

Aneesh vs State of Kerala

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Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : Crl.MC/6782/2023

Appellant : Aneesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945
CRL.MC NO. 6782 OF 2023 CRIME NO.229/2008 OF Kadakkavoor
Police Station, Thiruvananthapuram AGAINST THE
ORDER/JUDGMENT CC 732/2013 OF JUDICIAL MAGISTRATE OF
FIRST CLASS ,VARKALA

PETITIONER/3RD ACCUSED: ANEESH AGED 33 YEARS S/O
AJAYKUMAR, THODIYIL VEEDU, ADIVARAM, VAKKOM,
THIRUVANANTHAPURAM DISTRICT., PIN - 695308 BY ADV
P.ANOOP (MULAVANA) RESPONDENTS/STATE/DEFACTO
COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC

PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 SUBHA
D/O LALITHA , THODIYIL VEEDU, ADIVARAM, VAKKOM,
THIRUVANANTHAPURAM DISTRICT., PIN - 695308 OTHER
PRESENT: PP-SRI.PRASANTH M.P THIS CRIMINAL MISC. CASE
HAVING COME UP FOR ADMISSION ON 01.02.2024, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO.6782 OF
2023 2

ORDER

This Crl.M.C. under Section 482 of Cr.P.C. is filed by the 3rd accused in Crime No.229/2008 of Kadakkavur Police Station, Thiruvananthapuram, registered under Sections 447, 324, 323, 354, 506(ii) read with Section 34 of IPC, for quashing Annexure-1 FIR.

2. The prosecution allegation is that, on 24/8/2008 at

4.30pm, the petitioner along with other accused trespassed into the house of the victim, assaulted her with a stick, criminally intimidated her and outraged her modesty.

3. When the matter is taken up for consideration, learned

counsel for the petitioner would submit that the matter stands settled between himself and the defacto complainant, and he produced Annexure-2 affidavit of the 2 nd respondent/defacto complainant, endorsing the factum of settlement, and stating that, she has no intention to continue with the prosecution as against the petitioner. She has no objection in quashing Annexure-1 FIR in Crime No.229/2008, as against the petitioner. CRL.MC NO.6782 OF 2023 3

4. Learned Public Prosecutor on instructions submitted

that the matter has been settled between the petitioner and the 2nd respondent, and he produced the signed statement of the 2 nd respondent, stating that as the matter is settled between herself and the petitioner, she has no objection in quashing Annexure-1 FIR in Crime No.229/2008, as against him.

5. In the case on hand the petitioner is the third accused

and the settlement is arrived only between the petitioner and 2nd respondent. The 2nd respondent has not settled the matter with the other accused. Learned counsel for the petitioner relied on the decision of this Court in *Sajeev and Another v. State of Kerala and Another* [2022 (3) KHC 69] and submitted that even when the settlement is arrived between the victim and some of the accused persons, it is permissible to quash the FIR as against those accused alone, on the ground of settlement, depending on the facts and circumstances. Paragraph 9 of *Sajeev's* case cited *supra* reads as follows.

9. It is true that the settlement was arrived at between the 2nd respondent and the accused Nos.2 and 4 alone who are the petitioners. No settlement was arrived at with the CRL.MC NO.6782 OF 2023 4

remaining accused. Hence, the question is whether the FIR / Final Report against some of the accused alone could be quashed on the ground of settlement invoking S.482 of Cr.P.C. The Apex Court in *Lovely Salhotra and Another v. State NCT of Delhi and Another*, 2017 KHC 3564 : (2018) 12 SCC 391 : 2017 (2) KLT 424 : AIR 2017 SC 2595 quashed the proceedings against one of the accused alone, invoking S.482 of Cr.P.C. That was a case where the High Court refused to quash the proceeding holding that the FIR cannot be quashed in part. True, in the said case, the Apex Court had taken into account the facts of the case that no cognizable offence was made out. The Apex Court, on facts, also found that no offence was made out against the appellant / accused therein. However, the principle that could be deduced from the dictum laid down in the said decision is that it is not impermissible to quash the FIR qua some of the accused alone, depending on the facts and circumstances of each case. In *Sreejith v. State of Kerala and Another* (Crl.M.C.No.3343/2021 dated 10/08/2021), this Court quashed the proceedings against one of the accused alone on the ground of settlement invoking S.482 of Cr.P.C. In these circumstances, I hold that it is permissible in law to quash the FIR or Final Report only against one or

some of the accused on the ground of settlement, depending upon the facts and circumstances of each case invoking S.482 of Cr.P.C.

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6. In the case on hand the major overt acts are alleged

against accused Nos.1 and 2. The only allegation against the petitioner is that he caught hold on hair during that incident. Now the defacto complainant has condoned his act of holding her hair, and filed an affidavit stating that she has no intention to proceed against her. In such circumstances, the crime can be quashed as against him.

7. In the light of the decision cited Supra and also the

principles laid down by the Apex Court in Gian Singh v. State of Punjab and Another; [(2012) 10 SCC 303], and State of Madhya Pradesh v. Laxmi Narayan and Others; [(2019) 5 SCC 688], this Court is of the view that the proceedings against the petitioner can be quashed on the basis of settlement. In the result, this Crl.M.C. is allowed and Annexure-1 final report in Crime No.229/2008 of Kadakkavur Police Station, Thiruvananthapuram, stands quashed, as against the petitioner CRL.MC NO.6782 OF 2023 6 herein. It is made clear that crime No.229 of 2008 of Kadakkavur Police Station shall be continued as against accused Nos.1 and 2. Sd/- SOPHY THOMAS JUDGE SSK/01/02 CRL.MC NO.6782 OF 2023 7
APPENDIX OF CRL.MC 6782/2023 PETITIONER ANNEXURES Annexure 1
TRUE COPY OF THE FINAL REPORT IN CRIME Annexure 2 TRUE COPY OF
THE AFFIDAVIT FILED BY THE 2ND RESPONDENT

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