

Sajith Vs. State of Kerala

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Court : Kerala

Decided On : Feb-25-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Sajith

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 25^H DAY OF FEBRUARY 2014 6TH PHALGUNA, 1935 CrI.MC.No. 1325 of 2014 ()
----- CC.NO. 424/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, NILAMBUR CRIME NO. 773/2012 OF NILAMBUR POLICE STATION ,MALAPPURAM DISTRICT -----
PETITIONER(S)/ACCUSED: ----- 1. SAJITH, AGED 25 YEARS, S/O.BALA KRISHNAN, VALORTH HOUSE, KAPPIL, WANDOOR, MALAPPURAM DISTRICT.

2. FAISAL, S/O.HYDER, AGED 33 YEARS, KARIMBANAKUTH HOUSE, PULLOTU, MAMPAD, MALAPPURAM DISTRICT.

3. SANTHOSH, S/O.MANIYAN, AGED 23 YEARS, VALORTH HOUSE, MAMPATTU, PULLOTTU, NILAMBUR TALUK, MALAPPURAM DISTRICT.

4. BABU, S/O.VELAYUDHAN,AGED39YEARS, VALORTH HOUSE, THRIKKAYKUTHU, WANDOOR, MALAPPURAM DISTRICT.

5. PRAMOD, S/O.PRABHAKARAN,AGED29YEARS, MAKKALI HOUSE, KAMPANIPADI, MAMPAD, NILAMBUR TALUK, MALAPPURAM DISTRICT. BY ADV. SRI.P.SAMSUDIN RESPONDENTS/STATE AND COMPLAINANT:

----- 1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. (IN CR.NO.773/2012 OF NILAMBUR POLICE STATION).

2. DIPU, AGED25YEARS,S/O.KARI @ KUTTIKARI, UMMANGALAM HOUSE, THRIKKAIKUTHU, KAPIL.P.O.-679 328, WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT.

3. ARUN @ ARUNDAS, AGED23YEARS,S/O.HARIDASAN, THATTAKATH HOUSE, THRIKKAIKUTHU, KAPIL.P.O.-679 328, WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT. sts 2/- -2- CRMC.NO.1325/2014 4. ASHFAQUE, AGED23YEARS,S/O.ABDUL AZEEZ, CHAKKINGATHODI HOUSE, THRIKKAIKUTHU, KAPIL.P.O.-679 328, WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT.

5. PRASAD, AGED27YEARS, S/O.KUMARI, KAIPANCHOLA HOUSE, THRIKKAIKUTHU, KAPIL.P.O.-679 328, WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT.

6. MUSTHAFA P, AGED35YEARS,S/O.AHAMMEDKUTTY, PANAKKAL HOUSE, THRIKKAIKUTHU, KAPIL.P.O.-679 328, WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT.

7. DINESH, AGED27YEARS, S/O.KUNHAN, MATTODI HOUSE, THRIKKAIKUTHU, KAPIL.P.O.-679 328, WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT. R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P. R2 TO R7 BY ADV. SMT.NIMA JACOB THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2502-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts CrI.MC.No. 1325 of 2014 ()

----- APPENDIX PETITIONER(S)' ANNEXURES:
----- ANNEX A1- TRUE COPY OF THE FINAL
REPORT IN CRIME NO.773/2012 OF NILAMBUR POLICE STATION. ANNEX
A2- THE ORIGINAL OF THE AFFIDAVIT SWORN IN BY THE2D RESPONDENT
DATED2002.2014. ANNEX A3- THE ORIGINAL OF THE AFFIDAVIT SWORN IN
BY THE3D RESPONDENT DATED2002.2014. ANNEX A4- THE ORIGINAL OF
THE AFFIDAVIT SWORN IN BY THE4H RESPONDENT DATED2002.2014.
ANNEX A5- THE ORIGINAL OF THE AFFIDAVIT SWORN IN BY THE5H
RESPONDENT DATED2002.2014. ANNEX A6- THE ORIGINAL OF THE
AFFIDAVIT SWORN IN BY THE6H RESPONDENT DATED2002.2014. ANNEX
A7- THE ORIGINAL OF THE AFFIDAVIT SWORN IN BY THE7H RESPONDENT
DATED2002.2014. RESPONDENT(S)' ANNEXURES: NIL /TRUE COPY/
P.A.TO.JUDGE sts K. Ramakrishnan, J.

===== CrI.M.C.No.1325 of 2014
===== Dated this, the 25th day of February,
2014.

ORDER

This is an application filed by accused in C.C.No.424/13 (Crime No.773/12 of Nilambur Police Station) on the files of the Judicial First Class Magistrate Court, Nilambur, 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 the accused in Crime No.773/12 of Nilambur Police Station which was registered on the basis of the statement given by second respondent as de facto complainant alleging offences under Sections.143, 147, 148, 323, 324 read with Section 149 of Indian Penal Code. Respondents 2 to 7 are the de facto complainant and other injured witnesses in the case. The case of the prosecution was that, on 29.08.2012, at about 5.30 p.m, while a bike race was going on under the auspicious of a cultural event organized by public library, the accused persons made joyous noise and chaos and organizers and volunteers questioned the same, there was some scuffle and altercation CrI.M.C.No.1325 of 2014 :

2. : occurred and they were manhandled and caused simple and grievous injuries to respondents 2 to 7 and thereby, they have committed the above said offences. In respect of the same incident, another case was registered as Crime No.772/12 against the present petitioners and that case was pending before the same court as C.C.No.680/13. Both these cases were settled due to the intervention of mediators and now harmony has been restored between the petitioners and the respondents 2 to 7. Since some of the offences are non compoundable in nature, they cannot file an application before the concerned magistrate court for compounding or withdrawing the case. No purpose will be served by proceeding with the case as well. Respondents 2 to 7 have filed CrI.M.C.1323/14 before this court for quashing the counter case. So, under the circumstances, they have no other option but to approach this court seeking the following relief: "To quash all further proceedings against the petitioners/Accused in CC4242013 of Judicial First Class Magistrate Court, Nilambur pursuant to Annexure A1 final report in Crime No.773/2012 of Nilambur Police Station in Malappuram district, in the interest of justice." CrI.M.C.No.1325 of 2014 :

3. :

3. Respondents 2 to 7 appeared through Counsel and submitted that the matter has been settled between the parties and they have no objection in quashing the proceedings and all the injured persons including the de facto complainant have filed affidavits as Annexure A2 to A7.

4. Learned Public Prosecutor on instructions as directed by this court submitted that except this case, there is no other case against the petitioners but opposed the application.

5. It is an admitted fact that in respect of an incident occurred on 29.08.2012, a crime was registered as Crime No.773/12 against the present petitioners on the basis of the statement given by the second respondent as de facto complainant alleging offences under Sections.143, 147, 148, 323, 324 read with Section 149 of Indian Penal Code. It is also an admitted fact that after investigation, Annexure A1 final report was filed and it was taken on file as file as C.C.No.424/13 by the Judicial First Class Magistrate Court, Nilambur and it is pending before that court.

It is also an admitted fact that in respect of the same incident, another crime was registered as Crime No.772/12 and after Crl.M.C.No.1325 of 2014 :

4. : investigation, final report was filed and it was taken on file as C.C.No.680/13 by the same magistrate and it is also pending before that court. The respondents 2 to 7 herein filed Crl.M.C.1323/14 for quashing the counter case C.C.680/13. The matter has been settled between the parties. All the injured persons have filed affidavits before this court stating that they have settled the matter and now they are living in cordial relationship and they do not want to proceed the case.

6. Further, in the decision reported in *Gian Singh V. State of Punjab* 2012(4) KLT108(SC) which is 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 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 Crl.M.C.No.1325 of 2014 :

5. : 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." 7. The Public Prosecutor submitted that there is no other case against the petitioners and there is no criminal background for them as well. It is seen from the allegations itself that the incident happened on account of some intervention caused to the bike race organized by a cultural club and case and counter cases have been registered against both the parties. They have settled the cases now. The cordial relationship between the injured persons in both the cases who were shown as de facto complainant and accused have been restored due to the settlement arrived at on CrI.M.C.No.1325 of 2014 :

6. : account of the intervention of mediators and well wishers of both sides. In view of the fact that the matter has been settled between the parties, there is no possibility of any conviction being entered into against the accused persons if the trial of the case is allowed to continue and that will only result in wastage of judicial time and nothing more. So, considering the circumstances, 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 harmony that has been restored between the parties on account of the settlement arrived at between them due to the intervention of well wishers and friends. So, the application is

allowed and further proceedings in CC.No.424/13 on the file of the Judicial First Class Magistrate Court, Nilambur (Crime No.773/12 of Nilambur Police Station) is here by quashed. Office is directed to communicate this order to the concerned court for further action. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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