

Sabin vs State of Kerala

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Court : Kerala

Decided On : May-23-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/2624/2023

Appellant : SABIN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
TUESDAY, THE 23RD DAY OF MAY 2023 / 2ND JYAISHTA, 1945 CRL.MC NO.
2624 OF 2023 AGAINST THE ORDER/JUDGMENTCC 1989/2017 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -II, KOLLAM

PETITIONERS/ACCUSED 1 TO 11: 1 SABIN AGED 33 YEARS THUNDAZHAKAM
VEEDU, NEW NAGAR-70, MANAKKADU CHERI, VADAKKEVILA.P.O, KOLLAM
DISTRICT, PIN - 691010. 2 SREEJITH S/O. SASIDHARAN PILLAI, RADHA
NIVAS, NEAR KSRTC DEPOT, CHATHANNOOR CHERI, CHATHANNOOR.P.O,
KOLLAM DISTRICT, PIN - 691572. 3 GOKUL AGED 35 YEARS S/O.
CHANDRABABU, SANKARAVILASAM, ITHOTTUVA, WEST KALLADA.P.O,
KOLLAM DISTRICT, PIN - 691502. 4 VISHNU.K.RAJ S/O. REMESAN,

SARIGAMA, VASUPILLA JN., KANNIMEL CHERI, SAKTHIKULANGARA, KOLLAM, PIN - 691581. 5 ARUN LAL S/O. ASHOKAN, ARUN NIVAS, PULLUVANKUZHIIYIL, NADUVELIKKARA CHERI, MAYYANAD.P.O, KOLLAM, PIN - 691303. 6 RIYAD S/O. ABDUL AZEES, REJILA COTTAGE, KOTTIYAM SITHARA JN., ADHICHANALLOOR VILLAGE, KOTTIYAM.P.O, KOLLAM, PIN - 691571. 7 SHANKAR S/O. MOHANAKRISHNAN, SREESANKARAM, MAMATHA NAGAR-32A, SAKTHIKULANGARA VILLAGE, KOLLAM DISTRICT, PIN - 691581. 8 SHARUN CRL.MC NO. 2624 OF 2023 2 AGED 33 YEARS S/O. SADASIVAN PILLAI, SIVASAKTHI, PUNTHALATHAZHAM NAGAR-267, PUNTHALATHAZHAM CHERI, VADAKKEVILA, KOLLAM, PIN - 691010. 9 FIROZ KHAN.A.N AGED 34 YEARS S/O. ABDUL NOOR, PV HOUSE, KINATTU MUKKU, PORADAM CHERI, CHADAYAMANGALAM VILLAGE, KOLLAM, PIN - 691534. 10 FIROZ KHAN.T FIROZ MANSIL, THENNICHAL, POREDAM.P.O, CHADAYAMANGALAM, KOLLAM, PIN - 691534.

11 MUHAMMED NAJIM S/O. MUHAMMED SHERIF, THOTTAM VEEDU, BHARATH NAGAR-24, NEAR VENDOR MUKKU, THEKKEVILA CHERI, VADAKKEVILA.P.O, KOLLAM, PIN - 691010. BY ADVS. BINU GEORGE HEMALATHA AMANTA MATHEW RESPONDENTS/STATE-DEFACTO COMPLAINANT/VICTIMS/INJURED: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031. 2 AJAY NATH AGED 36 YEARS S/O. APPUKKUTTAN, AMBADI, ORUVATHILKKOTTA, ANAYARA, THIRUVANANTHAPURAM DISTRICT, PIN - 695029. 3 JISHAD.A.J AGED 33 YEARS S/O. JALEEL, JJ PALACE, PULLOOR MUKKU, KUDAVOOR VILLAGE, VELAMKONAM CHERI, KALLAMBALAM P.O, THIRUVANANTHAPURAM DISTRICT, PIN - 695605. 4 VINOOP AGED 34 YEARS S/O. VENUGOPALAN, KUTHAMPUZHA HOUSE,OLAVAKODE, KAVILPADU P.O, PALAKKAD, PALAKKAD DISTRICT, PIN - 678012. CRL.MC NO. 2624 OF 2023 3 5 ROHAN AGED 33 YEARS S/O. SALAHUDHEEN, RAHANAS, IQBAL NAGAR-139 C, PALLIMUKKU, VADAKKEVILA P.O, KOLLAM DISTRICT, PIN - 691010. SRI.T R RENJITH, SR PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23.05.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 2624 OF 2023 4

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. 1 to 11 in

CC.No.1989 of 2017 on the files of the Judicial Magistrate of the First Class-II, Kollam. In the said case, they faced indictment for having committed offences punishable under Sections 143, 147, 341, 294(b), 323, 427, 506(i) and 149 of the IPC.

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

as under: On 29.1.2011 at about 1.34 p.m., the petitioners are alleged to have entered into the classroom of Yonus College and attacked the respondents in the presence of the informant and caused injuries.

4. The learned counsel appearing for the petitioners submitted that

the parties have settled their disputes and they are not desirous of pursuing the prosecution proceedings. Reliance is placed on Annexures 3 to 6 affidavits filed by respondents 2 to 5 to substantiate his contention. According to the learned counsel, if the proceedings are terminated, recording the amicable settlement, the parties can embark upon their future paths in an atmosphere of tranquility and mutual respect.

5. When the matter had come up for admission, this court had

directed the investigating officer concerned to record the statement of the CRL.MC NO. 2624 OF 2023 5 defacto complainant/injured/victim and report as to whether the assertion in the petition and the affidavit filed in support that entire disputes have been resolved between the parties concerned is true and genuine. The investigating officer was also directed to report as to whether the petitioners are persons with criminal antecedents and whether there is any other impediment in terminating the criminal proceedings.

6. The learned Public Prosecutor has raised reservations with

regard to the prospect of quashing the present proceedings purely on the basis of the settlement. It is urged that the extant circumstances may not warrant the exercise of the court's inherent jurisdiction, as conferred under Section 482 of the Code of Criminal Procedure. However, it is fairly submitted that no other transgressions or complaints stand registered against the Petitioners hitherto. It is further submitted that the statement of the party respondents has been recorded, and they have unequivocally expressed that they harbor no enduring 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 summarised the law as laid down in Gian Singh v. State of Punjab², Narinder Singh v. State of Punjab³, State [(2019) 5 SCC 688]

(2012) 10 SCC 303

2014 (6) SCC 466 CRL.MC NO. 2624 OF 2023 6 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 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

(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] CRL.MC NO. 2624 OF 2023 7

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.

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9. Having carefully analyzed the nature of the allegations, the

gravity of the offense, the severity of injuries inflicted, antecedents of the petitioners, and the relationship between the parties, I am of the considered opinion that the quashing of proceedings on the basis of the settlement will not have any adverse impact on the society and it would only inure to bring about peace and secure the ends of justice. Even otherwise, persisting with the prosecution would be nothing but a waste of time as the prospects of conviction are bleak. Having considered all the relevant circumstances, I am of the considered view that this Court will 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-A2 Final Report in Crime No. 127/2011 of Eravipuram Police Station and all further proceedings pending against the

petitioners as C.C.No.1989/2017 on the file of the Judicial First Class Magistrate-II, Kollam, are quashed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE Sru CRL.MC NO. 2624 OF 2023 9 APPENDIX OF CRL.MC 2624/2023 PETITIONERS ANNEXURES Annexure A1 CERTIFIED COPY OF THE FIR IN CRIME NO. Annexure A2 CERTIFIED COPY OF FINAL REPORT IN CRIME NO. Annexure A3 AN AFFIDAVIT DATED 27.01.2023 SWORN BY 2ND RESPONDENT. Annexure A4 AN AFFIDAVIT DATED 17.03.2023 SWORN BY 3RD RESPONDENT. Annexure A5 AN AFFIDAVIT DATED 24.08.2022 SWORN BY 4TH RESPONDENT. Annexure A6 AN AFFIDAVIT DATED 20.09.2022 SWORN BY 5TH RESPONDENT. RESPONDENTS EXHIBITS : NIL

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