

Dhanesh Vs. State of Kerala

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Court : Kerala

Decided On : Sep-22-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Dhanesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN MONDAY, THE 22D DAY OF SEPTEMBER 2014 31ST BHADRA, 1936 CrI.MC.No. 5326 of 2014 ()
----- AGAINST THE

ORDER

IN CC6912013 of JUDL.M.F.C.-I, ERNAKULAM CRIME NO. 215/2013 OF MULAVUKAD POLICE STATION , ERNAKULAM PETITIONER/ACCUSED:
----- DHANESH AGED 29 YEARS S/O.SISUPALAN, THARAYIL HOUSE, THYKODAM VYTTILA, ERNAKULAM, COCHIN 19 BY ADV. SRI.SANIL KUMAR RESPONDENT (SCOMPLAINANT/DEFACTO COMPLAINANT:

1. STATE OF KERALA REP BY THE SUB INSPECTOR OF POLICE MULAVUKAD POLICE STATION 2 W/O.JAGATHYVASA SOLLY @ ANJU PONNURUNNI, POST,PANIKKER, VATTAMALA HOUSE, VYTTILA ERNAKULAM 3 S/O.KARUNAKARA JAGATHYVASA PANIKKER, AGED 43 YEARS

PONNURUNNI POST,MENON, VATTAMALA HOUSE, VYTILA ERNAKULAM R2,3 BY ADV. SRI.A.V.JAMES BY PUBLIC PROSECUTOR SMT. R. REMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22-09-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 5326 of 2014 () ----- APPENDIX PETITIONER(S)' EXHIBITS ----- ANNEXURE I-CERTIFIED COPY OF THE FIR IN CRIME NO 215/2013 IN MULAVUKADU POLICE STATION, DTD 23/2013 IN CC NO 69113 PENDING BEFORE JFCM COURT NO 1 AT ERNAKULAM ANNEXURE II:- CERTIFIED COPY OF THE CHARGE SHEET IN CRIME NO 215/13 IN MULAVUKADU POLICE STATION, DTD 23/2013 IN CC 69113 PENDING BEFORE JFCM COURT NO 1 AT ERNAKULAM V.K.MOHANAN, J.

----- CrI.M.C.No. 5326 of 2014 Dated-----2014
this the 22nd day of September,

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 the accused in C.C. No. 961 of 2013 on the file of the Judicial First Class Magistrate - I, Ernakulam which is a case instituted upon the police report in Crime No. 215 of 2013 of Mulavukadu Police Station for offences punishable under Sections 323, 354 and 427 of I.P.C. with a prayer to quash Annexure 1 and 2, FIR and charge sheet in the aforesaid crime, as the matter is settled out of court.

2. The allegation in the above case is that when the de facto complainant was talking with her husband's friend one Mr. Boban, the accused who is a family friend of her, slapped on her face and caught hold of her hand and destroyed her mobile phone worth Rs. 3500/-, and CrI.M.C.No. 5326 of 2014 :-2-: 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 respondents 2 and 3. 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 crime/case. Therefore, the continuation of the proceedings in the above case is abuse of process of law and proceedings.

5. The learned counsel for respondents 2 and 3 who on the basis of specific instruction received from the 2nd respondent/de facto complainant, submitted that the above respondent, who is the de facto complainant//injured does not intend to proceed any further against the petitioner and she has no grievance against the petitioner.

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 CrI.M.C.No. 5326 of 2014 :-3-: learned Public Prosecutor has also no objection in allowing the above petition.

7. Having regard to the facts and circumstances involved in the case, it can be seen that the offences involved in the above case are only 323, 354 and 427 of IPC which are more or less personal in nature and no public interest is involved. It is pertinent to note that though such offences are 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 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) KLT108SC)], 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:- Crl.M.C.No. 5326 of 2014 :-4-: "..... 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....." 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. Crl.M.C.No. 5326 of 2014 :-5-: In the result, this Crl.M.C. is allowed, quashing Annexure - 1 and 2, the FIR and Charge Sheet in Crime No. 215 of 2013 of Mulavukad Police Station and all further proceedings thereto pending against the petitioner in C.C.No. 691/2013 pending before the Judicial First Class Magistrate - I, Ernakulam. Dated this the 22nd day of September, 2014. Sd/- V.K.MOHANAN, Judge ani/ /true copy/ P.S. To Judge