

Jayaram vs State of Kerala

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Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/2322/2024

Appellant : Jayaram

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN TUESDAY, THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946 CRL.MC NO. 2322 OF 2024 CRIME NO.9/2016 OF ANCHALUMMOODU POLICE STATION, KOLLAM AGAINST THE ORDER/JUDGMENT DATED IN SC NO.65 OF 2017 OF ASSISTANT SESSIONS COURT/ADDITIONAL SUB COURT,KOLLAM PETITIONERS/ACCUSED A1 TO A9: 1 JAYARAM AGED 33 YEARS S/O MANIKANDAN, MANIKANDA BHAVAN, NEAR PANANYAM TEMPLE, PANAYAM CHERRY, PANAYAM VILLAGE, KOLLAM DISTRICT., PIN - 691601 2 PRADEEP AGED 39 YEARS S/O MURALI, PREETHALAYAM VEEDU, INCHAVILA CHERRY, MULACKKAL VAYAL THRIKKARUVA VILLAGE, KOLLAM DISTRICT., PIN - 691602 3 PRASHANTH AGED 35 YEARS S/O MURALI, PREETHALAYAM VEEDU, INCHAVILA CHERRY, MULACKKAL VAYAL THRIKKARUVA VILLAGE,

KOLLAM DISTRICT., PIN - 691602 4 RATHEESH AGED 31 YEARS S/O RAJENDRAN PILLA @ RAJU, THAZHATHETHIL HOUSE, VADAKKEKKARA CHERRY THRIKKARUVA VILLAGE, KOLLAM DISTRICT., PIN - 691602 5 RATHEESH CHANDRAN @ ACHU AGED 31 YEARS S/O RAMACHANDRAN PILLA, VATTETTU VEEDU, THATTUVILA CHERRY, THRIKKARUVA VILLAGE, KOLLAM DISTRICT., PIN - 6 THOBHIYAS @ JOY AGED 44 YEARS S/O CHACKO, KOTTARAM PUTHUVEL PURAYIDOM, MATHILIL CHERRY, THRIKKADAVOOR VILLAGE, KOLLAM DISTRICT., PIN - 691601 7 VINESH AGED 33 YEARS S/O. VIJAYAN, VAYALIL PUTHEN VEEDU, THATTUVILA CHERRY, THRIKKARUVA VILLAGE, KOLLAM DISTRICT., PIN - 691602 8 SUCHITHRAKUMAR AGED 33 YEARS S/O. CHITHRAKUMAR, CHIPPY BHAVANAM, VADAKKEKKARA CHERRY, THRIKKARUVA VILLAGE, KOLLAM DISTRICT., PIN - 691602 9 ASHWINIKUMAR @ KINNAN AGED 34 YEARS S/O. SASIDHARAN, KUTHIRAPANTHIYIL, INCHAVILA CHERRY, THRIKKARUVA VILLAGE, KOLLAM DISTRICT., PIN - 691602 BY ADV P.V.DILEEP RESPONDENTS/STATE: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031 2 THE STATION HOUSE OFFICER ANCHALUMMOODU POLICE STATION, KOLLAM DISTRICT., PIN - 691601 3 RAJITH AGED 34 YEARS S/O RAJU, PANAMOOTTIL VEEDU, NEAR ASHTAMUDI TEMPLE, VADAKKEKARA CHERRY, THRIKKARUVA VILLAGE KOLLAM DISTRICT., PIN - 691602 4 RANJEESH AGED 32 YEARS S/O RAJU, PANAMOOTTIL VEEDU, NEAR ASHTAMUDI TEMPLE, VADAKKEKARA CHERRY, THRIKKARUVA VILLAGE KOLLAM DISTRICT., PIN - 691602

5 ANEESH KUMAR AGED 34 YEARS S/O ARJUNAN, VALIYAVILA PUTHENVEEDU, VADAKKEKKARA CHERRYIL SCHOOL, THRIKKARUVA VILLAGE KOLLAM DISTRICT., PIN - 691602 OTHER PRESENT: ADV. K,V ANIL KUMAR -SR,PP SR.PP S. SEETHA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23.04.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN ----- Dated this the 23rd day of April, 2024

ORDER

This Criminal Miscellaneous Case is filed under Section 482 of the Code of Criminal Procedure, 1973 (the Code for the sake of brevity).

2. The petitioners are the accused in S.C.No.65/2017

on the files of the Assistant Sessions Court, Kollam arising from Crime No.9/2016 of Anchalummoodu Police Station, Kollam. The above case is charge sheeted against the petitioners alleging offences punishable under Sections 143, 147, 148, 294(b), 323, 341, 324, 308 r/w Section 149 IPC.

3. The prosecution case is that the accused formed themselves into unlawful assembly and assaulted the victims and used filthy language. It is submitted that counter case is already quashed by this Court as per

judgment dated 09.04.2024 in CrI.MC No.2370/2024.

4. The learned counsel for the petitioners submits

that the parties have settled their dispute and do not wish to pursue the prosecution proceedings. The counsel relies on the affidavit filed by the victims in support of his contention. The counsel appearing for the victims also submitted that the matter is settled and the victims have no objection in quashing the prosecution.

5. The learned Public Prosecutor, on instructions,

has expressed reservations about quashing the proceedings solely on the basis of the settlement. But the Public Prosecutor conceded that the matter is settled between the parties.

6. This Court has considered the submission of the petitioners, victims and the Public Prosecutor and has also gone through the records including the affidavits filed by the victims.

7. In State of Madhya Pradesh v Laxmi Narayan

and Others (2019 (5) SCC 688), three judge bench of the Hon'ble Supreme Court has summarized the situation in which non compoundable offences can be quashed invoking the powers under Section 482 of the Code. The apex court in Laxmi Narayan's case (supra) also relied on the law laid down in Gian Singh v. State of Punjab and another (2012 (10) SCC 303) and Narinder Singh and others v. State of Punjab and another (2014 (6) SCC 466). The apex court in paragraph 13 of the Laxmi Narayan's case discussed the law in detail and the same is extracted hereunder: 13. Considering the law on the point and the other decisions of this Court on the point,

referred to herein above, it is observed and held

as under: i) that the power conferred under S.482 of the Code to quash the criminal proceedings for the non - compoundable offences under S.320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves; ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society; iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender; iv) offences under S.307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under S.307 IPC and / or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under S.482 of the Code, on the ground

that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of S.307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of S.307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under S.307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital / delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed / charge is framed and / or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate

conclusion in paragraphs 29.6 and 29.7 of the

decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated herein above; v) while exercising the power under S.482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement / compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

8. Keeping in mind the above dictum laid down by the

apex court, this court perused the facts in this case and also perused the documents produced by the parties. After going through the entire facts and

circumstances I am of the considered opinion that the dispute is private in nature and the settlement can be accepted. Therefore, this Criminal Miscellaneous case is allowed. All further proceedings against the petitioners in S.C.No.65/2017 on the files of the Assistant Sessions Court, Kollam arising from Crime No.9/2016 of Anchalumoodu Police Station, Kollam are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE bng APPENDIX OF CRL.MC 2322/2024 PETITIONERS ANNEXURES Annexure-A CERTIFIED COPY OF THE FIR AND FIS IN CRIME NO.9 / 2016 OF ANCHALUMMOODU POLICE STATION DATED 01.01.2016. Annexure-B CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 9 / 2016 OF ANCHALUMMOODU POLICE STATION DATED 28.04.2016. Annexure-C AFFIDAVIT OF THE 3RD RESPONDENT DATED 20.02.2024. Annexure-D AFFIDAVIT OF THE 4TH RESPONDENT DATED 20.02.2024. Annexure-E AFFIDAVIT OF THE 5TH RESPONDENT DATED 20.02.2024.

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