

Kumari Vs. State of Kerala

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Court : Kerala

Decided On : Jun-24-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Kumari

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 24TH DAY OF
JUNE 2014 3RD ASHADHA, 1936 CrI.MC.No. 3115 of 2014 ()
----- AGAINST THE

ORDER

/

JUDGMENT

IN CP1062013 of JUDICIAL FIRST CLASS MAGISTRATE'S COURT,
NEDUMKANDOM CRIME NO. 363/2013 OF SANTHANPARA POLICE STATION
, IDUKKI PETITIONER/ACCUSED: ----- KUMARI,
AGED 35 YEARS, W/O.SELVAM, PRIYA BHAVAN (HOUSE), MUTTUKAD
KANDAM BHAGAM, CHINNAKANAL VILLAGE, IDUKKI DISTRICT. BY ADV.
SRI.E.C.BINEESH RESPONDENTS/STATE & FATHER OF THE VICTIM (CW4) :
----- 1. STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SELVAM, AGED 44 YEARS, S/O.DAVID, PRIYA BHAVAN (HOUSE), MUTTUKAD KANDAM BHAGAM, CHINNAKANAL VILLAGE, IDUKKI DISTRICT. R1 BY PUBLIC PROSECUTOR SMT. P.MAYA R2 BY ADV. SRI.N.K.SHYJU THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24-06-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 3115 of 2014 () ----- APPENDIX PETITIONER'S ANNEXURES: ----- ANNEXURE I COPY OF THE CHARGE SHEET IN CRIME NO 363/2013 OF SANTHANPARA POLICE STATION, IDUKKI DISTRICT. ANNEXURE II COPY OF THE AFFIDAVIT SWORN BY 2D RESPONDENT DATED 09/06/2014. RESPONDENTS' ANNEXURES: ----- NIL // True Copy // P.A. To Judge DSV/26/06 K. RAMAKRISHNAN, J.

----- CrI.M.C. No. 3115 of 2014
----- Dated this the 24th day of June, 2014

ORDER

This is an application filed by the petitioner, who is the unfortunate mother of victim child, facing prosecution in C.P. No. 106 of 2013 pending before the Judicial First Class Magistrate Court, Nedumkandam, to quash the proceedings on the basis of settlement under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition, the petitioner has been arrayed as sole accused in Crime No. 363/2013 of Santhanpara Police Station of Idukki District, alleging offences under Section 326 of Indian Penal Code and Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2000. Petitioner is the mother of the victim and wife of the second respondent, who is the father of the victim, and they are now residing together. The prosecution case was that the son of CrI.M.C. No. 3115 of 2014 2 the petitioner and the second respondent were beaten by the petitioner on 28.05.2013 at 6.00 p.m., at Priya Bhavan, Muttukad Kandam Bhagam, Chinnakanal Village, Idukki District and caused grievous injury and thereby she had committed the above said offence. In fact, she had no intention to

inflict any grave injury to the victim, but, on account of some sudden provocation caused due to the act of the victim, she happened to beat him and that resulted in the injury. Now, they are living together and she is protecting the welfare of the child as well. The matter has been settled between the parties and the difference of opinion between the parents which resulted in incident has now resolved between them. On account of the settlement, no purpose will be served by proceeding with the case. Since the offences are non compoundable in nature, they could not file an application for compounding before the concerned Court. So, the petitioner has no other remedy except to approach this Court seeking the following relief: "To quash all further proceedings in Charge Sheet in Crime No.363/2013 of Santhanpara Police Station, Idukki District on the file of the Judicial First Class Magistrate Court (CP No.106/2013) Santhanpara in the interest of justice." CrI.M.C. No. 3115 of 2014 3 3. Second respondent, who is the father of the victim and natural guardian has appeared before this Court through counsel and submitted that now the matter has been settled between the parties and they are now residing together taking more care for the welfare of the child and the pendency of the case may affect their harmony, and he does not want to prosecute the case. He had further submitted that the compromise is for the benefit of the victim boy as well, as he will be getting the affection of the mother and father together that will be more helpful for him to build up his future as well.

4. Learned counsel for the petitioner also submitted that in view of the settlement, no purpose will be served by proceeding the case and in fact being the mother, she had no intention to cause any grievous hurt and she had to beat the child due to some provocation caused on account of his act, he prayed for allowing the application.

5. Learned Public Prosecutor, on instructions, as directed by this Court submitted that except this case there is no other case against the petitioner, and the petitioner, her husband and child were living together happily now, but, had submitted that it is not a case to be quashed invoking Section CrI.M.C. No. 3115 of 2014 4 482 of the Code of Criminal Procedure.

6. It is an admitted fact that the petitioner is the mother of the victim boy, who suffered injury in her hands and on the basis of the statement given by the victim boy, a crime was registered as Crime No. 363 of 2013 of Santhanpara Police Station and after investigation, final report was filed and it was taken on file as C.P. No. 106/2013 on the file of Judicial First Class Magistrate Court, Nedumkandom, alleging offences under Section 326 of Indian Penal Code and Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2000. Second respondent is none other than the father of the victim and the natural guardian. Now, the matter has been settled between the parties and they are living together. As directed by this Court to the Public Prosecutor, a discrete enquiry was conducted as to whether the child is now safe in the hands of the parents and after getting necessary instructions and submitted before this Court that they are now living happily and the welfare of the child will be protected by the petitioner as well as the second respondent, if he is residing with them.

7. It is true that Juvenile Justice (Care and Protection of Children) Act has been enacted for the purpose of protecting CrI.M.C. No. 3115 of 2014 5 the right of children and against exploitation of children either in the hands of the parents or by outsiders. Further, considering the fact that child abuse and violation of children right are being at large now a days, Special Courts have been constituted under Section 25 of the Commissions for Protection of Child Rights Act, 2005, and Principle Sessions Court of each district has been designated as special courts for trying such cases. It is true that child abuse and causing harassment to children are now in increase. No one knows the reason for the same as well. Even children are not safe in the hands of the parents. That aspect has to be considered by the Court while considering the case of this nature. But, at the same time Court will have to visualize the situation that if a mother has been convicted and sent to jail and causing separation of the family after they have decided to live together protecting the interest of child then that also will have a greater impact on the future of the child as well. In this case, it is seen from the averments that the petitioner had realized her fault and decided to mend herself and show much love and affection to the child, and that was accepted by her husband, and they have decided to live together taking into consideration the CrI.M.C. No. 3115 of 2014 6 welfare of the child as the primary object. So, considering the facts and

circumstances, though such offences have to be viewed seriously, but if such offences were committed without any intention, but due to some provocation, later they realized the same and decided to mend themselves and due to the intervention of family members, harmony has been resulted in the family life, then pendency of such cases should not be a hurdle for the same as well.

8. Further, in the decision reported in *Gian Singh V. State of Punjab* 2012 (4) KLT108(SC), the Hon'ble Supreme Court has held that in family disputes, if the parties have settled their issues due to the intervention of well wishers and family members and does not want to proceed with the criminal prosecution initiated, then that must be honoured and the prosecution has to be quashed invoking the power under Section 482 of the Code of Criminal Procedure.

9. So, in view of the dictum laid down in the above decision and also considering the fact that the matter has been settled between the parties and the welfare of the child is safe in the hands of the petitioner and second respondent and in fact the settlement is for the benefit of the child, who is the CrI.M.C. No. 3115 of 2014 7 victim in this case, and on account of the settlement conviction will be remote, this Court feels that it is a fit case where the power under Section 482 of the Code of Criminal Procedure has to be invoked to quash the proceedings against the unfortunate mother, who is now facing prosecution for causing hurt to her own child, which has been settled due to the intervention of mediators and now the welfare of the child has been taken as a prime duty by the father and mother and the pendency of the case should not be a hurdle for the welfare of the child as well. So the petition is allowed and further proceedings in C.P. No. 106/2013 (Crime No. 363/2013 of Santhanpara Police Station, Idukki District) of Judicial First Class Magistrate Court, Nedumkandom, as against the petitioner is quashed. Office is directed to communicate this order with the concerned Court immediately for necessary further action in this regard. K. RAMAKRISHNAN JUDGE DMR/-

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