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Nazmal 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/3065/2023

Appellant : Nazmal

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 CRL.MC NO. 3065 OF 2023 IN SC 1139/2018 OF ADDITIONAL SUB COURT,ATTINGAL PETITIONERS/ACCUSED 1 TO 3 AND 5 TO 12: 1 NAZMAL AGED 24 YEARS S/O NAHARI, RESIDING AT ALFALAQ VEEDU, NEAR PARAYIL SCHOOL, 2 AJEEB HAZARI @ KUNJAN AGED 25 YEARS S/O BABUHAJARI, THODIYIL VEEDU, NEAR VILAKULLAM GROUND, 3 JAISAL S/O JAZEER @ DAVOOD, J.J. HOUSE, NEAR VILAKULLAM GROUND, KURAKANNY, VARKALA VILLAGE, NOW RESIDING AT ROSE VILLA, NEAR AMMACHILMUKKU, PALACHIRA, CHERUNNIYOOR VILLAGE,

VARKALA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN - 695143.

4 SALMAN SALIM S/O SALIM SHAMSHUDDIN, FAJEER VEEDU, NEAR OODAYAM PARAMBIL TEMPLE, KURAKANNY, VARKALA VILLAGE, THIRUVANANTHAPURAM, 5 NAZIM S/O NAZAR, AYIKKARAKUDI VEEDU, NEAR VILAKULLAM GROUND, 6 SALIMSHA @ KUNDAPPU S/O KABEER, ARAYALU VEEDU, NEAR BORNIYAMUKKU, KURAKANNY, VARKALA VILLAGE, THIRUVANANTHAPURAM,, PIN - 695141. 7 ALI AGED 25 YEARS S/O SINUDHEEN, PADINJATTE THEKKE VILA VEEDU, BODAYAM, EDAVA VILLAGE, THIRUVANANTHAPURAM, PIN - 695311. 8 ANEESH S/O THAMPI, VILAKULLATHIL VEEDU, NEAR VILAKULLAM GROUND, CRL.MC NO. 3065 OF 2023 2 9 MUHAMMED RASHIN S/O ABDUL RASHEED, ATHIVILA RAHIYANATH MANZIL, KURAKANNY, VARKALA VILLAGE, THIRUVANANTHAPURAM, PIN - 695141.

10 NAZAL S/O SHAJAHAN, SHAHANA MANZIL, NEAR BORONIYAMUKKU, 11 PRINCE AGED 24 YEARS S/O JAHANGIR, BISMI VILLA, NEAR VILAKULLAM GROUND, BY ADV M.DINESH RESPONDENTS/STATE & DE FACTO COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031. 2 FEBIN NIZAM AGED 29 YEARS S/O NIZAMUDEEN, NOW RESIDING AT ROOM NO.303, BUILDING NO.219, HATTA STREET, AL-DANEL ZONE-1, ABU DHABI, FROM KUNNUMPURATHU VEEDU, THERUVUMUKKU DESOM, EDAVA VILLAGE, VARKALA TALUK, THIRUVANANTHAPURAM,, PIN - 695141. ADDL R3 ABDUL RAHUMAN FAZIL S/O MARAN VILAKOM, ABDUL HAMEED FAZIL, NOW RESIDING AT ROOM NO.303, BUILDING NO.219, HATTA STREET, AL DANA ZONE-1, ABU DHABI, UAE, FROM KOYIMANAZHIKOM, EDAVA, VARKALA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN 695141. ADDL R4 NIYAS S/O NIZAR, MUSTHUMANAZHIKAM, EDAVA, VARKALA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN 695141. ADDL R5 NINA S/O A.R. FAMI, HIRANA HOUSE, EDAVA, VARKALA TALUK,

THIRUVANANTHAPURAM DISTRICT, PIN 695141. *ADDL R3 TO R5 ARE IMPLEADED AS PER ORDER DATED 31.7.2023 IN CRL.M.A NO.2 OF 2023 IN CRL.M.C NO.3065 OF 2023. CRL.MC NO. 3065 OF 2023 3 BY ADVS. SRI.M.DINESH SRI.T.R RENJITH, SR. PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31.07.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 3065 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 in S.C No.1139 of 2018

on the files of the Assistant Sessions Court, Attingal, registered for the offences punishable under Sections 143, 147, 148, 149, 294(b), 323, 324, and 308 of the IPC.

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

as under:- On 5.1.2018 at 8.30 p.m., the accused persons formed themselves into an unlawful assembly and in prosecution of a common object, restrained the de facto complainant and attacked them, causing injuries.

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 affidavits filed by the party respondents 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 CRL.MC NO. 3065 OF 2023 5 Criminal Procedure. However, it is fairly submitted that no other crimes of serious nature have been registered against the petitioners to date. It is further submitted that the statement of the party respondents have been recorded, and they have unequivocally stated that they do not have any lasting grievances.

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

7. 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 Punjab2, Narinder Singh v. State of Punjab3 and in subsequent cases. 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

(2019) 5 SCC 688

(2012) 10 SCC 303 2014 (6) SCC 466 CRL.MC NO. 3065 OF 2023 6

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.

8. Having carefully analyzed the prayer sought in the light of the

CRL.MC NO. 3065 OF 2023 7 principles laid down 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 This petition is allowed. Annexure-A2 Final Report in Crime No.24 of 2018 of the Ayiroor Police Station, and all further proceedings against the petitioners pending as S.C No.1139 of 2018 on the files of the Assistant Sessions Court, Attingal, are quashed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE Sru CRL.MC NO. 3065 OF 2023 8 APPENDIX OF CRL.MC 3065/2023 PETITIONERS ANNEXURES Annexure A1 CERTIFIED COPY OF THE F.I.R. IN CRIME NO.24/2018 OF AYIROOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 6.1.2018. Annexure A2 CERTIFIED COPY OF THE FINAL REPORT IN S.C.

NO.1139/2018 ON THE FILE OF ASSISTANT SESSIONS COURT, ATTINGAL (RE-FILED FROM C.P. NO.52/2018 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, VARKALA) WHICH AROSE FROM CRIME NO.24/2018 OF AYIROOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT. Annexure A3 NOTARIZED AFFIDAVIT OF THE 2ND RESPONDENT/DE-FACTO COMPLAINANT DATED 30.3.2023 WHICH RELATE TO THE SETTLEMENT OF ISSUES IN CRIME NO.24/2018 OF AYIROOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT. Annexure A4 EMBASSY OF INDIA - ABU DHABI ATTESTED AFFIDAVIT OF 3RD RESPONDENT HEREIN DATED 5.7.2023. Annexure A5 NOTARY ATTESTED AFFIDAVIT OF RESPONDENTS 4 & 5 HEREIN DATED 26.6.2023.

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