

Movind 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/3234/2024

Appellant : Movind

Respondent : State of Kerala

Judgement :

CRL.MC NO. 3234 OF 2024 1

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. 3234 OF 2024 CRIME NO.1193/2014 OF Attingal Police
Station, Thiruvananthapuram AGAINST THE ORDER/JUDGMENT
DATED IN SC NO.1754 OF 2022 OF ADDITIONAL DISTRICT COURT &
SESSIONS COURT (ATROCITIES & SEXUAL VIOLENCE AGAINST
WOMEN & CHILDREN),THIRUVANANTHAPURAM PETITIONER/S:
MOVIND AGED 29 YEARS S/O MURALIDHARAN, GIRIJA NIVAS,
PARAYADI, PIRISHAL KOTTUKONAM, POYYIKAMUKU DESOM,
MUDAKKAL VILLAGE, THIRUVANANTHAPURAM, PIN - 695103

BY ADVS. M.R.SARIN PARVATHI KRISHNA ASHA MARY KURIAN
RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 XXX AGED 27
YEARS XXXXXXXXXXXXXXXX, PIN - 695101 CRL.MC NO. 3234 OF 2024 2 3 YYY
AGED 50 YEARS YYYYYYYYYY, PIN - 695101 4 THE SUB INSPECTOR OF
POLICE ATTINGAL POLICE STATION, THIRUVANANTHAPURAM, PIN - BY
ADV Saumya P.S OTHER PRESENT: SMT. SEETHA S SR.PP THIS CRIMINAL
MISC. CASE HAVING COME UP FOR ADMISSION ON 23.04.2024, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 3234 OF 2024 3

P.V.KUNHIKRISHNAN, J ----- CrI.M.C. No. 3234 of 2024
----- 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 petitioner is the accused in SC No.1754/2022 on

the file of the Addl. District and Sessions Court (Atrocities & Sexual Violence against Women & Children), Thiruvananthapuram arising from Crime No. 1193/2014 of Attingal Police Station. The above case is chargesheeted alleging offences punishable under Sec.8 of the POCSO Act.

3. The prosecution case is that on 08.08.2014 at 12.45

pm, when the defacto complainant was coming back from the tuition class, the accused person forced her and took her to the CRL.MC NO. 3234 OF 2024 4 'Tapasya Theatre' to watch the movie and sexually abused her.

4. The learned counsel for the petitioner submits that the

parties have settled their dispute and do not wish to pursue the prosecution proceedings. The counsel relies on the affidavits 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 petitioner, 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 CRL.MC NO. 3234 OF 2024 5 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.

9. This Court also considered the dictum laid down in

Vishnu v. State of Kerala [2023 (4) KHC 1]. Following the CRL.MC NO. 3234 OF 2024 8 above principle, I think the proceedings against the petitioner can be quashed. Therefore, this Criminal Miscellaneous case is allowed. All further proceedings against the petitioner in SC No.1754/2022 on the file of the Addl. District and Sessions Court (Atrocities & Sexual Violence against Women & Children), Thiruvananthapuram arising from Crime No. 1193/2014 of Attingal Police Station are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE SKS

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