

Shifadh Vs. Jinu

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Court : Kerala

Decided On : Feb-06-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Shifadh

Respondent : Jinu

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. 1054 of 2014
----- AGAINST THE

ORDER

IN CC7732012 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR
CRIME NO. 361/2011 OF NENMARA POLICE STATION , PALAKKAD -----
PETITIONER(S)/ACCUSED NOS 1 TO 6 -----

1. SHIFADH, AGED 24 YEARS, S/O.MUHAMMED HANEEFA,
MELEPADAMKULAM, MELARKODE PALAKKAD DISTRICT.

2. BASIL, AGED 23 YEARS, S/O.ISSAC, THAMARACHALIL HOUSE,
PATTAYAMPADAM KORENCHIRA, KIZHAKKENCHERRY, PALAKKAD.

3. MANOJ, AGED 22 YEARS S/O.RAJU, CHEKUNNI, KARIMPARA PALAKKAD.

4. JITHUN, AGED22YEARS S/O.GANGADHARAN, NANDHANAM HOUSE, CHERAMANGALAM PALAKKAD.

5. SUNILKUMAR, AGED25YEARS, S/O.SASI, CHUVATTUPADAM KANAKKANTHURUTHY, VADAKKENCHERRY, PALAKKAD.

6. VINEESH KUMAR, AGED24YEARS S/O.CHANDRAN, KURAPPADAM HOUSE, KARIMPARA PALAKKAD. BY ADV. SRI.M.REVIKRISHNAN RESPONDENTS/DEFACTO COMPLAINANT/CW4-8 AND STATE: ----- 1. JINU, AGED23YEARS S/O.VELAYUDHAN, KUNNATH HOUSE, KAMMANATHARA VADAKKENCHERRY, PALAKKAD DISTRICT. PJ ...2/- ..2.. CrI.MC.No. 1054 of 2014 ----- 2. SUBASH, AGED22YEARS S/O.GOPALAN, THAYANKAD HOUSE, OLASSERY PALAKKAD.

3. JIBIN, AGED22YEARS S/O.NARAYANAN, AIYYANPUTHUR HOUSE, CHITTUR PALAKKAD.

4. RANJITH, AGED22YEARS S/O.JAYACHANDRAN, KARAYAMKAD HOUSE, VADAKKENCHERRY PALAKKAD.

5. SUNEESH, AGED21YEARS S/O.SASI, VELLIYALACKALA HOUSE, THIRUVAZHIAID THIRUTHAMPADAM, PALAKKAD.

6. SUBASH, AGED21YEARS S/O.BHASKARAN, PERUMKUNNAM HOUSE, VILAYANNUR PALAKKAD.

7. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. R1-6 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL) R7 BY PUBLIC PROSECUTOR SMT.S.HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON0602-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: PJ CrI.MC.No. 1054 of 2014 ----- APPENDIX PETITIONER(S)' EXHIBITS ----- ANNEXURE-A: PHOTO COPY OF THE FINAL REPORT IN CRIME NO.361/2011 OF NENMARA POLICE STATION IN PALAKKAD DISTRICT IN CC NO.773/2012 ON THE FILE OF THE COURT OF

JUDICIAL 1ST CLASS MAGISTRATE, ALATHUR. ANNEXURE-B: AFFIDAVIT SWORN BY THE1T RESPONDENT HEREIN EVIDENCING THE AFORESAID SETTLEMENT ANNEXURE-C: AFFIDAVIT SWORN BY THE2D RESPONDENT HEREIN EVIDENCING THE AFORESAID SETTLEMENT ANNEXURE-D: AFFIDAVIT SWORN BY THE3D RESPONDENT HEREIN EVIDENCING THE AFORESAID SETTLEMENT. ANNEXURE-E: AFFIDAVIT SWORN BY THE4H RESPONDENT HEREIN EVIDENCING THE AFORESAID SETTLEMENT ANNEXURE-F: AFFIDAVIT SWORN BY THE5H RESPONDENT HEREIN EVIDENCING THE AFORESAID SETTLEMENT RESPONDENT(S)' EXHIBITS ----- NIL. / TRUE COPY / P.S. TO JUDGE PJ K. RAMAKRISHNAN, J.

----- Crl.M.C. No.1054 of 2014
----- Dated this the 6th day of
February, 2014

ORDER

This criminal miscellaneous case is filed by accused Nos. 1 to 6 in C.C.773/12 on the file of the Judicial First Class Magistrate Court, Alathur, to quash the proceedings, recording the composition entered into between the petitioners and the injured persons, 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 petitioners are accused Nos.1 to 6 in C.C.No.773/12 on the file of Judicial First Class Magistrate Court, Alathur. The case was originated on the basis of a crime registered by the Nenmara Police as Crime No.361/2011 of Nenmara Police Station, alleging offences under Section 143, 147, 148, and 324 read with Section 149 of the Indian Penal Code. The prosecution allegation was that on 13.10.2011, at Crl.M.C. No.1054 of 2014 2 about 12.30, hours the accused formed themselves into an unlawful assembly and beat the defacto-complainant with bamboo sticks due to the animosity in connection with a clash between Kerala Students Union by the Students Federation of India students. After investigation, final report has been filed and the case has been taken on the file by the learned magistrate as C.C.No.773/2012.

Now the matter has been settled between the parties. They have realised their mistake and now settled in their life. The pending case will affect their future prospects. Since some of the offences are non-compoundable in nature, they cannot file a compounding application before the concerned court. So they have no other option but to seek the intervention of this court, to quash the proceedings, after recording composition under Section 482 of the 'Code'. Hence the petition.

3. The respondents 1 to 7, who are the defacto- complainant and injured in the case, appeared through counsel and also filed affidavits supporting the case of the Crl.M.C. No.1054 of 2014 3 petitioners.

4. Heard the learned Public Prosecutor also, who opposed the application.

5. It is an admitted fact that, while the petitioners and respondents 1 to 7 were studying in N.S.S. College, Nenmara, there occurred a clash in connection with some incident between two group of students political organisation and the police has registered case and counter case against the petitioners and respondents 1 to 7 in respect of that incident. Both petitioners and respondents 1 to 7 represented one fraction or other of the political student's union. The matter has been settled between the parties now. They have completed their studies and settled in life. It is quite unfortunate that, the students now without going the consequences of their act, on some fanciful aspiration to become leaders in a political party involve in such activities. Further they also did not know the pains taken by their parents, for educating them, by spending their harder earned money. These things were Crl.M.C. No.1054 of 2014 4 done by the students in fact at the instigation of political parties, without knowing the fact that, it will affect their future.

6. However, though it is in the nature of a political issue, considering the fact that the poor students without knowing the consequences have involved in such activities and the pendency of these cases are likely to affect their future and also considering the fact that they have now repenting for what they have done, I feel that, it can be treated as an exceptional case where, (though normally courts should not inclined to invoke the jurisdiction), this court has to invoke the power to provide them better prospects in their life, especially when they have understood their mistake and wanted to rectify them in future. Further the learned Public

Prosecutor submitted that there is no other criminal case registered and pending against them except this case. So they do not have any criminal background as well. In the decision reported in *Gian Singh v. State of Punjab* [2012(4) KLT108(SC)], CrI.M.C. No.1054 of 2014 5 it has been observed 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, 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." In view of the above discussions made and also considering the fact that things done during the student life has been realised to be a mistake by the petitioners and the respondents 1 to 7 and they want to console themselves, forgetting their political ideologies which they carried during their college days and want to lead a peaceful life, after getting good employment for which this could not CrI.M.C. No.1054 of 2014 6 stand in the way, I feel that it is a fit case where the power under Section 482 of the 'Code' has to be invoked to quash the proceedings to make them settle in their life in a proper and prospective manner. Further since, the matter has been settled between the parties, there is no probability of conviction if it is allowed to proceed with. So this criminal miscellaneous case is allowed and the proceedings against the petitioners in C.C.No.773/2012 (Crime No.361/2011 of Nenmara

Police Station) on the files of the Judicial First Class Magistrate Court, Alathur, is quashed. Office is directed to communicate this order to the concerned court for appropriate further action. Sd/- K. Ramakrishnan, Judge // True Copy // P.A. to Judge ss

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