

Suresh Kumar @ Suresh Vs. State of Kerala

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Court : Kerala

Decided On : Sep-10-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Suresh Kumar @ Suresh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE V.K.MOHANAN TUESDAY, THE10H DAY OF
SEPTEMBER201319TH BHADRA, 1935 CrI.MC.No. 3932 of 2013
----- AGAINST THE

ORDER

/

JUDGMENT

IN SC NO. 1195/2010 OF ADDITIONAL DISTRICT AND SESSIONS COURT
(ADHOC)-II, KOLLAM DATED2704-2013 CRIME NO. 419/2009 OF
KILIKOLLOOR POLICE STATION , KOLLAM PETITIONER(S)/1ST
ACCUSED: ----- SURESH KUMAR @
SURESH,AGED32YEARS, S/O.PANKAJAKSHAN PILLAI, AKASH BHAVAN,
CHENDAPOOR, THRIKKOVILVATTOM VILLAGE, KOLLAM DISTRICT. BY
ADVS.SRI.S.ABHILASH SRI.PRATHEESH.P. RESPONDENTS/DE-FACTO

COMPLAINANT

&

STATE:

----- 1. STATE OF KERALA. REPRESENTED BY SUB INSPECTOR OF POLICE, KILIKOLLOOR POLICE STATION THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA - 682 031.

2. GIREESH, S/O.KUTTAN PILLAI, THEKKATHIL VEEDU, , AGED33YEARS, NADARCONAM CHERRY,THRIKKOVILVATTOM VILLAGE, KOLLAM DISTRICT - 691 331. R1 BY PUBLIC PROSECUTOR SMT.S.HYMA R2 BY ADV. SRI.K.SIJU THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON1009-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss Crl.MC.No. 3932 of 2013 ----- APPENDIX PETITIONER(S)'

ANNEXURES: ----- ANNEXURE-1: THE COPY OF FIR WITH FIS IN CRIME NO.419/2008 OF KILIKOLLOOR POLICE STATION. ANNEXURE-2: THE COPY OF FINAL REPORT IN CRIME NO.419/2008 DATED3011.2008. ANNEXURE-3: THE COPY OF WOUND CERTIFICATE OF THE DE-FACTO COMPLAINANT/2ND RESPONDENT ISSUED FROM THE DISTRICT HOSPITAL, KOLLAM DATED188.2008. ANNEXURE-4: THE COPY OF JUDGEMENT IN S.C.NO.1195/2010 ON THE FILE OF ADDL.DISTRICTS & SESSIONS JUDGE (ADHOC-II), KOLLAM DATED274.2013. ANNEXURE-5: THE AFFIDAVIT SWORN BY THE2D RESPONDENT/DE-FACTO COMPLAINANT REGARDING COMPROMISE ON79.2013. RESPONDENT(S)' ANNEXURES: ----- N I L /TRUE COPY/ P.S.TOJUDGE Kss V.K.MOHANAN, J.

----- CRL.M.C.No. 3932 of 2013
----- Dated this the 10th day of September, 2013

ORDER

The petitioner is the first accused in Crime No.419 of 2008 of the Kilikolloor Police Station and according to him, the entire dispute after the incident in the above case has been settled with the de facto complainant and besides the above, according to him, though the other accused faced the trial, they are acquitted as per Annexure 4 judgment. So, according to the petitioner, in the above

circumstances, no purpose will be served even if he is willing to face the trial. Hence, the present petition is filed under Section 482 of the Cr.P.C. with a prayer to quash Annexure 1 FIR and Annexure 2 final report in Crime No.419/2008 of Kilikolloor Police Station and all further proceedings pending against him pursuant to the same in S.C.No.454/2013 on the file of the court of Additional Districts and Sessions Judge (Adhoc-II), Kollam. Crl.M.C.No. 3932 Of 2013 :-2-:

2. The prosecution case is that due to previous enmity on 18.8.2008 at 7.15 a.m. accused abused CW1 and the first accused inflicted injury upon his head with a sword and A2 attempted to commit his murder by inflicting injuries. The place of occurrence is on the eastern side of the public road near Kalakulam temple. The attempt of the accused was to commit his murder. Accused were allegedly acting in prosecution of their common intention CW1 gave a statement before the Police and on the basis of that CW9 registered Crime No.419/2008 conducted the investigation and laid the charge before the court. Thus, according to the prosecution, the accused has committed the offences punishable under Sections 294(b), 324 and 308 read with Section 34 I.P.C.

3. Now, the case of the petitioner is that as I indicated earlier, after the incident, the entire dispute is settled with the second respondent, who is the de facto complainant and he had sworn into Crl.M.C.No. 3932 Of 2013 :-3-: Annexure 5 affidavit. In the light of the submission made by counsel for the petitioner, I have also perused Annexure 4 judgment and in paragraph 6 of the same, the learned Sessions Judge has found that Pws.2 to 5, who are the occurrence witnesses, did not support the prosecution case and they turned hostile and thus, the remaining witnesses were given up by the prosecution and consequently, those accused are acquitted.

4. In the light of the above facts and circumstances, according to me, particularly in view of the settlement arrived between the petitioner and the de facto complainant, it is only just and proper to allow this Crl.M.C., otherwise, no purpose will be served except the sheer waste of judicial time. 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) KLT108SC]. In *Gian Singh's* case, the Supreme Court has

held as follows:- CrI.M.C.No. 3932 Of 2013 :-4-: "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,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, 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....." Thus, according to me, following the decision cited supra, this CrI.M.C.can be allowed granting the relief as sought for. In the result, this CrI.M.C. is allowed quashing Annexure I CrI.M.C.No. 3932 Of 2013 :-5-: FIR and Annexure 2 final report in Crime No.419/2008 of Kilikolloor Police Station and all further proceedings pending against him pursuant to the same including S.C.No.454/2013 on the file of the court of Additional District and Sessions Judge (Adhoc-II), Kollam. V.K.MOHANAN, Judge MBS/ CrI.M.C.No. 3932 Of 2013 :-6-: