

Jayakumar Vs. State of Kerala

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Court : Kerala

Decided On : Feb-21-2014

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Jayakumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 21ST DAY OF FEBRUARY 2014 2ND PHALGUNA, 1935 CrI.MC.No. 1258 of 2014 ----- CC NO.2339/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT II, ERNAKULAM CRIME NO. 240/2012 OF ERNAKULAM CENTRAL POLICE STATION , ERNAKULAM PETITIONER(S)/ACCUSED: ----- JAYAKUMAR, M AGED 40 YEARS, S/O. PUSH PANGATHAN, PADANNATHURA, PANAMBUKADU MURI, MULAVUKADU VILLAGE, ERNAKULAM DISTRICT. BY ADV. SRI.K.V.ANIL KUMAR RESPONDENT(S)/STATE AND COMPLAINANTS: ----- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE, ERNAKULAM CENTRAL POLICE STATION, ERNAKULAM DISTRICT.

3. HARILAL, AGED 32 YEARS, S/O. VISWANATHAN, ARATTUCHANI VEEDU, THAIKKATTUSSERY DESOM, THAIKKATTUSSERY VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT - 688 011. R1 & R2 BY PUBLIC PROSECUTOR SMT. S. HYMA R3 BY ADV. SRI. P. V. DILEEP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21-02-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss CrI.M.C.No.1258/2014 APPENDIX PETITIONER'S ANNEXURES: ANNEXURE A1: COPY OF THE FIR AND FI STATEMENT IN CRIME NO.240/2012 OF THE ERNAKULAM CENTRAL POLICE STATION. ANNEXURE A2: COPY OF THE CHARGE SHEET IN CRIME NO.240/2012 OF THE ERNAKULAM CENTRAL POLICE STATION. ANNEXURE A3: AFFIDAVIT OF 3D RESPONDENT. RESPONDENT'S ANNEXURES: N I L /TRUE COPY/ P.S. TO JUDGE Kss K. RAMAKRISHNAN, J.

..... CrI.M.C.No.1258 of 2014
..... Dated this the 21st day of February, 2014.

ORDER

This is an application filed by the petitioner who is the sole accused in C.C.2339/12 (Crime No.240/12 of Ernakulam Central police station) to quash the proceedings recording the composition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code).

2. It is alleged in the petition that the petitioner is the sole accused in Crime No.240/2012 of Ernakulam Central Police Station which is now pending as C.C.2339/12 on the file of the Judicial First Class Magistrate-II, Ernakulam. The case was registered on the basis of the statement given by the third respondent as defacto complainant alleging the offences under Section 341, 294 (b) and Section 324 of the Indian Penal Code. The allegation was that on 22.1.2012 at about 9.30 a.m due to dispute between the petitioner and the defacto complainant regarding cricket-play, the petitioner wrongfully restrained the defacto complainant and his autorickshaw near to Ernakulam KSRTC boat jetty and abused him in filthy language and fisted him, using unknown weapons, caused injury to him and thereby he had committed the above said offences. The CrI.M.C.No.1258 of 2014 2 matter has been settled between the parties. The defacto complainant has no

interest in prosecuting the case as it was settled due to intervention of mediators and friends. The freindship has been restored on account of the settlement. Since some of the offences are non compoundable in nature, they cannot approach the court below for compounding the case. So the petitioner has no other remedy except to approach this Court for this purpose. Hence the petitioner has filed this petition seeking the following reliefs: In these circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to quash all further proceedings against the petitioner/accused in Annexure A2 final report in Crime No.240/2012 of Ernakulam Central Police Station now pending before the Judicial First Class Magistrate Court-II, Ernakulam as C.C.No.2339/2012 as it is an abuse of process of court.

3. The counsel for the third respondent appeared through counsel and submitted that the matter has been settled between the parties and he has no grievance against the petitioner now and their friendship has been restored on account of the settlement. He has no objection in quashing the proceedings. The learned counsel for the defacto complainant submitted that the defacto complainant filed an affidavit to that effect as Annexure A3.

4. On instructions, as directed by this Court, the learned Public CrI.M.C.No.1258 of 2014 3 Prosecutor submitted that excpet this case, there is no other case against the petitioner and he has no other criminal background and the incident itself has happened due to some misunderstanding between the petitioner and the defacto complaint and opposed the quashing of the prceedings at this stage.

5. The counsel for the petitioner submitted that since the matter has been settled between the parties, there is possibility of conviction being entered into and it will only wastage of judicial time to allow the case to continue in the lower court.

6. It is an admitted fact that on the basis of the statement given by the third respondent, Ernakulam Central police has registered a case as Crime No.240/2012 against the petitioner as Annexrue A1 alleging offences under Sections 341, 294(b) and 324 of the Indian Penal Code and after investigation Anenxure A2 final report was filed before the Judicial First Class Magistrate Court-II, Ernakulam where it is now pending as C.CNo. 2339/12. The matter has been

settled between the defacto complainant and the petitioner, who is the sole accused in the case and the defacto complainant had filed Annexure-A3 affidavit before this Court admitting the settlement and expressing his willingness to quash all proceedings. It is also mentioned in the affidavit that both are auto rickshaw drivers and due to some misunderstanding, the case has been filed. Now they Crl.M.C.No.1258 of 2014 4 have settled the matter and restored friendship between them on account of the settlement which resulted due to intervention of mediators and friends 7. Further in the decision reported in Gian Singh v. State of Punjab (2012 (4) KLT108(SC), the Hon'ble Supreme Court has held that: "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." 8. In view of the dictum laid down in the above decision and also considering the fact that the petitioner and the defacto complainant were friends and due to some misunderstanding, the Crl.M.C.No.1258 of 2014 5 incident happened and now they settled their dispute and restored their friendship, this Court feels that no purpose will be served by allowing the case to continue and it will be only a wastage of judicial time to allow the same as there is no possibility of conviction, if the case is allowed to be tried

by examining the witnesses. So this court feels that it is a fit case where the power under Section 482 of the Code has to be invoked to quash the proceedings to promote settlement between the parties. So the petition is allowed and further poceedings in C.CNo.2339/12 (Crime No.240/12 of Ernakulam Central Police Station) pending before the JFCM-II, Ernakulam against the petitioner is quashed. Office is directed to communciate this order to the concerned court for necessary further action. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge Crl.M.C.No.1258 of 2014 6 K. RAMAKRISHNAN, JUDGE. cl Crl.M.C.No.1258 of 2014 7

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