

Asif a vs State of Kerala

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Court : Kerala

Decided On : May-30-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/2472/2023

Appellant : ASIF A

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TUESDAY, THE 30TH DAY OF MAY 2023 / 9TH JYAISHTA, 1945 AGAINST THE ORDER/JUDGMENTCC 263/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, PERINTHALMANNA PETITIONER/S: 1 ASIF A AGED 28 YEARS ALIKKAL HOUSE, PUTHANANGADI, ANGADIPPURAM P.O., PERINTHALMANNA, MALAPPURAM DISTRICT, PIN - 679321 2 MUHAMMED NISSAR AGED 31 YEARS S/O. USMAN, ALIKKAL HOUSE, PUTHANANGADI, ANGADIPPURAM P.O., PERINTHALMANNA, MALAPPURAM DISTRICT, PIN - 679321 3 MUHAMMED ASHIQ T P AGED 28 YEARS S/O. ALI. T.P., THACHUPARAMBAN HOUSE, CHERAKKAPARAMBU,

ANGADIPPURAM P.O., PERINTHALMANNA, MALAPPURAM DISTRICT ., PIN - 679321 4 FAJISH MUHAMMED AGED 28 YEARS S/O. KUNHUMHAMMED, AMBALAKUTTHU HOUSE, THIRURKKAD, ANGADIPPURAM P.O., PERINTHALMANNA, MALAPPURAM DISTRICT, PIN - 679321 BY ADV U.K.DEVIDAS RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 SHARAFUDHEEN AGED 28 YEARS S/O.ALI, PUTHENPEEDIKAKKAL HOUSE, PONNIAKURSSI, PERINTHALMANNA P.O., MALAPPURAM DISTRICT, PIN - 679322 BY ADV P.M.SHAHIDA SRI VIPIN NARAYAN SR PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.05.2023, 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 accused Nos. 1 to 4 in C.C. No. Perinthalmanna. In the said case, they are accused of having committed offence punishable under Sections 341, 323, 324 r/w. Section 34 of the IPC.

3. The prosecution allegation is that on 24.8.2020 at 9.15 p.m., the petitioners herein, in furtherance of their common intention, wrongfully restrained the 2nd respondent and attacked him with an iron rod causing injuries.

4. The learned counsel appearing for the petitioners submitted that

while the proceedings were pending, at the intervention of mediators, the parties have settled their entire disputes. He would point out that the 2nd respondent has sworn to an affidavit asserting that the differences of opinion that they had have been ironed out. According to the learned counsel, the continuance of criminal proceedings will not serve any purpose and will only enure to waste the valuable time of the trial court as there are no prospects of conviction.

5. The learned Public Prosecutor has vehemently opposed the

prayer for quashing the criminal proceedings. It is submitted that the Apex Court in State of M.P. v. Laxmi Narayan,¹ has laid down the principles and had observed that quashing of proceedings on the basis of settlement would depend on the facts and circumstances of each case. He would point out that the Apex Court had observed that while quashing the proceedings, the court will have to consider whether the crime is against the society or against an individual alone and also the character, conduct, and antecedents of the accused.

6. As it was submitted by the learned public prosecutor that the

petitioners are involved in numerous crimes, directions were issued to place on record the details of crimes in which the petitioners are involved. The list of cases has been placed before this Court, and the same is extracted for easy reference.

7. The 1st petitioner, Asif A, is involved in the following cases:

- 1) Perinthalmanna Crime 783/2016 u/s 143, 147, 148, 341, 307, 326 r/w 149 IPC.
- 2) Perinthalmanna Crime 280/2018 u/s 323, 324, 308, 506 (i), r/w 34 IPC
- 3) Perinthalmanna Crime 450/2018 u/s 143, 147, 148, 341, 323, 324 r/w 149 IPC

(2019) 5 SCC 688

- 4) Perinthalmanna Crime 318/2019 u/s 143, 147, 323, 324, 392, 326, 363, 308, 109, 201, 506(2) r/w 149 IPC
- 5) Perinthalmanna Crime 363/19 U/S 341,323 324,506 (i) r/w 34 IPC
- 6) Perinthalmanna Crime 793/2020 u/s 341, 323,324,34 IPC
- 7) Perinthalmanna Crime 62/21 U/S 341,323,34 IPC
- 8) Perinthalmanna Crime 464/2019 u/s 143, 147, 448, 341, 323 r/w 149 IPC
- 9) Perinthalmanna Crime 605/20 U/S 143, 147, 148, 447, 323, 324, 341, 326, 308, 354, 395 r/w149 IPC
- 10) Perinthalmanna Crime 1407/2015 u/s 143, 147, 148, 323,324 r/w 149 IPC
- 11) Perinthalmanna Crime 471/18 U/S 107 Cr PC.
- 12) Perinthalmanna Crime 1073/2021 U/S 151 Cr PC
- 13) Perinthalmanna Crime 264/2019 U/S 341, 323, 324, R/W 34 IPC

8. The 2nd petitioner, Muhammed Nisar, is involved in the following cases.

1) Perinthalmanna Crime 1407/15 U/S 143, 147,148, 323, 324 r/w 149 IPC 2) Perinthalmanna Crime 783/16 U/S 143, 147, 148, 341, 307, 326 r/w 149 IPC 3) Perinthalmanna Crime 216/2017 u/s 107 CRPC 4) Perinthalmanna Crime 645/2018 U/S 323, 324, 341 R/W 34 IPC 5) Perinthalmanna Crime 264/2019 U/S 341,323,324,R/W 34 IPC 6) Perinthalmanna Crime 1074/2021 U/S 151 Cr PC 7) Mankada PS Crime 21/2021 U/S 143, 147, 148, 341, 324, 326 307, 506 (1), R/W 149 IPC

9. The 3rd petitioner, Muhammed Ashiq, is involved in the following cases.

1) Perinthalmanna Crime 129/2019 U/S 143, 147, 148, 341, 323, 324, 452,308 r/w 149 IPC 2) Perinthalmanna Crime 373/2020 U/S 269, 291 IPC 3) Perinthalmanna Crime 793/2020 U/S 341,323,324,34 IPC 4) Perinthalmanna Crime 62/2021 U/S 341,323,34 IPC 5) MANKADA PS CRIME 21/2021 U/S 143, 147, 148, 323, 308, 506 R/W 149 IPC

10. The 4th petitioner, Fajis Muhammed, is involved in the following cases.

1) Perinthalmanna Crime 783/16 U/S 143, 147, 148, 341,307,326 r/w 149 IPC 2) Perinthalmanna Crime 450/2018 u/s 143, 147, 148, 341, 323, 324 r/w 149 IPC 3) Kolathur PS Crime 300/2018 u/s 341, 323 r/w 34 IPC 4) Perinthalmanna Crime 264/2019 U/S 341,323,324 R/W 34 IPC 5) Perinthalmanna Crime 208/2020 U/S 151 Cr PC 6) Perinthalmanna Crime 793/2020 U/S 341,323,324,34 IPC 7) Perinthalmanna Crime 384/2022 U/S 341, 323, 324, 427, 506, 34 IPC 8) Perinthalmanna Crime 245/2022 U/S 151 Cr PC

Asif, Muhammed Nisar, Muhammed Ashiq, are the rowdies of Perinthalmanna police station, and proceedings under the Kerala Anti Social Activities Prevention Act have been initiated against Sri. Asif during the previous years.

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

12. In State of M.P (supra), a three-judge bench of the Honble

Supreme Court has summarised the law as laid down in Gian Singh v. State of Punjab², Narinder Singh v. State of Punjab³, State of Rajasthan v. Shambhu Kewat⁴, State of M.P. v. Deepak⁵, State of M.P. v. Manish⁶, J. Ramesh Kamath v. Mohana Kurup⁷; State of M.P. v. Rajveer Singh⁸, Parbatbhai Aahir v. State of Gujarat⁹, State of M.P. v. Kalyan Singh¹⁰ and State of M.P. v. Dhruv Gurjar¹¹. It was laid down as under:

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

(2012) 10 SCC 303 2014 (6) SCC 466

(2014) 4 SCC 149

(2014) 10 SCC 285

(2015) 8 SCC 307 2016) 12 SCC 179

(2016) 12 SCC 471

(2017) 9 SCC 641

(2019) 4 SCC 268

(2019) 5 SCC 570]

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.

13. The petitioners are involved in a multitude of crimes during the

past several years. Needless to say, their continuous involvement necessarily has societal ramifications. It will have to be construed as a transgression infringing upon the fabric of society rather than a private dispute. Consequently, it is infeasible to terminate the ongoing criminal proceedings on the basis of a settlement arrived at with the de facto complainant. This Court is also unsure whether the settlement was arrived at with a free or open mind or whether it was obtained by threat or coercion, given the criminal antecedents of the accused and their propensity to involve in crimes disturbing the peace, one after the other. I have no doubt in my mind that the action of the petitioners in continuously engaging in crimes has a significant and adverse societal impact. The Apex Court had also observed that while considering the prayer for quashing on the basis of settlement, this Court is bound to consider the antecedents and conduct of the accused and the manner in which the accused had managed to enter into a compromise. Having considered the facts and circumstances and the antecedents of the petitioners, I am not inclined to exercise the powers conferred on this Court under Section 482 of the Code to put a premature end to the prosecution. This petition is accordingly dismissed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE avs APPENDIX OF CRL.MC 2472/2023 PETITIONER ANNEXURES Annexure I TRUE COPY OF THE FINAL REPORT IN CRIME NO. 23.04.2021 Annexure II TRUE COPY OF THE LIST OF WITNESSES IN CRIME NO.793 OF 2020 OF PERINTHALMANNA POLICE STATION DATED 23.04.2021 Annexure -III THE ORIGINAL OF THE AFFIDAVIT DATED 17.03.2023 EXECUTED BY THE SECOND RESPONDENT