

**Thomas and Another Vs. State of Kerala, represented by Public Prosecutor and Another**

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**Court :** Kerala

**Decided On :** Jan-22-2016

**Judge :** B. Kemal Pasha

**Appeal No. :** Crl. MC. No. 2416 of 2015

**Appellant :** Thomas and Another

**Respondent :** State of Kerala, represented by Public Prosecutor and Another

**Judgement :**

1. Can a person, who availed of all the benefits of a settlement, be permitted to backtrack from the settlement, and to continue with the prosecution proceedings against the adverse party, in violation of the terms of settlement?

Petitioners are the accused in C.C. No.481/2012 of the Judicial First Class Magistrate's Court-II, Thrissur, which has arisen from Crime No.120/2012 of the Thrissur West Police Station, registered for the offences punishable under Sections 341 and 323 read with Section 34 of the Indian Penal Code.

2. The defacto complainant was the son-in-law of the first petitioner. There was difference of opinion between the defacto complainant and his wife, who is the daughter of the first petitioner, which culminated in a series of litigations between them. As the wife of the defacto complainant was tortured and harassed with a

demand for dowry, and as her properties were misappropriated, a case was pending for the same against the defacto complainant in this case, as C.C.No.70 of 2012 before the Chief Judicial Magistrate's Court, Thrissur. The defacto complainant had filed O.P.No.680/2012 before the Family Court, Thrissur against the daughter of the first petitioner seeking a decree of divorce.

3. The entire disputes between the parties were settled in the Lok Adalath. In O.P.680/12, a settlement agreement was executed in that regard. As all the disputes were settled, the parties had agreed to terminate C.C.No.70 of 2012 as well as C.C.No.481 of 2012.

4. Complying with the terms of settlement, the daughter of the first petitioner was instrumental in terminating the prosecution in C.C.No.70/12, which was pending against the defacto complainant herein. Consequently, the defacto complainant was acquitted in the said case. Similarly, O.P.No.680/12 has been dismissed as withdrawn, and as per the settlement, a joint petition seeking divorce was filed, and consequently a decree of divorce has been passed.

5. After that, the defacto complainant herein has allegedly resorted to a lukewarm attitude in getting the matter involved in C.C.No.481/12 of the Judicial First Class Magistrate's Court-II, Thrissur, settled. He has not cared to come up to file a compounding petition in the matter.

6. According to the petitioners, the defacto complainant cannot backtrack from the settlement, especially when he has obtained the aforesaid benefits out of that settlement. Therefore, according to the petitioners, all the proceedings against the petitioners in C.C.No.481/2012 are liable to be quashed.

7. Heard the learned counsel for the petitioners. Even though notice has been served on the 2nd respondent, he has not turned up.

8. As rightly pointed out by the learned counsel for the petitioners, the defacto complainant cannot approbate and reprobate. It is a fact that he has availed all the benefits of the settlement, and the case which was pending against him as C.C.No.70/2012 was settled and he got acquitted. After availing that benefit and

also after obtaining the benefit of the divorce by mutual consent, he cannot backtrack from the settlement which has come into effect.

9. Of course, it can be stated that a contract for terminating the legal proceedings is a contract opposed to public policy and therefore, the same cannot be enforced. This is not a case wherein the settlement is sought to be enforced. At the same time, at the present stage, the omission from the part of the defacto complainant to file a compounding petition is malafide.

10. Identical situations were dealt with in the decision in Mohd. Shamim and others v. Nahid Begum(Smt.) and another[(2005) 3 SCC 302] and Ruchi Agarwal v. Amit Kumar Agrawal[(2005) 3 SCC 299]. Mohd. Shamim (supra) was a case wherein the execution of a deed of settlement between the parties was denied. It was held that denial of execution of the deed of settlement was an afterthought and the same could not be accepted in view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of an Additional Sessions Judge, especially when the settlement appeared to be genuine.

11. Here, in this particular case also a genuine settlement has been entered into in the Lok Adalath and an award has been passed. Similarly, in an identical situation in Ruchi Agarwal(supra), the proceedings against the respondents were quashed. There, the Apex Court held,

8. .... Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

9. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue.

12. The learned counsel for the petitioners has invited the attention of this Court to the decision in Aditya Chandershekhar Pandit and others v. State of NCT of Delhi

and another[2013(2) KLD 570(Del.)]. In that case, in an identical situation wherein a Mediation had taken place and a Mediation Settlement Agreement was entered into, the Delhi High Court held that the parties to such a settlement agreement cannot be permitted to backtrack, after the settlement has come into effect.

13. Here, in this particular case also a settlement has been arrived at between the parties and the consequent award passed by the Lok Adalath has come into effect and a substantial portion of it has been complied with. In that particular context, the 2nd respondent cannot be permitted to backtrack from the settlement and to proceed with the prosecution against the petitioners.

14. Matters being so, the entire proceedings in C.C.No.481/2012 of the Judicial First Class Magistrate's Court-II, Thrissur, as against the petitioners, based on Annexure A1 Final Report in Crime No.120/2012 of the Thrissur West Police Station, are liable to be quashed.

In the result, this CrI.M.C. is allowed and all further proceedings in C.C.No.481/2012 of the Judicial First Class Magistrate's Court-II, Thrissur, as against the petitioners, based on Annexure A1 Final Report in Crime No.120/2012 of the Thrissur West Police Station, are hereby quashed.

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