-: 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 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....." Further, in Jitendra Raghuvanshi's case, the Apex Court has held as follows:- "7. It is not in dispute that matrimonial disputes have been on considerable increase in recent times resulting in filing of complaints under Sections 498A and 406 of I.P.C. not only against the husband but also against the relatives of the husband. The question is when such matters are resolved either by the wife agreeing to rejoin the matrimonial home or by mutual settlement of other pending disputes for which

both the sides approached the High Court and jointly prayed for quashing of the criminal proceedings or the FIR or complaint by the wife under Sections 498A and 406 of I.P.C., whether the prayer can be declined on the sole ground that since the offences are non-compoundable under Section 320 of the Code, it would be impermissible for the court to quash the criminal proceedings or FIR or complaint. Crl.M.C.No.3130 of 2013 :-6-:

8. It is not in dispute that in the case on hand subsequent to the filing of the criminal complaint under Sections 498A and 406 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, with the help and intervention of family members, friends and well-wishers, the parties concerned have amicably settled their differences and executed a compromise/settlement. Pursuant thereto, the appellants filed the said compromise before the Trial Court with a request to place the same on record and to drop the criminal proceedings against the appellants herein. It is also not in dispute that in additional to the mutual settlement arrived at by the parties, respondent/-wife has also filed an affidavit stating that she did not wish to pursue the criminal proceedings against the appellants and fully supported the contents of the settlement deed. It is the grievance of the appellants that no only the Trial Court rejected such prayer of the parties but also the High Court failed toe exercise its jurisdiction under Section 482 of the Code only on the ground that the criminal proceedings relate to the offences punishable under Sections 498A and 406 of IPC which are non-compoundable in nature." "12. In our view, it is the duty of the Courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings. Crl.M.C.No.3130 of 2013 :-7-:

13. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the

parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law, in order to do complete justice in the matrimonial matters, the Courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed." Considering the particular facts and circumstances in this case, it can be seen further that the criminal proceedings are initiated consequent to the matrimonial dispute arose among the parties and both the disputes are now amicably settled between the parties. 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 decisions will be squarely Crl.M.C.No.3130 of 2013 :-8-: applicable in the present case. According to me, as the parties to the dispute settled the issues amicably, it is the duty of this Court to promote 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 Crl.M.C.can be allowed granting the relief as sought for. In the result, this Crl.M.C. is allowed, quashing Annexure-A1 F.I.R. in Crime No.350 of 2012 of Nedupuzha Police Station and all further proceedings pending against the petitioners in C.C.No.1471 of 2012 on the file of the Judicial First Class Magistrate Court-II, Thrissur. V.K.MOHANAN, JUDGE skj

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