

Mohammed Javid Vs. State of Kerala

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Court : Kerala

Decided On : Aug-04-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Mohammed Javid

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN MONDAY, THE 4TH DAY OF AUGUST 2014 13TH SRAVANA, 1936 CrI.MC.No. 3515 of 2013 ()
----- CRIME NO. 431/2013 OF KUMBLA POLICE STATION , KASARGOD DISTRICT ----- PETITIONER/ACCUSED NO.2: -----
----- MOHAMMED JAVID, S/O. MOOSA, AGED 24 YEARS, OLCHAL HOUSE, BAMBRANA JUNCTION, BAMBRANA VILLAGE, KASARGOD DISTRICT. BY ADV. SRI.KODOTH SREEDHARAN
RESPONDENT(S)/COMPLAINANT: ----- 1. STATE OF KERALA, THROUGH THE STATION HOUSE OFFICER KUMBLA, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. MUMTHAZ, D/O. AHAMMED, BASTHIPADPU, MANGALORE, ULLAL, D.K. DISTRICT, KARNATAKA, NOW RESIDING AT K.M.K. QUARTERS, UDAYAVARA, MADA, KASARGOD DISTRICT. R1 BY PUBLIC PROSECUTOR

SRI.DHANESH MATHEW MANJOORAN R2 BY ADV. SMT.REHNA N.S. THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/08-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts CRMC.NO.3515/2013 APPENDIX PETITIONER'S ANNEXURES: ANNEX I COPY OF THE AFFIDAVIT FILED BY THE DEFACTO COMPLAINANT DATED 13/7/2013. ANNEX II COPY OF THE FIR IN CRIME NO.431/2013 DATED 04/07/2013 BY THE KUMBLA POLICE STATION ANNEX III COPY OF THE

ORDER

IN CRL.M.C.NO.3141/2013 DATED 29/07/2013 BY THIS HON'BLE COURT. ANNEX IV COPY OF THE AFFIDAVIT FILED BY THE DEFACTO COMPLAINANT DATED 13/7/2013 ANNEX V CERTIFIED COPY OF THE FINAL REPORT DATED 08/10/2013 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KASARAGOD ANNEX VI COPY OF THE PETITION FILED BY THE DEFACTO COMPLAINANT DATED 13/7/2013 RESPONDENT'S ANNEXURES: NIL /TRUE COPY/ P.A.TO.JUDGE sts V.K.MOHANAN, J
===== Crl.M.C No.3515 of 2013
===== Dated this the 4th day of August, 2014

ORDER

The above petition is filed under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C.') at the instance of the petitioner, who is accused in C.M.P No.5372 of the Judicial First Class Magistrate Court - I, Kasaragod, which is a case instituted upon the police report in Crime No. 431/2013 of Kumbala Police Station for the offences punishable under Section 364(A) r/w Section 34 of the I.P.C. with a prayer to quash the proceedings in Crime No. 431/2013 of Kumbala Police Station and pending before the Judicial First Class Magistrate Court - I, Kasaragod as the matter is settled out of court.

2. The allegation in the above case is that on 03.07.2013 at 20:30 hours while the de facto complainant was travelling in a car along with her friends and when they reached at Bambrana village, all the accused including the petitioner in furtherance of their common intention kidnapped the de facto complainant

demanding ransom and, thus, they Crl.M.C No.3515/2014 2 have committed the aforesaid offences and now, the case of the petitioner is that the matter is settled out of court.

3. Heard the learned counsel for the petitioner as well as the 2nd respondent. I have also heard the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted that during the pendency of the above case, the matter is settled amicably between the parties to the dispute which is the subject matter of the above case. Therefore, the continuation of the proceedings in the above case is abuse of process of law and proceedings.

5. The learned counsel for the 2nd respondent, who on the basis of specific instruction received from the respondent, submitted that the above respondent, who is the de facto complainant does not intend to proceed any further against the petitioner and she has no grievance against him.

6. I have carefully considered the above submissions of the respective counsel. I have verified the documents and materials produced along with the above petition. In the given facts and circumstances of the case and especially in the light of the settlement arrived between the parties to the dispute, the learned Public Prosecutor has also no objection in allowing the above petition. Crl.M.C No.3515/2014 3 7. Having regard to the facts and circumstances involved in the case, it can be seen that the offence involved in the above case is only u/s364(a) r/w Section 34 of the Indian Penal Code which is more or less personal in nature and no public interest is involved. It is pertinent to note that though such offence is involved, the real parties to the dispute approached this Court after having amicably settled the matter. From the submission made by the counsel for the 2nd respondent, it appears to me that the de facto complainant has no further grievance against the petitioner/accused in the light of the settlement arrived by them. In this juncture, it is relevant to note the decision of the Honourable Apex Court reported in *Gian Singh v. State of Punjab* [2012(4) KLT108(SC)], in which case, the Supreme Court has held as follows:- "57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR 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.. It is further held as follows:-

"..... But the criminal cases having overwhelmingly and pre- dominantly civil flavour stand on different footing for the CrI.M.C No.3515/2014 4 purposes of quashing, particularly the offences arising from commercial, financial,mercandile, 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....." According to me, in the light of the facts and circumstances involved in the present case and particularly in view of the settlement arrived in the present case, the dictum laid in the above decision is applicable in the present case. Thus, I am of the view that as the parties to the dispute settled the issues amicably, it is the duty of this Court to promote and encourage such settlement, instead of compelling the parties to go on with the dispute. It is pertinent to note that since the matter is settled out of court, in the event of proceeding with the trial, there would not have any fruitful prosecution resulting the conviction of the accused, rather the net result would be sheer waste of judicial time and abuse of process of the court and proceedings. Thus, according to me, following the decisions cited supra, this Criminal M.C. can be allowed granting the relief as sought for. CrI.M.C No.3515/2014 5 In the result, this CrI.M.C. is allowed, quashing the proceedings pending against the petitioner in Crime No. 431/2013 of Kumbala Police Station, and pending before the Judicial

First Class Magistrate Court - I, Kasaragod. Sd/- V.K.MOHANAN, JUDGE vdv
//True Copy// P.Ato Judge

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