

Moideen Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1157801

Court : Kerala

Decided On : Jul-21-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Moideen

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 21ST DAY OF JULY 2014/30TH ASHADHA, 1936 CrI.MC.No. 4357 of 2013 ()
----- CC3362013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KOTHAMANGALAM PETITIONER(S)/ACCUSED IN CC3362013 FROM CMP13282012.:

----- MOIDEEN, AGED 57 S/O. PAREETH, PALLATHU VEEDU, CHERUTHURUTHY, SHORNOOR, PALAGHADU DISTRICT. BY ADV. SRI.T.RAJASEKHARAN NAIR RESPONDENT(S)/COMPLAINANT: ----- 1.
STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA.

2. KOYAKUTTY P.K. POOKADASSERIYIL, PUTHUPADY P.O., KOTHAMANGALAM VILLAGE KOTHAMANGALAM TALUK, THRISSUR-680 001. R2 BY ADV. SRI.SUNIL NAIR PALAKKAT R2 BY ADV. SRI.K.N.ABHILASH R2

BY ADV. SMT.R.LEELA R1 BY PUBLIC PROSECUTOR SMT. SAREENA
GEORGE P. THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 21-07-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Crl.MC.No. 4357 of 2013 APPENDIX PETITIONERS EXHIBITS:- ANNEXURE A:
CERTIFIED COPY OF THE COMPLAINT FILED BY THE 2D RESPONDENT AS
CMP NO.1328/2012 BEFORE THE JFCM, KOTHAMANGALAM. RESPONDENTS
EXHIBITS: NIL /TRUE COPY/ P.A. TO JUDGE SKV K.RAMAKRISHNAN, J
----- CRL.M.C. No.4357
OF 2013----- Dated this the 21st day of July, 2014

ORDER

This is an application filed by the accused in C.C. No.336 of 2013 on the file of the Judicial First Class Magistrate Court, Kothamangalam to quash the proceedings under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner has been arrayed as accused in C.C.336 of 2013 on the file of the Judicial First Class Magistrate Court, Kothamangalam. The 2nd respondent herein, who is none other than the father-in-law of the petitioner's daughter who had filed a private complaint alleging that he along with his daughters Sameera and one Suhara committed offences punishable under Sections 380, 468, 471 read with Section 34 of the Indian Penal Code.

3. The main allegation in the complaint was that the petitioner herein have committed theft of certain cheques and other documents which were kept in the CRL.M.C. No.4357 OF 2013 house of the defacto complainant and forged the same and filed S.T.No.242 of 2012 before the Judicial First Class Magistrate Court-I, Vadakkancheri alleging the offence under Section 138 of the Negotiable Instruments Act against the 2nd respondent. So, the petitioner was considered to file a private complaint as C.M.P. 2087 of 2011 before the Judicial First Class Magistrate Court, Kothamangalam which was forwarded to the Police for investigation under Section 156(3) of the Code of Criminal Procedure and after the investigation they referred the case. Thereafter, the petitioner filed C.M.P.1328 of 2012 as protest complaint and after enquiry, the learned Magistrate dismissed the complaint against accused nos.2 and 3 mentioned in the complaint and took

cognizance of the case against the present petitioner alone as under Section 380 of Indian Penal Code and now it is pending as C.C.No.336 of 2013 on the file of the Judicial First Class Magistrate Court, Kothamangalam. In fact, no offence under Section 380 of Indian Penal Code has been attracted even on the basis of the allegations made. The CRL.M.C. No.4357 OF20133 case has been filed only as a counter blast to the cheque case filed by the petitioner against the 2nd respondent. So, the petitioner has no other remedy except, to approach this Court seeking the following relief:- "To quash Annexure A complaint, in C.C.No.336/2013 on the file of the Judicial First Class Magistrate Court, Kothamangalam, so as to attain the ends of justice." 4. During the pendency of the proceedings as requested by both the counsels, the parties appeared before this Court for considering the matter to be referred to Mediation and the matter has been referred to Mediation and in the Mediation, the matter has been settled. Parties have decided to withdraw all the cases filed by them. Accordingly, 2nd respondent has filed an affidavit before this Court, stating that in view of the settlement of the Mediation, the entire dispute between him and the petitioner has been settled and the family relationship between the two families has been restored. So, he has no objection in quashing the proceedings.

5. Both the counsel submitted that in view of the CRL.M.C. No.4357 OF20134 settlement, no purpose will be served by proceeding with the case and they prayed for allowing the application.

6. The application was opposed by the learned Public Prosecutor. It is an admitted fact that the petitioner and 2nd respondent were relatives and the 2nd respondent is none other than the father-in-law of the petitioner's daughter. There were some disputes between them which resulted in filing a complaint under Section 138 of the Negotiable Instruments Act by the petitioner against the 2nd respondent and the 2nd respondent filed a private complaint against the petitioner alleging theft of the cheque belonging to him which was misused and the case under Section 138 of the Act was filed. Further, there were civil litigations also between them. In the mediation, all the disputes have been settled between the parties and they have decided to withdraw all the litigations and the family relationship has been restored. In view of the fact that the matter has been settled, there is no possibility

of conviction being entered into against the petitioner, as the complainant will not give evidence CRL.M.C. No.4357 OF20135 against the petitioner. Further, it is a private dispute and family issues that resulted into the registration of crimes and civil suits which have been settled between the parties.

7. In the decision reported in *Gian Singh v. State of Punjab* [2012 (4) KLT108(SC)], the Hon'ble Supreme Court has held in the case of family disputes, resulted in registration of crimes and other litigations and if the matter has been settled between the parties, then the Court may honour such settlement and though non compoundable offences have been made out in the complaint or final report, the court has to invoke the power under Section 482 of Code of Criminal Procedure and quash the proceedings to promote the settlement and restoration of harmony that has been brought between the family members of both the parties on account of settlement in the Mediation.

8. In view of the dictum laid down in the above decision, and also considering the fact that the parties are relatives and the family disputes between them resulted CRL.M.C. No.4357 OF20136 in registration of the crimes and filing of cases and the matter has been settled between the parties in the Mediation held in the Mediation Centre, Ernakulam and on account of the settlement, there is no possibility of conviction, this Court feels that it is a fit case, where the power under Section 482 of Code of Criminal Procedure can be invoked to quash the proceedings to promote the settlement and harmony that has been brought among the members of the family of both the parties and the pendency of the case should not be huddle for the same. So the application is allowed and further proceedings in C.C. No.336/2013 pending before the Judicial First Class Magistrate Kothamangalam as against the petitioner is quashed. Office is directed to communicate this order to the concerned court immediately. Sd/- K.RAMAKRISHNAN, JUDGE. /True Copy/ P.A. To Judge SKV