

Molly vs Pratheesh

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Court : Kerala Orders

Decided On : Nov-27-2023

Judge : Honourable Mr. Justice G.Girish

Appeal No. : Crl.Rev.Pet/242/2007

Appellant : MOLLY

Respondent : Pratheesh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE G.GIRISH MONDAY,
THE 27TH DAY OF NOVEMBER 2023 / 6TH AGRAHAYANA, 1945
CRL.REV.PET NO.3079 OF 2006 AGAINST THE CONVICTION AND
SENTENCE BY JUDGMENT DATED 02.12.2005 IN CC NO.334/2004
OF JUDICIAL MAGISTRATE OF FIRST CLASS -I (FOREST
OFFENCES), THODUPUZHA CRL. APPEAL NO.336/2005 AND
CRL.APPEAL NO.340/2005 BY A COMMON JUDGMENT DATED
24.06.2006 OF SPECIAL COURT (NDPS ACT CASES), THODUPUZHA
REVISION PETITIONERS/APPELLANTS/ACCUSED 1 TO 4:

1 MR.PRATHEESH, S/O.SUKUMARAN, KUNNEL VEETIL, MUNDANMUDIKARA,, VANNAPPURAM VILLAGE, THODUPUZHA. 2 MR.SANTHOSH @ PRASAD S/O.SUKUMARAN KUNNEL VEETIL, MUNDANMUDIKARA,, VANNAPPURAM VILLAGE, THODUPUZHA. 3 MR.SUKUMARAN, S/O.MADHAVAN KUNNEL VEETIL, MUNDANMUDIKARA,, VANNAPPURAM VILLAGE, THODUPUZHA. 4 MR.MOHANAN, S/O.NARAYANAN VALIYAKALUMKAL HOUSE, MUNDANMUDIKARA,, VANNAPPURAM VILLAGE, THODUPUZHA. BY ADVS. C.C.PADMAKUMAR M.K.SAMYUKTHA(K/447/2015) (Amicus Curie)

RESPONDENT/RESPONDENT/COMPLAINANT: 1 STATE OF KERALA PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. 2 MOLLY W/O RAJU, AGED 49 YEARS, KUNNELVEETIL, MUNDANMUDIKARA, VANNAPURAM, THODUPUZHA 685607 (IMPLEADED AS ADDL.R2 AS PER ORDER DATED 24/11/23 IN CRL.M.A 2/23 IN CRL.RP 3079/2006). 3 RAJU S/O KRISHNAN, AGED 54 YEARS, KUNNELVEETIL MUNDANMUDIKARA VANNAPURAM, THODUPUZHA 685607 (IMPLEADED AS ADDL.R.3 AS PER ORDER DATED 24/11/23 IN CRL.M.A 2/23 IN CRL.RP 3079/2006). BY ADVS. PUBLIC PROSECUTOR MANSOOR.B.H. SAKREENA BEEGUM SRI SANAL P.RAJ- PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 27.11.2023, ALONG WITH CRL.REV.PET.242/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE G.GIRISH MONDAY, THE 27TH DAY OF NOVEMBER 2023 / 6TH AGRAHAYANA, 1945 CRL.REV.PET NO.242 OF 2007 AGAINST THE JUDGMENT DATED 24.06.2006 OF THE ADDL.SSESSIONS JUDGE/SPECIAL JUDGE FOR NDPS ACT CASE, THODUPUZHA IN CRL.A.NO.340/2005 AND CC

334/2004 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I (FOREST OFFENCES), THODUPUZHA REVISION PETITIONER/PW1 & PW3: 1 MOLY, W/O.RAJU, PARAKKAL HOUSE, MUNDANMUDI P.O., NARUMKANAM, VANNAPPURAM. 2 RAJU, S/O.KRISHNAN PARAKKAL HOUSE, MUNDANMUDI P.O., NARUMKANAM, VANNAPPURAM. BY ADV MANSOOR.B.H. RESPONDENTS/APPELLANTS/ACCUSED 3 & 4: 1 PRATHEESH, S/O.SUKUMARAN, KUNNEL VEETIL, MUNDANMUDIKARA, VANNAPPURAM VILLAGE, THODUPUZHA TALUK. 2 SANTHOSH @ PRASAD S/O SUKUMARAN, KUNNEL VEETIL,, MUNDANAMUDIKARA,, VANNAPPURAM VILLAGE, THODUPUZHA TALUK. 3 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM., (S.I. OF POLICE KALIYAR POLICE STATION.) BY ADVS. C.C.PADMAKUMAR PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 27.11.2023, ALONG WITH CRL.REV.PET.3079/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

G.GIRISH, J.

----- Crl.R.P.No.3079 of 2006 & Crl.R.P.No.242 of 2007
----- Dated this the 27th day of November, 2023

ORDER

Crl.M.A No.3 of 2023 in Crl.R.P.No.3079 of 2006 The revision petitioners, along with additional respondents 2 and 3 have filed this petition under Sections 320(8) and 482 Cr.P.C., for compounding the offence involved.

2. The petitioners were convicted and sentenced by the

Judicial First Class Magistrate-I, Thodupuzha, for the commission of offence under Sections 447, 323, 324 and 326 I.P.C read with Section 34 I.P.C. They were

sentenced to rigorous imprisonment for three years for the offence under Section 326 I.P.C and rigorous imprisonment for six months for the offence under Section 447 I.P.C. No separate punishment was awarded for the offences under Sections 323 and 324 I.P.C. In the appeal filed before the Sessions Court, the learned Additional Sessions Judge, Thodupuzha confirmed the conviction and modified the sentence. The accused were accordingly, sentenced by the appellate court to undergo rigorous imprisonment for three months each under Section 447 I.P.C. and to undergo rigorous imprisonment for two years each and to pay fine Rs.5,000/- each under Section 326 I.P.C. Challenging the above concurrent findings of conviction and the sentence imposed by the appellate court, the petitioners preferred CrI.R.P No.3079/2006. In the meanwhile, additional respondents 2 and 3 filed CrI.R.P No.242/2007, seeking enhancement of sentence awarded by the appellate court.

3. When both these cases were taken up for hearing,

the learned counsel representing both parties submitted that the issue has been amicably settled between them and hence, it is highly necessary to compound the offence and close the revision proceedings. On the basis of the application filed by the revision petitioners in CrI.R.P No.242/2007 as CrI.M.A No.2/2023, they were impleaded as additional respondents 2 and 3 in CrI.R.P No.3079/2006.

4. In the present application filed by the petitioners and

additional respondents 2 and 3, it is stated that the additional respondents 2 and 3 are having no grievance at all against the revision petitioners, since the matter has been amicably settled between them. Accordingly, it is requested that the composition of the offence may be accepted and the revision petitioners in CrI.R.P No.3079/2006 to be acquitted.

5. With regard to the nature of the offence under

Section 326 I.P.C., which is non-compoundable, the learned counsel for the Revision Petitioners brought to my notice the decision of the Apex Court in Ramgopal & anr. v. State of

Madhya Pradesh [2021 KHC 6543], wherein it has been held

as follows:

19. We thus sum - up and hold that as opposed to S.320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences compoundable within the statutory framework, the extra - ordinary power enjoined upon a High Court under S.482 Cr.P.C. or vested in this Court under Art.142 of the Constitution, can be invoked beyond the metes and bounds of S.320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused

persons, prior to and after the occurrence of the purported offence and / or other relevant considerations.

Thus it has been held by the Honble Supreme Court in the aforesaid decision that in appropriate cases where the parties have amicably settled the dispute, and the victim willingly consented to the nullification, it is highly necessary to wind up the proceedings in exercise of the inherent powers under Section 482 Cr.P.C. Having regard to the facts and circumstances of this case, I am of the view that this is a fit case where the offences involved are to be compounded invoking the inherent powers of this Court under Section 482 Cr.P.C. read with Section 320 Cr.P.C.

6. In the result, CrI.M.A No.3/2023 is allowed. The

offence under Sections 447, 323, 324 and 326, for which the petitioners are convicted by the court below, are compounded and the petitioners are acquitted under Section 320(8) Cr.P.C read with Section 482 Cr.P.C. CrI.R.P.No.3079 of 2006 In the light of the above order in CrI.M.A No.3/2023, this CrI.R.P No.3079/2023 is disposed of, setting aside the impugned judgment of the court

below. Crl.R.P.No.242 of 2007 Crl.R.P No.242 of 2007 is dismissed as not pressed, in the light of the above settlement between the parties, as evident from this petition. Sd/- G.GIRISH, JUDGE vgd APPENDIX OF CRL.R.P No.242 of 2007 PETITIONERS ANNEXURES ANNEXURE-1 TRUE PHOTOCOPY OF THE COMMON JUDGEMENT IN

CRL.A.NO.336/2005 AND CRL.A.NO.340/2005 OF ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE FOR NDPS ACT CASES, THODUPUZHA DATED 24.06.2006. ANNEXURE-II TRUE PHOTOCOPY OF THE JUDGEMENT IN CC NO.334/2004 OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS-I, THODUPUZHA DATED 02.12.2005.

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