

Diljin vs State of Kerala

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Court : Kerala

Decided On : Jul-31-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/754/2022

Appellant : Diljin

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945 PETITIONER/S: 1 DILJIN AGED 28 YEARS SON OF ALI, CHAMMIL HOUSE, IYAD, UNNIKULAM.P.O, BALUSSERY, KOZHIKODE, PIN - 673574 2 SUBIN AGED 26 YEARS SON OF BALAKRISHNAN, CHAMMIL HOUSE, IYAD, UNNIKULAM.P.O, BALUSSERY, KOZHIKODE KOZHIKODE, PIN - 673574 3 ABHISHEK AGED 24 YEARS SON OF MURALIDHARAN, MUTHEDATH PARMBHATH (H), OMASSERY, PUTHUR, KOZHIKODE KOZHIKODE, PIN - 673582 BY ADV V.A.JOHNSON (VARIKKAPPALLIL) RESPONDENT/S: 1 STATE OF KERALA STATE OF KERALA,

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM ERNAKULAM, PIN - 682031 2 KUMARI AGED 34 YEARS WIFE OF VASU, MANALIPOTTA VEEDU, VELIKKAD.P.O, MUNDOOR, PALAKKAD PALAKKAD, PIN - 678592 BY ADV UNNI SEBASTIAN KAPPEN SRI. T R RANJITH, SR. PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31.07.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This petition is filed invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (the Code for the sake of brevity).

2. The petitioners herein are the accused, Nos. 2 to 4 in C.C.

No. 860 of 2018, on the files of the Judicial Magistrate of the First Class-II, Palakkad. In the said case, they are accused of having committed offence punishable under Section 394 of the IPC.

3. The prosecution allegation, as borne out from the records,

are as under: On 30.03.2018 at about 7.30 p.m., the petitioners herein, along with the 1st accused, in furtherance of their common intention, alleged to have committed robbery of a chain worn by the de facto complainant and thereby committed the offence.

4. The learned counsel for the petitioners submits that the

parties have settled their dispute and do not wish to pursue the prosecution proceedings. He relies on the affidavit filed by the party respondent in support of his contention. Counsel argues that if the proceedings are terminated, with the recording of the amicable settlement, the parties can move forward in an atmosphere of peace and mutual respect.

5. The learned Public Prosecutor, on instructions, has

expressed reservations about quashing the proceedings solely on the basis of the settlement. He argues that the facts and circumstances may not warrant the exercise of the court's inherent jurisdiction under Section 482 of the Code of Criminal Procedure. However, it is fairly submitted that there have been no other crimes of serious nature registered against the petitioner to date. It is further submitted that the statement of the party respondent has been recorded, and she has unequivocally stated that she does not have any lasting grievances.

7. I have considered the submissions and have gone through the records.

8. In *State of M.P. v. Laxmi Narayan*,¹ a three-judge bench

of the Honble Supreme Court has summarized the law as laid down in *Gian Singh v. State of Punjab*², *Narinder Singh v. State of Punjab*³ and in subsequent cases. It was laid down as under:

15. Considering the law on the point and the other decisions of this

(2019) 5 SCC 688

(2012) 10 SCC 303 2014 (6) SCC 466 Court on the point referred to hereinabove, it is observed and

held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 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; 15.2. 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; 15.3.

Similarly, such power is not to be exercised for the offences under the special statutes like the 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; 15.4. Offences under Section 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 Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 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 Section 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 Section 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 Section 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/delicate 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 paras 29.6 and 29.7 of the decision of this Court in

Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove; 15.5. While exercising the power under Section 482 of the Code to quash the

criminal proceedings in respect of non-compoundable offenses, 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.

Having carefully analyzed the prayer sought for in the light of the principles laid down as above and also the nature of the allegations, the gravity of the offense, the severity of injuries inflicted, antecedents of the accused, and the amicable relationship that now exists between the parties, I am of the considered opinion that quashing the proceedings on the basis of the settlement will not have any adverse impact on society. In fact, it would only serve to bring about peace and secure the ends of justice. Additionally, persisting with the prosecution would be a waste of time, as the prospects of conviction are bleak. In light of all of the relevant circumstances, I am of the considered view that this Court would be well justified in invoking its extraordinary powers under Section 482 of the Code to quash the proceedings. Resultantly, this petition will stand allowed. Annexure-1 Final Report in Crime No.395/2018 of Kongad Police Station, Palakkad, and all further proceedings against the petitioners pending as C.C.No.860/2018 on the file of the Judicial Magistrate of the First Class-II, Palakkad, are quashed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE avs APPENDIX OF CRL.MC 754/2022 PETITIONER ANNEXURES Annexure1 TRUE COPY OF THE FINAL REPORT IN C.C.NO.860/2018 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-II, PALAKKAD Annexure2 THE AFFIDAVIT SWORN BY THE 2ND RESPONDENT HEREIN EVIDENCING THE AFORESAID FACTUM OF SETTLEMENT

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