

MobIn Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1129011

Court : Kerala

Decided On : Feb-06-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Mobin

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 6TH DAY OF FEBRUARY 2014 17TH MAGHA, 1935` CrI.MC.No. 1068 of 2014 () ----- CP. NO.59/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KANNUR. CRIME NO. 1928/2012 OF KANNUR TOWN POLICE STATION. PETITIONER/ACCUSED NO.9: ----- MOBIN, S/O.MANO HARAN, AGED 19 YEARS, MADATHANKANDY HOUSE, P.O. KIZHUNNA, KANNUR DISTRICT. BY ADVS.SRI.K.C.SANTHOSH KUMAR, SMT.K.K.CHANDRALEKHA. RESPONDENTS/COMPLAINANT & INJURED: ----- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SADIQ, S/O.MUHAMMED KUTTY, AGED 21 YEARS, SOUDHA MANSIL, KACHERIPARAMBU, P.O. MUNDERI, KANNUR DISTRICT-670 141.

3. SREEYESH, S/O.SAJEEVAN, AGED20YEARS, M.K. HOUSE, P.O. AZHEEKKAL, KANNUR DISTRICT - 670 012.
4. SREERAG, S/O.SREEDHARAN, AGED20YEARS, VADAKEPARAMBATH HOUSE, P.O. MUNDAYAD, KANNUR DISTRICT.
5. JAPTHAN, S/O.MANOCHARAN, AGED20YEARS, SREE NIVAS, ADIKADALAYI P.O., KANNUR DISTRICT - 670 007.
6. ASHWIN, S/O.SUDAKARAN, AGED20YEARS, RESIDING AT S.K. NIVAS, MADUKOTH, VARAM P.O., KANNUR DISTRICT -670 012.
7. RAJATH, S/O.BALASUBRAMANIAN, AGED19YEARS, 'SREENIVAS', EDAKKAD P.O., KANNUR DISTRICT-670 007. R1 BY PUBLIC PROSECUTOR SMT.S. HYMA. R2 TO R7 BY ADV. SMT.M.M.DEEPA. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON0602-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: rs. CrI.MC.No. 1068 of 2014 APPENDIX PETITIONER'S ANNEXURES:- ANNEXURE-A: TRUE COPY OF THE FIRST INFORMATION STATEMENT. ANNEXURE-B: TRUE COPY OF THE CHARGE SHEET SUBMITTED BY KANNUR TOWN POLICE IN CRIME NO.1928/2012. ANNEXURE-C: TRUE COPY OF THE INTIMATION DATED2501.2014 ISSUED BY ARMY RECRUITING OFFICE, CALICUT. ANNEXURE-D: THE SWORN AFFIDAVIT EXECUTED BY THE RESPONDENT NO. 2 TO7 RESPONDENT'S ANNEXURES:- NIL. //TRUE COPY// P.A. TO JUDGE rs. K. RAMAKRISHNAN, J.

----- CrI.M.C. No.1068 of 2014
----- Dated this the 6th day of
February, 2014

ORDER

This criminal miscellaneous case is filed by the 9th accused in Crime No.1928/2012 of Kannur Town Police Station, who is the sole accused in C.P. No.59/2013 on the file of the Judicial First Class Magistrate Court-I, Kannur, to quash the proceedings, on the basis of the composition entered into between the

petitioner and the injured, including the defacto-complainant under Section 482 of the Code of Criminal Procedure (hereinafter called the 'Code').

2. It is alleged in the petition that, the petitioner is aged now 19 years and he is in the selected list as an Army men by the Army Recruitment Board, Calicut, and he was the 9th accused in Crime No.1928/12 of Kannur Town Police Station. The crime was registered on the basis of the statement given by CW2, who is the 2nd respondent herein, alleging offences under Section 143, 147, 148, 324 CrI.M.C. No.1068 of 2014 2 323, 308 and 341 read with Section 149 of the Indian Penal Code. After investigation, final report has been filed by the investigating officer against all the accused persons including the petitioner before the Judicial First Class Magistrate Court-I, Kannur. Except the present petitioner, the case against other accused persons were committed to the court of Sessions and that case is pending against them before the Sessions Court. Since the present petitioner did not appear at the time, the case against him was split up and re-filed as C.P.59/2013 and now it is pending before that court.

3. The incident occurred in the premises of S.N. College, Kannur, caused on account of some altercation between the members of two student organisations. Now the matter has been settled, considering the fact that he has been provisionally selected as an Army men by the Army Recruitment Office, Calicut, and he was directed to produce CrI.M.C. No.1068 of 2014 3 a police verification certificate, from the Superintendent of Police by 10.02.2014. Though, a request was made showing the settlement reached between the parties and that there is no possibility of conviction being entered against the petitioner, the police officials are not giving a certificate to that effect. Since the matter has been settled between the petitioner and the injured persons and there is no possibility of any conviction being entered as against the petitioner and the allegations made and the overt act alleged against the petitioner are not that grave, he has no other option but to approach this court, to quash the proceedings as against him. Otherwise he will be loosing his opportunity of getting employment in the Army. So he filed the application for the above relief under Section 482 of the 'Code'.

4. Respondents 2 to 7 who are the defacto- complainant and the injured in the above case appeared through counsel and also filed Annexure-D affidavit, Crl.M.C. No.1068 of 2014 4 regarding the composition entered into between them stating the reason for the composition also and expressed their willingness to quash the proceedings, as against the petitioner alone.

5. The application was opposed by the learned Public Prosecutor on the ground that, the case against the other accused persons are still pending, this is likely to affect the prosecution in that case.

6. The counsel for the petitioner submitted that, the overt act attributed against the petitioner is not that grave and after the incident, he had to leave the college and now he has realised the mistakes and he is in the verge of getting employment and he had no criminal background as well. So he seeks the intervention of this court, as an exceptional case to quash the proceedings.

7. I have considered the rival contentions of both parties in the matter. Crl.M.C. No.1068 of 2014 5 8. It is an admitted fact that, while the petitioner was a Plus Two student in Sree Narayana College, Kannur, he had some political affiliation and was a member of a student political organisation. There was some incident happened on 15.10.2012, in which a clash occurred between the two rival students political organisations and CWs 1 to 6, who are respondents 2 to 7 herein sustained injuries in that incident. On the basis of the statement given by CW1, a case was registered as Crime No.1928/2013 of Kannur Town Police Station and alleging offences under Section 143, 147, 148, 324 323, 308 and 341 read with Section 149 of the Indian Penal Code and after investigation final report has been filed, which was taken on the file by the learned magistrate. Since the present petitioner did not appear at the earlier occasion, the learned magistrate has committed the case against other accused persons in this case to the Sessions Court and now Crl.M.C. No.1068 of 2014 6 that matter is pending before the Sessions Court, as against other accused persons. The case against the present petitioner was split up and re-filed as C.P.59/2013. Now the matter has been settled between the petitioner and the defacto-complaint and other injured persons, who were arrayed as respondent 2 to 7 in the petition.

9. It was specifically mentioned in the affidavit filed by respondents 2 to 7 that due to the intervention of mediators and well-wishers and also considering the future of the present petitioner, they have decided to settle the case against the present petitioner alone. Further it was also mentioned in the affidavit that, they have not made any specific allegation against the present petitioner either in the first information statement or in the further statement given by them to the police. So they have no objection in recording composition and quashing the proceedings as against the petitioner, considering his CrI.M.C. No.1068 of 2014 7 present repentance made by him for the incident and they have decided to forgive him and provide him an opportunity to lead a happy life.

10. It may be mentioned here that, normally this court is not inclined to exercise the extra ordinary power under Section 482 of the 'Code', in a case where grave offences are alleged. Except the offence under Section 308 and 324 of Indian Penal Code, the other offences cannot be said to be of that grave nature.

11. Further it is seen from the case diary file that, the incident happened between two student political organisations and the petitioner and respondents 2 to 7 belonged to the rival student organisations. There is a tendency among the students that doing something in the colour of political activity during their student life will give them prosperity in future to become a political leader. Unfortunately this is being supported by the political parties CrI.M.C. No.1068 of 2014 8 as well. Innocent students are being trapped to unnecessary political incidents, without knowing the consequence of their act at their tender age. This is an example of one such incident. The students are also not understanding the pain and interest taken by their parents, to provide them good education as well. Ignoring all these aspects, under some false notion of politics, they are involving in such activities and later they are repenting for their involvement in such activities, by the time it will become too late to repair as well. But in this case, it is seen that, the present petitioner has been recruited provisionally as Army man by the Army Recruiting Office, Calicut, and he was asked to produce a police verification report to asking about his antecedents. Since a crime has been registered and it is pending and it has not been disposed of, police may not be able to exonerate him and give a certificate that he had no criminal antecedents. I have requested the learned

Crl.M.C. No.1068 of 2014 9 Public Prosecutor to enquire about the antecedent of the present petitioner and the Public Prosecutor has submitted that, except this case, there is no other case registered against the petitioner and he had no other criminal background as well.

12. Further, respondents 2 to 7 who are the injured persons have come with an open mind with magnanimity to forgive him for his act so as to give him an opportunity to lead a good life in future. In the decision reported in *Gian Singh v. State of Punjab* [2012(4) KLT108(SC)], the Hon'ble Supreme Court has observed regarding the power of this court under Section 482 of the 'Code' and in what circumstances it can be used, which reads as follows: "The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceedings 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 has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the Crl.M.C. No.1068 of 2014 10 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 FIR 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. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc., cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. 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, 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of the criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question (s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding." 13. Though it can be termed as a political fight Crl.M.C. No.1068 of 2014 11 between the student union which resulted in the incident, considering the age of the petitioner at the time when the incident happened, I feel that he could not have anticipated the consequences of the act, when involved in the incident due to the over-enthusiasm inspired on him by the political heroes, which he wanted to follow in his life. Later he had realised his mistake. Further the persons who sustained injury in the incident also belong to a political group now realised that, they intended to forgive the act of the petitioner to provide him better prosperity in life. The pendency of this case may spoil the life of the petitioner. Court should never stand in the way of protecting the interest of a citizen, who has repented for his past activity and decided to improve his character and lead a happy life in future. So considering the exceptional circumstances mentioned above, and also considering the fact that the overt act alleged against the petitioner is also not that Crl.M.C. No.1068 of 2014 12 grave compared to other accused persons involved in the crime, I feel that it is a fit case where in the interest of justice and also to provide a life to a person, who is now repenting for his past activity, without any further criminal background, to invoke the power under Section 482 of the 'Code' to quash the proceedings as against him alone. So the petition is allowed and the proceedings in C.P.No.59/2013 (Crime No.1928/2012 of Kannur Town Police Station) pending

before the Judicial First Class Magistrate Court-I, Kannur, is hereby quashed as against the petitioner alone. Office is directed to communicate this order to the concerned court, immediately for further necessary action. Sd/- K. Ramakrishnan, Judge // True Copy // P.A. to Judge ss

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