

Ganesh Vs. State of Kerala

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Court : Kerala

Decided On : Feb-28-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Ganesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 28^H DAY OF FEBRUARY 2014 9TH PHALGUNA, 1935 CrI.MC.No. 1387 of 2014 ----- [C.C. NO.1416/13 ON THE FILE OF THE JUDICIAL FIRST CLASS - MAGISTRATE COURT- I, KOLLAM, CRIME NO. 824/2013 OF THE KUNDARA POLICE STATION] PETITIONERS/ACCUSED NOS. 1 TO 4 ----- 1. GANESH, AGED 20 YEARS, S/O.KALADHARAN PILLAI, THETTICHIRAVILA PUTHEN VEEDU (RAJENDRA VILASOM), KOTTANKARA VILLAGE, CHANDANATHOPPU P.O, KOLLAM DISTRICT-691 014.

2. VICHU @ VISHNU.R, AGED 20 YEARS, S/O.RADHAKRISHNA PILLAI, VISHNU BHAVANAM, KOTTANKARA VILLAGE, CHANDANATHOPPU P.O, KOLLAM DISTRICT-691 014.

3. KIRAN.G.KRISHNAN @ KIRAN,AGED19YEARS, S/O.GOPALAKRISHNAN, GEETHA BHAVANAM, KOTTANKARA VILLAGE, CHANDANATHOPPU P.O, KOLLAM DISTRICT- 691 014.

4. ANURAJ, AGED19YEARS, S/O.CHANDRAN PILLAI, ADEESHA BHAVANAM, KOTTANKARA VILLAGE, CHANDANATHOPPU P.O, KOLLAM DISTRICT-691 014. BY ADV. SRI.S.BIJU. RESPONDENTS/STATE/DE-FACTO COMPLAINANT:
----- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. ANU.M, AGED21YEARS, S/O.MOHANAN PILLAI, RESIDING AT CHARUVILA PUTHEN VEEDU, KOTTANKARA VILLAGE, CHANDANATHOPPU P.O, KOLLAM DISTRICT-691 014. Prv. CRL.M.C.NO.1387/2014:

3. BABU.M, AGED26YEARS, S/O.MOHANAN, RESIDING AT PLAVILA VEEDU, KOTTANKARA VILLAGE, CHANDANATHOPPU P.O, KOLLAM DISTRICT-691 014.

4. B.YADHU KRISHNAN @ YADHU, AGED19YEARS, S/O.BHUVANCHANDRAN UNNITHAN, RESIDING AT YATHUKULAM, MAMOODU, KOTTANKARA VILLAGE, CHANDANATHOPPU P.O, KOLLAM DISTRICT-691 014. R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE, R2 TO R4 BY ADV. SRI.G.KRISHNA KUMAR (MARANAD). THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2802-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Prv. CRL.M.C. NO.1387/2014: APPENDIX PETITIONERS' ANNEXURES: ANNEX.A1: A TRUE PHOTOCOPY OF THE CHARGE SHEET IN CRIME NO. 824/2013 (CC NO. 1416/13) OF KUNDARA POLICE STATION. ANNEX A2: A AFFIDAVIT SWORN BY THE2D RESPONDENT. ANNEX A3: TRUE PHOTOCOPY OF THE AFFIDAVIT SWORN BY THE3D RESPONDENT. ANNEX A4: A TRUE PHOTOCOPY OF THE AFFIDAVIT SWORN BY THE3D RESPONDENT. RESPONDENTS' ANNEXURES: NIL. //TRUE COPY// P.A. TO JUDGE. Prv. K. Ramakrishnan, J.

===== Crl.M.C.No.1387 of 2014
===== Dated this, the 28th day of February,
2014.

ORDER

This is an application filed by accused Nos.1 to 4 in C.C.No.1416/13 (Crime No.824/13 of Kundara Police Station) on the files of the Judicial First Class Magistrate Court No-I, Kollam, to quash the proceedings after recording the composition under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioners are accused Nos.1 to 4 in Crime No.824/13 of Kundara Police Station which was registered on the basis of the statement given by the second respondent de facto complainant alleging offences under Sections.341 323, 324 read with Section 34 of Indian Penal Code causing injury to the de facto complainant and respondents 3 and 4. After investigation, final report has been filed and it was taken on file as C.C.No.1416/13 and pending before Judicial First Class Magistrate Court, No-I, Kollam. In the meantime, the dispute has been settled between the parties. Since some of the offences are non-compoundable in nature, the same cannot be compounded before the trial court. No purpose will be served by allowing Crl.M.C.No.1387 of 2014 :

2. : the case to proceed as there is no possibility of any conviction being entered into against the petitioners. So, they filed this petition seeking the following relief: "To call for the records leading to Annexure A1 charge sheet, pending as C.C.No.1416/13 before the Judicial First Class Magistrate Court-1, Kollam and to quash the same, as against the petitioners." 3. Respondents 2 to 4 appeared through Counsel and submitted that the matter has been settled between the parties and they have no objection in quashing the proceedings.

4. Learned Public Prosecutor on instructions, submitted that except this case, there is no other cases against the petitioners and there is no criminal background as well. But, however, opposed the application for quashing at this stage as it is in the crime stage.

5. Counsel for the petitioners also submitted that the matter has been settled and they are friends even at the time when the incident occurred and now the friendship has been restored due to the settlement.

6. It is an admitted fact that on the basis of the statement given by the second respondent, the Kundara police Crl.M.C.No.1387 of 2014 :

3. : has registered a case as Crime No.824/13 against the petitioners alleging that they have caused injuries to respondents 2 to 4 using a dangerous weapon. It is also an admitted fact that after investigation, final report was filed and it is now pending before the Judicial First Class Magistrate Court, No-1, Kollam, as C.C.No.1416/13. It is seen from the allegations in the petition that the matter has been settled between the respondents 2 to 4 and the petitioners. It is also alleged in the petition that the petitioners and respondents 2 to 4 were friends even at the time of the incident and the incident occurred due to some misunderstanding and now due to the intervention of mediators and well wishers, the matter has been settled and their relationship restored. They filed affidavits before this court supporting this fact and also expressing their intention not to proceed with the case against the petitioners.

7. In the decision reported in Gian Singh V. State of Punjab [2012(4) KLT108(SC)] held as follows: "The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing in criminal proceeding or F.I.R. 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 Crl.M.C.No.1387 of 2014 :

4. : 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. 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 case, 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 proceeding or continuation of the criminal proceeding 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 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." 8. Considering the dictum laid in the above decision and also considering the fact that the petitioners and the Crl.M.C.No.1387 of 2014 :

5. : injured victims including the de facto complainant are friends even at the time when the incident occurred and the incident itself happened due to some misunderstanding between them which was later solved due to the intervention of mediators and well wishers and friends and their relationship restored and there is no possibility of any conviction being entered into on account of the settlement and proceeding with the case will only result in wastage of judicial time, this court feels

that it is a fit case where the power under Section 482 of Code of Criminal Procedure has to be invoked to quash the proceedings in order to promote the restoration of friendship between the petitioners and the injured persons. So, the application is allowed and the further proceedings in C.C.No.1416/13 (Crime No.824/13 of Kundara Police Station) on the files of Judicial First Class Magistrate Court, No-I, Kollam, as against the petitioners is quashed. Office is directed to communicate this order to the concerned court immediately. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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