

Nazeer Vs. State of Kerala

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Court : Kerala

Decided On : Jun-24-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Nazeer

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. 1238 of 2014 ()
----- CRIME NO. 1583/2012 OF MATTANCHERRY POLICE STATION , ERNAKULAM PETITIONERS: ----- 1. NAZEER, AGED 30 YEARS, S/O.ALI, CC NO.7/941, PANDARAPPARAMBU, PANAYAPPILLY, MATTANCHERRY.

2. SAMEER, AGED 31 YEARS, S/O.ALI, CC 141634, KARUVELIPPADY, THOPPUMPADY.

3. SAINUDHEEN T.M., AGED 31 YEARS, S/O. MOHAMMED, CC 7964, PANAYAPPILLY, MATTANCHERRY. BY ADV. SRI.SAM ISAAC POTHYIL
RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. JOHN BOSCO, S/O.K.T.JOSEPH, CC121144, PANAYAPPILLY CORPORATION COLONY, THOPPUMPADY VILLAGE.

3. BINDU, AGED37YEARS, W/O.JAYARAJ, C.C.NO.12/1076, PANAYAPPILLY CORPORATION, THOPPUMPADY VILLAGE.

4. SUSEELA, AGED48YEARS, W/O.SEBASTIAN, CC121079, PANAYAPPILLY CORPORATION COLONY. CrI.MC.No. 1238 of 2014 ()

----- 5. MANOJ, AGED37YEARS, S/O.JOHN, VELLATHU HOUSE, PULIMOOTTIPARAMBIL, PANAYAPPILLY CORPORATION COLONY. R1 BY PUBLIC PROSECUTOR SMT. S. HYMA R2 TO R5 BY ADV. SRI.A.S.SREEJAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2406-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 1238 of 2014 ()

----- APPENDIX PETITIONERS' ANNEXURES:

----- ANNEXURE-1.CERTIFIED COPY OF THE FINAL REPORT FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-II, KOCHI. ANNEXURE-2.AFFIDAVIT SWORN BY2D RESPONDENT DATED112/2014. ANNEXURE-3.AFFIDAVIT SWORN BY THE2D RESPONDENT DATED112/2014. ANNEXURE-4.AFFIDAVIT SWORN BY THE2D RESPONDENT DATED112/2014. RESPONDENTS' ANNEXURES: -----

NIL // True Copy // P.A. To Judge DSV/26/06 K. RAMAKRISHNAN,J.

----- CrI.M.C. No. 1238 of 2014

----- Dated this the 24th day of June, 2014

ORDER

This is an application filed by accused Nos.1 to 3 in S.C. No. 404 of 2013 pending before the Court of Assistant Sessions Judge, Kochi, 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 that petitioners were arrayed as accused Nos. 1 to 3 in Crime No. 1583 of 2012 of Mattancherry Police Station, which was registered on the basis of a statement given by the de facto complainant, second respondent, alleging that they have committed offences punishable under Sections 323, 324,

341 and 308 read with Section 34 of the Indian Penal Code. After investigation, final report was filed before the Judicial First Class Magistrate Court-II, Kochi, and it was taken on file as C.P. No. 12 of 2013 CrI.M.C. No. 1238 of 2014 2 and thereafter, it was committed to the Court of Sessions, where it was taken on file as S.C. No. 404 of 2013 and thereafter it was made over to Court of Assistant Sessions Judge, Kochi, and it was now pending before that Court.

3. Due to the intervention of well wishers of both sides, the matter has been now settled between the parties and the de facto complainant and other injured do not want to prosecute the petitioners. In view of the settlement, there is no possibility of conviction. Since the offences are non compoundable in nature, they could not file an application for compounding before the concerned Court. So they have no other option except to approach this Court seeking the following relief. "To quash Annexure I Final Report and all further proceedings pursuant thereto, in the light of Annexures 2 to 4, so as to secure the ends of justice." 4. Respondents 2 to 5, who are the de facto complainant and other injured in the case appeared through counsel and submitted that the matter has been settled between the parties due to the intervention of well wishers of both parties and on account of the settlement, their old CrI.M.C. No. 1238 of 2014 3 relationship has been restored and harmony has been brought among the people of locality and they do not want to prosecute the petitioners in view of the settlement. They also stated that they have filed separate affidavits stating these facts.

5. Learned counsel for the petitioners also submitted that in view of the settlement, no possibility of conviction and keeping the case on file will only amount to wastage of Judicial time. So he prayed for allowing the application.

6. Learned Public Prosecutor, on instructions, as directed by this Court submitted that though there were some petty cases against the petitioners, they ended in conviction by payment of fine alone and except this case there is no other case now pending against the petitioners, but opposed the application on the ground that Section 308 of the Indian Penal Code has been incorporated.

7. It is an admitted fact that on the basis of the statement given by the second respondent as de facto complainant, Mattancherry Police has registered a case as

Crime No. 1583 of 2012 against the petitioners alleging offences under Sections 323, 324, 341 and 308 read with CrI.M.C. No. 1238 of 2014 4 Section 34 of the Indian Penal Code. It is also an admitted fact that after investigation, final report was filed and it is now pending as S.C. No. 404 of 2013 before Assistant Sessions Court, Kochi. Now, the matter has been settled between the parties which is evident from the affidavits filed by respondents 2 to 5. It is stated in the affidavits that due to the intervention of well wishers of both parties, the matter has been settled and they have no grievance against the petitioners and they have no objection in quashing the proceedings as harmony has been brought between them on account of settlement. Considering the fact that the matter has been settled between the parties, there is no possibility of conviction as well, even if the case is allowed to prosecute as neither the de facto complainant nor the witnesses and other injured persons, will support the case of the prosecution and it will only amount to wastage of Judicial time. Though Section 308 of the Indian Penal Code has been incorporated, I am not going to the question at this stage as to whether the allegations are sufficient to attract that offences or not in view of the fact that the matter has been settled between the parties. Further, it is settled law that if a crime has been committed on account of some misunderstanding between the CrI.M.C. No. 1238 of 2014 5 neighbouring members and due to the intervention of mediators and well wishers, the disputes have been settled, then Court must honour such settlement and for keeping the harmony among them the pendency of the case should not be a hurdle.

8. In the decision reported in *Gian Singh V. State of Punjab* [2012 (4) KLT108(SC)], it is held as follows: "The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a 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 CrI.M.C. No. 1238 of 2014 6 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 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 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 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 CrI.M.C. No. 1238 of 2014 7 criminal proceeding." 9. 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 no purpose will be served by keeping the case on file as conviction of such cases 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 to promote the

settlement and harmony that has been resulted between the parties and the pendency of this case could not be a hurdle for the same. So the petition is allowed and further proceedings in S.C. No. 404/2013 pending before the Assistant Sessions Court, Kochi, (Crime No. 1583 of 2012 of Mattancherry Police Station) as against the petitioners 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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