

Vimal Kumar vs State of Kerala

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/2184/2022

Appellant : Vimal Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945
CRL.MC NO. 2184 OF 2022 CRIME NO.0436/2019 OF Harippad Police Station,
Alappuzha CP 73/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,
HARIPAD PETITIONERS:

1 VIMAL KUMAR AGED 21 YEARS KOMRATH VEEDU,
THECKKEKARA EAST MURI, PALLIPPAD VILLAGE, ALAPPUZHA
DISTRICT, PIN - 690512 2 SAJEEV KUMAR AGED 35 YEARS S/O
ANIYAN, KARATHARA KIZHAKKATHIL, THECKKEKARA EAST MURI,
PALLIPPAD VILLAGE, ALAPPUZHA DISTRICT, PIN - 690512 3

RATHEESH @ MAMMUTTI AGED 37 YEARS S/O. GOPALAKRISHNAN, AGED 37 YEARS, ACHU BHAVANAM, THECKKEKARA EAST MURI, PALLIPPAD VILLAGE, 4 VIJITH AGED 27 YEARS S/O. VISWANATHAN, CHIRACKAL PADEETTATHIL VEEDU, THECKKEKARA EAST MURI, PALLIPPAD VILLAGE, 5 DEEPUKUTTAN @ DEEPU AGED 37 YEARS S/O. ANIYAN, KARATHARA KIZHAKKATHIL, THECKKEKARA EAST MURI, PALLIPPAD VILLAGE, ALAPPUZHA DISTRICT, PIN - 690512 6 ATHUL @ CHANDHU AGED 28 YEARS S/O RAVEENDRAN NAIR, SANCHU BHAVANAM, THECKKEKARA EAST MURI, PALLIPPAD VILLAGE, ALAPPUZHA DISTRICT, PIN - 690512 BY ADVS. ARUN CHANDRAN HARIMOHAN

RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 SIJO VARGHESE AGED 21 YEARS, /O. SAJI THOMAS RESIDING AT NALUVETTUMKAVALA COLONY, THECKKEKARA, KIZHAKKUM MURI, PALLIPPAD VILLAGE, KARTHIKAPPALLY TALUK 3 SIJO ABRAHAM AGED 21 YEARS S/O. BIJU RESIDING AT VANIYAPURAYIL VEEDU, NALUKETTUM KAVALA BHAGOM, THECKKEKARA KIZHAKKUM MURI, PALLIAPPAD VILLAGE, KARTHIKAPPALLY TALUK, 4 SUDHEESH AGED 28 YEARS S/O. SUDHAKARAN, RESIDING AT CHEMPADI VADAKKATHIL, VADAKKEKKARA KIZHAKKUM MURI, PALLIPPAD VILLAGE, KARTHIKAPPALLY TALUK, 5 STATION HOUSE OFFICER HARIPPAD POLICE STATION, HARIPPAD POST OFFICE, HARIPPAD, ALAPPUZHA DISTRICT, PIN - 690514 BY ADV PUBLIC PROSECUTOR

OTHER PRESENT: SRI RENJITH TR, PP SRI. REGINALD VALSAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

----- CrI.M.C. No.2184 of 2022
----- Dated this the 30th day of November, 2023

ORDER

This Criminal Miscellaneous Case is filed under Section 482 of the Code of Criminal Procedure, 1973.

2. This Criminal Miscellaneous Case is filed to quash

the proceedings in C.P.No.73/2021 on the file of the Judicial First Class Magistrate Court-I, Harippad, arising from Crime No.436/2019 of Harippad Police Station, based on settlement. The offences alleged are punishable under Sections 143, 147, 148, 323, 324, 308 and 326 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act. It is conceded that, since there is no notification as per the Arms Act in the area concerned in this case, Section 27 of the Arms Act not attracted.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. The learned counsel for the petitioners 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 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. The Public Prosecutor submitted that the 3rd petitioner is involved in 5 cases and a rowdy history sheet is opened against the 3rd petitioner. It is also submitted that as far as petitioners 1, 2 and 4 to 6 are concerned, there is no criminal antecedents. But the Public Prosecutor conceded that the matter is settled

between the parties.

6. This Court has considered the submission of the

petitioners, victims and the Public Prosecutor and has also gone through the records including the affidavits filed by the victims. Considering the criminal antecedents of the 3rd petitioner, his case cannot be quashed based on settlement. But he can file discharge petition.

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 in respect of petitioners 1, 2 and 4 to 6. The 3rd petitioner should surrender before the lower court and face the proceedings. The proceedings against petitioners 1, 2 and 4 to 6 can be quashed in the light of the decision reported in *Sajeev & Another v. State of Kerala & Another* [2022 (2) KLT 861] and the 3rd petitioner shall surrender before the court and face trial. The 3rd petitioner is also free to file a discharge petition in the light of settlement. Therefore, this Criminal Miscellaneous Case is allowed in part. All further proceedings against petitioners 1, 2 and 4 to 6 in C.P.No.73/2021 on the file of the Judicial First Class Magistrate Court-I, Harippad, arising from Crime No.436/2019 of Harippad Police Station, are quashed. The 3rd petitioner shall surrender before the jurisdictional court and after committal, the 3rd petitioner is free to file discharge petition at the appropriate stage, in the light of settlement. sd/- P.V.KUNHIKRISHNAN JV JUDGE APPENDIX OF CRL.MC 2184/2022 PETITIONER ANNEXURES Annexure1 CERTIFIED COPY OF THE FIR IN CRIME NO. POLICE STATION, ALAPPUZHA DISTRICT Annexure2 CERTIFIED COPY OF THE CHARGE SHEET DATED 30/5/2019. Annexure3 AFFIDAVIT DATED 21/12/2021 SWORN BY RESPONDENT NO 2. Annexure4 AFFIDAVIT DATED 21/12/2021 SWORN BY RESPONDENT NO 3. Annexure5 AFFIDAVIT DATED 21/12/2021 SWORN BY RESPONDENT NO 4.