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Febin @ Manikuttan 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/3283/2023

Appellant : Febin @ Manikuttan

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. 3283 OF 2023 IN CC 1485/2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS, VARKALA PETITIONERS/ACCUSED 1 TO 6: 1 FEBIN @ MANIKUTTAN AGED 29 YEARS S/O NIZAMUDDIN, KUNNUMPURATHU VEEDU, THERRUVUMUKKU, PARAYIL DESOM, EDAVA VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN - 695311. 2 NINO AGED 28 YEARS S/O FABI, HEERANA HOUSE, VAIDYANMUKKU, EDAVA DESOM, EDAVA VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN - 695311. 3 NIYAS AGED 28 YEARS S/O NIZAR, MUSTHUMANAZHIKAM VEEDU, NEAR VETTAKADA PALLIMUKKU, EDAVA DESOM, EDAVA VILLAGE, THIRUVANANTHAPURAM

DISTRICT, PIN - 695311. 4 ABDUL REHUMAN FAZIL @ REHUMAN AGED 29 YEARS KOYIMANAZHIKAM VEEDU, NEAR PAKISTAN MUKKU, KAPPIL DESOM, EDAVA VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN - 695311. 5 MOHAMMAD ANAS AGED 28 YEARS S/O ANZAR, KUZHIKKANA MALAPPURAM VEEDU, NEAR SREEYATTU, EDAVA VILLAGE, EDAVA DESOM, THIRUVANANTHAPURAM DISTRICT, PIN - 695311. 6 DULHAR BHAVAS AGED 24 YEARS S/O FAIZAL, OLLIPPIL ARIVALAM HOUSE, PARAYIL DESOM, EDAVA VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN - 695311. BY ADV C.S.SUMESH RESPONDENTS/DE FACTO COMPLAINANT & INJURED: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031. 2 AJEEB HAJARI AGED 26 YEARS S/O BABU HAJARI, THODIYIL VEEDU, KURAKANNI DESOM, VARKALA VILLAGE, VARKALA TALUK, THIRUVANANTHAPURAM,, PIN - 695141. CRL.MC NO. 3283 OF 2023 2 3 NAZIM AGED 24 YEARS S/O NAZAR, AYKKARAKUDY, ODAYAM, DESOM, VARKALA VILLAGE, VARKALA TALUK, THIRUVANANTHAPURAM, PIN - 695141. ADDL R4 JAISAL S/O JASEER, ROSE VILLA, ACHUMAMUKKU, PALACHIRA, CHERUNNIYOOR, VARKALA, VARKALA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN 695141. ADDL R5 NASMAL S/O NAHARI, RESIDING AT AL-FALAKH, NEAR PARAYIL SCHOOL, KURAKKANNI DESOM, VARKALA VILLAGE, VARKALA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN 695141. ADDL R6 NADEEM @ SULTHAN S/O SULFIKER, RESIDING AT SARAUMMA MANZIL, NEAR VILAKKULAM GROUND, KURAKKANNI DESOM, VARKALA VILLAGE, VARKALA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN 695141. ADDL R7 ANEESH S/O THAMPI, RESIDING AT VILAYKKULATHIL VEEDU, KURAKKANNI DESOM, VARKALA VILLAGE, VARKALA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN 695141. *ADDL R5 TO R7 ARE IMPLEADED AS ADDITIONAL RESPONDENTS AS PER ORDER DATED 9.6.2023 IN CRL.M.A NO.2 OF 2023 IN CRL.M.C NO.3283/2023. BY ADVS. C.S.SUMESH M.DINESH SRI. VIPIN NARAYAN, 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. 3283 OF 2023 3

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 C.C No.1485 of 2018 of

the Judicial Magistrate of First Class, Varakala, registered for the offences punishable under Sections 143, 147, 148, 149, 294(b), 341, 324, 326 and 427 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 party respondents 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 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 Criminal Procedure. However, it is fairly submitted that no other crimes of CRL.MC NO. 3283 OF 2023 4 serious nature have been registered against the petitioners to date. It is further submitted that the statements 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 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,

(2019) 5 SCC 688

(2012) 10 SCC 303 2014 (6) SCC 466 CRL.MC NO. 3283 OF 2023 5

> 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

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 CRL.MC NO. 3283 OF 2023 6 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.25 of 2018 of the Ayiroor Police Station, and all further proceedings against the petitioners pending as C.C No.1485 of 2018 of the Judicial Magistrate of First Class, Varakala, are quashed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE Sru CRL.MC NO. 3283 OF 2023 7 APPENDIX OF CRL.MC 3283/2023 PETITIONER ANNEXURES Annexure A1 CERTIFIED COPY OF THE F.I.R. DATED 6.1.2018 IN CRIME NO.25/2018 OF AYIROOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT. Annexure A2 CERTIFIED COPY OF THE FINAL REPORT IN C.C.

NO.1485/2018 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, VARKALA WHICH AROSE FROM CRIME NO.25/2018 OF AYIROOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 12.6.2018. Annexure A3 NOTARIZED AFFIDAVIT OF THE 2ND RESPONDENT/DE-FACTO COMPLAINANT WHICH RELATE TO THE SETTLEMENT OF ISSUES IN CRIME NO.25/2018 OF AYIROOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 23.2.2023. Annexure A4 NOTARIZED AFFIDAVIT OF THE 3RD RESPONDENT/DE-FACTO COMPLAINANT WHICH RELATE TO THE SETTLEMENT OF ISSUES IN CRIME NO.25/2018 OF AYIROOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 23.2.2023. Annexure A5 NOTARY ATTESTED AFFIDAVIT OF RESPONDENTS 4 TO 7 HEREIN/CW3, CW4, CW5 AND CW9 DATED 26.5.2023.

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