

James Vs. State of Kerala

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Court : Kerala

Decided On : Jul-08-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : James

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN MONDAY,THE 8TH DAY OF JULY 2013 17TH ASHADHA, 1935 CrI.MC.No. 2778 of 2013 -----
[C.C.NO.314/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, NILAMBUR IN CRIME NO. 134/2012 OF NILAMBUR POLICE STATION , MALAPPURAM DISTRICT] PETITIONERS/ACCUSED:
----- 1. JAMES,S/O. THOMAS, AGED 2 YEARS, KURISUMOOTIL HOUSE, THOTTAPPALLI, AKAMBADAM, NILAMBUR, MALAPPURAM DISTRICT.

2. BABY MATHEW, S/O.CHACKO, AGED 5 YEARS, CHUNDAPPALLI HOUSE, UDAYAGIRI, IDUKKI DISTRICT.

3. SIMON, S/O.THOMAS, AGED 2 YEARS, KURISUMOOTIL HOUSE, THOTTAPPALLI, AKAMBADAM, NILAMBUR, MALAPPURAM DISTRICT. BY ADV. SRI.P.SHAMSUDIN. RESPONDENTS/STATE AND DE-FACTO

COMPLAINANT: ----- 1.
STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM

031.

2. SHINTO , AGED 3 YEARS, S/O.THOMAS, MLAKKUZHIYIL HOUSE,
THOTTAPPALLY, AKAMBADAM AMSOM-679 329, NILAMBUR TALUK,
MALAPPURAM DISTRICT.

3. JOBI, AGED 4 YEARS, S/O.MATHEW, MLAKKUZHIYIL HOUSE,
VALANTHODE, AKAMBADAM AMSOM-679 329, NILAMBUR TALUK,
MALAPPURAM DISTRICT. Prv. CRL.M.C. NO.2778/2013:

4. JINTO, AGED 2 YEARS, S/O.THOMAS, MLAKKUZHIYIL HOUSE,
THOTTAPPALLY, AKAMBADAM AMSOM-679 329, NILAMBUR TALUK,
MALAPPURAM DISTRICT. R1 BY PUBLIC PROSECUTOR SMT. S. HYMA, R2
TO R4 BY ADV. SMT. NIMA JACOB. THIS CRIMINAL MISC. CASE HAVING
COME UP FOR ADMISSION ON 08-07-2013, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING: Prv. CRL.M.C. NO.2778/2013: APPENDIX
PETITIONERS' ANNEXURES: ANNEXURE A1- TRUE COPY OF THE CHARGE
SHEET IN CRIME NO.134/2012 OF NILAMBUR POLICE STATION. ANNEXURE
A2- TRUE COPY OF THE AFFIDAVIT SWORN IN BY THE RESPONDENTS 3
TO 4.RESPONDENTS' ANNEXURES: NIL. //TRUE COPY// P.A. TO JUDGE. Prv.
V.K.MOHANAN, J.

----- Crl.M.C.No. 2778 of 2013
----- Dated this the 8th 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.2 to 4 in Crime No. 134 of 2012 of Nilambur Police Station for the offences punishable under Sections 341, 323, 326 r/w 34 of I.P.C. with a prayer to quash all further proceedings against the petitioners/accused 2 to 4, pursuant to Annexure A1

Charge Sheet in Crime No. 134 of 2012 of Nilambur Police Station and pending as C.C No.314 of 2012 on the files of Judicial first class Magistrate Court, Nilambur, as the matter is settled out of court.

2. The allegation in the above case is that at about 10 pm, on 12.02.2012, while a fare festival in the church was going on, the accused persons in furtherance of their common intention to cause grievous hurt, the first accused beat Cws.1 and 3 with a wooden stick and thereby CW1 sustained grievous injury on head. According to the allegation the motive is that CW2 asked permission of the first accused for playing cards in the compound. The first accused refused permission and there had a wordy altercation and to wreck CrI.M.C.No. 2778 o

2. vengeance, the said incident occurred and thus the petitioners/accused have committed the offences punishable under Sections 341, 323, 326 r/w 34 of IPC. Now the case of the petitioners are that as the petitioners and injured are belong to same parish, settled the matter.

3. Heard the learned counsel for the petitioner/s as well as the respondents 2 to 4. I have also heard the learned Public Prosecutor.

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

5. The learned counsel for the respondents 2 to 4 who on the basis of specific instruction received from the second respondent submitted that the above respondent, who is the de facto complainant/victim/injured do not intend to proceed any further against the petitioners and they have no grievance against them.

6. I have carefully considered the above submissions CrI.M.C.No. 2778 o

3. of the respective counsel. I have verified the documents and materials produced along with the above petition. The de facto complainant and the injured accordingly sworn into a joint affidavit to produce Annexure-A2. 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 341, 323, 326 r/w 34 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 2 to 4, it appears to me that the injured/the victim/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 Crl.M.C.No. 2778 o

4. v. State of Punjab [2012(4) KLT 108(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-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, 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, Crl.M.C.No. 2778 o

5. 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. According to me, 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 allowed granting the relief as sought for. In the result, this CrI.M.C. is allowed, quashing CrI.M.C.No. 2778 o

6. Annexure -A1 charge sheet in Crime No. 134 of 2012 of Nilambur Police Station and all further proceedings pending against the petitioners in C.C.No.314 of 2012 of the Judicial First Class Magistrate Court, Nilambur . V.K.MOHANAN Judge mns

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