

Job Vs. the State of Kerala

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Court : Kerala

Decided On : Jun-26-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Job

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 26^H DAY OF JUNE 2014 5TH ASHADHA, 1936 CrI.MC.No. 3258 of 2014 ----- CC NO. 2506/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT I, ALAPPUZHA CRIME NO. 828/2013 OF MANNANCHERRY POLICE STATION , ALAPPUZHA PETITIONERS/ACCUSED 1 TO 5 ----- 1. JOB, AGED 48 YEARS, S/O. JOSEPH, VACHAKEL, WARD NO. 22, MARARIKULAM SOUTH PANCHAYAT, ALAPPUZHA DISTRICT.

2. DIXON, AGED 33 YEARS, S/O. JOSEPH, VACHAKEL, WARD NO. 22, MARARIKULAM SOUTH PANCHAYAT, ALAPPUZHA DISTRICT.

3. VINOD, AGED 30 YEARS, S/O. MICHAEL, VACHAKEL, WARD NO. 22, MARARIKULAM SOUTH PANCHAYAT, ALAPPUZHA DISTRICT.

4. DENNIS @ ANIKUTTAN, AGED24YEARS, S/O.JOB, VACHAKEL, WARD NO.22, MARARIKULAM SOUTH PANCHAYAT, ALAPPUZHA DISTRICT.

5. DAVIDSON @ ACHU, AGED18YEARS, S/O.JOB, VACHAKEL, WARD NO.22, MARARIKULAM SOUTH PANCHAYAT, ALAPPUZHA DISTRICT. BY ADVS.SRI.G.PRIYADARSAN THAMPI SRI.S.GULZAR RESPONDENTS/STATE AND DEFECTO COMPLAINANTS:

----- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. JESTIN @ UMMACHU, AGED54YEARS, S/O.ARULLAPPAN, VELIYIL VEEDU, WARD NO.22, MARARIKULAM SOUTH PANCHAYAT, ALAPPUZHA DISTRICT.

3. JAMES @ SOLI, AGED30YEARS, S/O.JESTIN, VACHAKEL, WARD NO.22, MARARIKULAM SOUTH PANCHAYAT, ALAPPUZHA DISTRICT. R1 BY PUBLIC PROSECUTOR SMT. S.HYMA R2 & R3 BY ADV. SMT.BHAVANA VELAYUDHAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2606-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss CrI.MC.No. 3258 of 2014 ----- APPENDIX PETITIONER(S)' ANNEXURES: ----- ANNEXURE A1- CERTIFIED COPY OF FIR AND CHARGE SHEET IN CRIME NO.828/2013 OF MANNANCHERRY POLICE STATION, ALAPPUZHA DISTRICT. ANNEXURE A2- AFFIDAVIT SWORN BY THE2D RESPONDENT DATED146.2013. ANNEXURE A3- AFFIDAVIT SWORN BY THE3D RESPONDENT DATED146.2013. RESPONDENT(S)' ANNEXURES:

----- N I L /TRUE COPY/ P.A.TO JUDGE Kss K.RAMAKRISHNAN, J.

----- CrI.M.C. No. 3258 of 2014 ----- Dated this the 26th day of June, 2014

ORDER

This is an application filed by accused nos. 1 to 5 in C.C. No. 2506/2013 pending before Judicial First Class Magistrate Court-I, Alappuzha, to quash the proceedings on the basis of the settlement under section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioners were arrayed as accused nos. 1 to 5 in Crime No.828/2013 of Mannancherry Police Station, Alappuzha District on the basis of the statement given by the de facto complainant - the second respondent, alleging offences under sections 143, 147, 148, 452 and 324 r/w 149 of Indian Penal Code. After investigation, final report has been filed and the case is now taken on file as C.C. 2506/2013 and pending before Judicial First Class Magistrate Court-I, Allapuzha. Petitioners 1 to 5 CrI.M.C. No. 3258/2014 -2- and respondents 2 and 3 are close relatives and neighbours. In fact, there was some misunderstanding in respect of the marriage of the daughter of the first accused with the son of the de facto complainant and that resulted in the unfortunate incident. Now, all the disputes have been settled and the marriage has been accepted by both parties and they are living happily now. In view of the settlement, there is no possibility of conviction and since some of the offences are non compoundable in nature, they could not file application before the concerned court for recording compounding. So the petitioners have no other remedy except to approach this court seeking the following reliefs "For these and other grounds that may be urged at the time of hearing, this Hon'ble Court may be pleased to allow this petition and quash all further proceedings in C.C. No.2506/2013 (Crime No.828/2013 of Mannancherry Police Station, Alappuzha District), on CrI.M.C. No. 3258/2014 -3- the files of learned Judicial First Class Magistrate's Court-I, Alappuzha, so as to secure the ends of justice." 3. Respondents 2 and 3 appeared before this Court through counsel and submitted that the matter has been settled between the parties and now the marriage between the son of the de facto complainant and the daughter of the first accused was accepted by the family members and they are now living together and harmony has been restored between them. So they do not want to prosecute the case any longer. They also stated that they have filed affidavit stating these facts.

4. The counsel for the petitioners also submitted that in view of the settlement there is no possibility of conviction and he also prayed for allowing the application.

5. Learned Public Prosecutor, on instructions as directed by this court, submitted that there is no other case against the petitioners, but considering the nature of the Crl.M.C. No. 3258/2014 -4- offences alleged, opposed the application.

6. It is an admitted fact that petitioners 1 to 5 and respondents 2 and 3 are close relatives and neighbours. It is also an admitted fact that the son of the de facto complainant married the daughter of the first accused, which caused some misunderstanding between these two families and resulted in an incident causing injury to the de facto complainant and another. So, on the basis of the statement given by the de facto complainant, Crime No.828/2013 of Mannancherry Police Station was registered against the petitioners alleging offences under sections 143, 147, 148, 452 and 324 r/w 149 of Indian Penal Code and after investigation, final report was filed and it is now pending before Judicial First Class Magistrate Court-I, Alappuzha as C.C.2506/2013. Now the matter has been settled between the parties. Crl.M.C. No. 3258/2014 -5- 7. The de facto complainant and other injured, who were arrayed as respondents 2 and 3, appeared through counsel and submitted that the matter has been settled and the marriage between the son of the de facto complainant and the daughter of the first accused was accepted by both families and old relationship between them has been restored on account of the settlement. So, in view of the settlement there is no possibility of conviction as well, as neither the de facto complainant nor their witnesses will support the case of the prosecution.

8. Further, 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 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 CrI.M.C. No. 3258/2014 -6- 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 CrI.M.C. No. 3258/2014 -7- High Court shall be well within its jurisdiction to quash the criminal proceeding." 9. It has been held that in a case where the incident occurred due to some misunderstanding between the neighbours and family members which resulted in registration of the crime and

filing of the final report and ultimately if the entire dispute is resolved due to mediation and interference of family members and well wishers of both parties, then the Court must always honour such settlement and promote harmony that has been restored among the neighbours and family members and in such cases even though some non compoundable offence has been committed, the Court must invoke section 482 of Code of Criminal Procedure and quash the proceedings and promote settlement and harmony that has been restored among the family members 10. In view of the dictum laid in the above decision and also considering the fact that the incident itself has CrI.M.C. No. 3258/2014 -8- happened on account of misunderstanding caused in connection with the marriage of the son of the de facto complainant with the daughter of the first accused and that dispute has been now resolved and they are now residing happily and on account of the settlement there is no possibility of conviction, this Court feels that it is a fit case where power under section 482 of Code of Criminal Procedure has to be invoked to quash the proceedings in order to promote the settlement, which resulted in harmony among the family members of petitioner's son and respondents 2 and 3 and the pendency of this case should not be a hurdle for the same.

11. So the petition is allowed and further proceedings in C.C. 2506/2013 (Crime No.828/2013 of Mannancherry Police Station) pending before Judicial First Class Magistrate Court-I, Alappuzha as against the petitioners is quashed. CrI.M.C. No. 3258/2014 -9- Office is directed to communicate this order to the concerned court immediately. Sd/- K.RAMAKRISHNAN, JUDGE //True Copy// P.A. to Judge jjj

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