

Siril Dev Vs State of Kerala

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Court : Kerala

Decided On : May-31-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/3471/2023

Appellant : Siril Dev

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945 CRL.MC NO. 3471 OF 2023 CC 786/2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I, NORTH PARAVUR CRIME NO.637/2016 OF NORTH PARAVUR POLICE STATION PETITIONER/ACCUSED: SIRIL DEV AGED 30 YEARS S/O RETHNAN, KANNAMPARAMBIL HOUSE, KARIMPADAM KARA CHENDAMANGALAM P.O., CHENDAMANGALAM KARA NORTH PARAVUR TALUK, ERNAKULAM, PIN - 683512 BY ADVS. PRASUN.S N.A.RETHEESH RESPONDENTS/STATE AND DE FACTO COMPLAINANT-VICTIM: 1 STATE OF KERALA REPRESENTED BY

PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682031 2 SUDHEER AGED 46 YEARS S/O IBRAHIM, THEROTH
HOUSE, CHITTATTUKARA, VADAKKEKARA VILLAGE, ERNAKULAM,
PIN - 683522 SRI VIPIN NARAYAN, SR PUBLIC PROSECUTOR THIS
CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
31.05.2023, 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 petitioner herein is the accused in CC.No.786 of 2016 on the

files of the Judicial Magistrate of the First Class-I, North Paravur. In the said case, he faces indictment for having committed offences punishable under Sections 457, 380 r/w Section 34 of the IPC.

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

under: On 30.03.2016 at about 11 a.m., the petitioner, with the intention to commit theft, entered the mobile shop by name Neha Mobiles and stole around 30 mobile phones.

4. The learned counsel appearing for the petitioner submitted that the

parties have settled their disputes and they are not desirous of pursuing the prosecution proceedings. Reliance is placed on Annexures - A2 affidavit filed by 2nd respondent 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 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 Punjab*², *Narinder Singh v. State of Punjab*³, *State of Rajasthan v. Shambhu Kewat*⁴, *State of M.P. v. Deepak*⁵, *State of M.P. v. Manish*⁶, *J. Ramesh Kamath v. Mohana Kurup*⁷; *State of M.P. v. Rajveer Singh*⁸, *Parbatbhai Aahir v. State of Gujarat*⁹, *State of M.P. v. Kalyan Singh*¹⁰ and *State of M.P. v. Dhruv Gurjar*¹¹. 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;

[(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]

15.2. 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. Having carefully analyzed the nature of the allegations, the gravity

of the offense, the severity of injuries inflicted, antecedents of the petitioners, and the amicable relationship that now exist 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-A1 Final Report in Crime No.637/2016 of North Paravur Police Station and all further proceedings pending against the petitioner as C.C.No.786/2016 on the file of the Judicial Magistrate of the First Class-I, North Paravur, are quashed. Sd/- RAJA VIJAYARAGHAVAN V., JUDGE IAP APPENDIX OF CRL.MC 3471/2023 PETITIONERS ANNEXURES: Annexure A1 THE TRUE COPY OF THE FINAL REPORT IN THE AFORESAID C.C.NO.786 OF 2016 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, NORTH PARAVUR Annexure A2 THE AFFIDAVIT DATED 13.04.2023 SWORN BY THE SECOND RESPONDENT

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