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Althaf 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/3334/2023

Appellant : Althaf

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 AGAINST THE ORDER IN SC NO.1799/2022 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - V, THIRUVANANTHAPURAM / II ADDITIONAL MACT PETITIONERS/ACCUSED NO.1 TO 6 :- 1 ALTHAF, AGED 29 YEARS S/O SULAIMAN, S.M.MANZIL, NEAR MUTHALA PALAM, KOKKOTTU KONAM (KK KONAM) DESOM, PALLIKKAL VILLAGE,THIRUVANANTHAPURAM, PIN - 695604 2 ASIQ, AGED 29 YEARS S/O SULFIKKAR, KUNNUMPURATH VEEDU, NEAR PALLIKKAL LP SCHOOL, PALLIKKAL VILLAGE, THIRUVANANTHAPURAM, PIN - 695604 3 ASIF, AGED 28 YEARS S/O FARITH KUTTY, UPPU KANDAM VEEDU, KK KONAM JUNCTION, KK KONAM DESOM, PALLIKKAL VILLAGE, THIRUVANANTHAPURAM, PIN - 695604 4 NASHID, AGED 27 YEARS S/O NOUSHAD, NASHID BAITH VEEDU, NEAR MUTHALA PALAM, KK KONAM

DESOM, PALLIKKAL VILLAGE, THIRUVANANTHAPURAM, PIN - 695604 5 ANSAL, AGED 31 YEARS S/O HASBAR, ANSAL MANSIL, NEAR EARATTU VALLABHAN KUNNU, KK KONAM DESOM, PALLIKKAL VILLAGE, THIRUVANANTHAPURAM, PIN - 695604 6 MUHAMMED SUROOR, AGED 28 YEARS S/O ABDUL BASHEER, SBM HOUSE, NEAR KAKKAD JUNCTION, MUTHAL DESOM, PALLIKKAL VILLAGE, THIRUVANANTHAPURAM, PIN - 695604 BY ADV S.MOHAMMED AL RAFI RESPONDENTS/STATE & COMPLAINANT :- 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 695031 2 HAJI MUHAMMED, AGED 64 YEARS

S/O SHAHUL HAMEED, HASEEB MANZIL, PHARMACY JUNCTION, NAVAIKULAM, KALLAMBALAM, THIRUVANANTHAPURAM, PIN - 695605 3 HASEEB, AGED 40 YEARS S/O HAJI MUHAMMED, HASEEB MANZIL, PHARMACY JUNCTION, NAVAIKULAM, KALLAMBALAM, THIRUVANANTHAPURAM, PIN - 695605 4 ANSARI, AGED 36 YEARS S/O ABDUL RAHEEM, BISMILLA HOUSE, PHARMACY JUNCTION, NAVAIKULAM, KALLAMBALAM, THIRUVANANTHAPURAM, PIN - 695605 SRI. T R RANJITH, SR. PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31.07.2023, 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 the accused, Nos.1 to 6, in

S.C.No.1799 of 2022, on the file of the Vth Additional Sessions Court, Thiruvananthapuram. In the said case, they face indictment for having committed offences punishable under Sections 143,147, 148, 149, 447, 323, 326 and 307 of the IPC.

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

under: On 30/12/2015, at 10:00 PM, the accused formed themselves into an unlawful assembly in the prosecution of their common object, attacked the 3rd respondent, his father, and a relative arrayed as respondents 2 and 4, with weapons, causing 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-B to D affidavits filed by respondents 2 to 4 to substantiate their contentions. It is urged that the parties are relatives. The learned counsel would refer to the accident register cum wound certificate of Sri. Ansari, the fourth respondent herein, and it is submitted that he had sustained some minor abrasions on his body. Insofar as the 3rd respondent is concerned, only one lacerated wound has a dimension of 8x0.5x0.5 cm over the scalp. 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 statements of the party respondents/injured/victims 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 had 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. He would highlight that among the offenses against the petitioners in the Charge, the offense under Section 307 of the IPC also has been

included. However, it is fairly submitted that no other transgressions or complaints stand registered against the Petitioners hitherto. It is further submitted that the statements of the party respondents have 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 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:

(2019) 5 SCC 688

(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

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, 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.

9. In the case on hand, the offenses alleged include Section 307 of

the IPC as well. In Laxmi Narayanan (supra), the Apex Court has reminded it would be open to this Court to examine whether incorporation of Section 307 of the IPC is there for the sake of it or whether the prosecution has collected sufficient evidence, which, if proven, would lead to framing the charge under Section 307 IPC. For this purpose, this Court was required to go by the nature of the injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, the nature of weapons used, etc. I have gone through the copies of the wound certificates of Ansari and Haseeb. I find that the injured were seen by the Asst Surgeon of the Medical College Hospital on 30.12.2015. Insofar as the third respondent is concerned, only one lacerated wound has a dimension of 8 x 0.5 x 0.5 cm over the scalp. The 4th respondent has sustained only abrasions on various parts of his body. The injuries cannot be said to be grave warranting incorporation of a charge under Section 307 of the IPC. As it appears from the affidavit that the parties are relatives they have settled all their disputes and are living in peace and harmony. In that view of the matter, despite the incorporation of Section 307 of the IPC in the charge, this court would be well justified in quashing

the proceedings recording the settlement. The quashing of proceedings on the basis of the settlement will not have any adverse impact on 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-A Final Report in Crime No.1833/2015 of Kallambalam Police Station and all further proceedings pending against the petitioners as S.C.No.1799/2022 on the file of the Vth Additional Sessions Court, Thiruvananthapuram, are quashed. Sd/- RAJA VIJAYARAGHAVAN V., JUDGE SMA APPENDIX OF CRL.MC 3334/2023 PETITIONER ANNEXURES :- Annexure A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO 1833/2015 OF KALLAMBALAM POLICE STATION Annexure B NOTARIZED AFFIDAVIT SWORN BY THE 2ND RESPONDENT Annexure C NOTARIZED AFFIDAVIT SWORN BY THE 3RD RESPONDENT Annexure D NOTARIZED AFFIDAVIT SWORN BY THE 4TH RESPONDENT

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