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Vishnu vs the 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/3496/2024

Appellant : Vishnu

Respondent : The 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. 3496 OF 2024 CRIME NO.592/2023 OF FORT POLICE STATION, THIRUVANANTHAPURAM AGAINST THE ORDER/JUDGMENT DATED IN SC NO.2307 OF 2023 OF SPECIAL COURT UNDER POCSO ACT, THIRUVANANTHAPURAM PETITIONER: XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX BY ADV HAIRA RESPONDENTS: 1 THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

2 SUB INSPECTOR OF POLICE, FORT POLICE STATION, THIRUVANANTHAPURAM CITY, PIN - 695036 3 XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX 4 XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX BY ADV 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:

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 Crime

No.592/2023 of Fort Police Station, Thiruvananthapuram, which is now pending as Sessions Case No.2407/2023 on the files of the Additional District and Sessions Court (POCSO), Thiruvananthapuram, wherein charge sheet has been submitted for the offences punishable under Section 342, 366, 376 of Indian Penal Code and under Sections 3, 4, 5(1) and 6 of the POCSO Act.

3. The prosecution case is that the petitioner and the

3rd respondent were in love and they eloped. Meanwhile, the 4th respondent filed complaint and the 2 nd respondent lodged Annexure 1 FIR. After investigation, Annexure 3 Final Report was submitted alleging the aforesaid offences. It is submitted that the petitioner married the 3rd respondent and is now living happily with her. It is also submitted that the 3 rd respondent is now pregnant. The learned counsel for the petitioner relied upon the judgment of this Court in Vishnu v State of Kerala [2023(4) KHC 1] and submitted that since his client married the 3rd respondent and they are living happily, criminal proceedings against him may be quashed.

4. It is true that the offence alleged against the

petitioner is serious in nature, but it is the fact that the petitioner married the 3rd respondent and they are living happily. The 3rd respondent is now pregnant.

Bearing in mind the principle laid down by this Court in Vishnus case (supra), I think the proceedings can be quashed.

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 affidavit filed by the victim in support of his contention. The counsel appearing for the victim also submitted that the matter is settled and the victim has 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, victim and the Public Prosecutor and has also gone through the records including the affidavit filed by the victim.

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 impart 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 and all further proceedings against the petitioner in SC No.2407/2023 on the files of the Additional District and Sessions Court (POCSO), Thiruvananthapuram, arising from Crime No.592/2023 of Fort Police Station, Thiruvananthapuram, are quashed. Sd/- RR P.V.KUNHIKRISHNAN JUDGE

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