

Shan Johny vs State of Kerala

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Court : Kerala

Decided On : Aug-25-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/3713/2023

Appellant : Shan Johny

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945 AGAINST THE ORDER/JUDGMENT CC 1275/2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IX, ERNAKULAM (TEMPORARY) PETITIONER/S: 1 SHAN JOHNY AGED 32 YEARS S/O. JOHNY, KUMBANAYIL HOUSE, VAYALAR ROAD, ERNAKULAM,, PIN - 682027 2 ANTONY AGED 37 YEARS S/O. FRANCIS, PALIYATHARA HOUSE, SOUTH CHITTOOR, CHITTOOR P.O., ERNAKULAM, PIN - 682027 3 SIRIL ANTONY AGED 35 YEARS S/O. AUGUSTINE CHOORAYIL HOUSE, NEAR ST. GEORGE CHAPPEL, ERNAKULAM, PIN - 682027 4 JOSE CLINTON AGED 28

YEARS S/O. ANTONY, THANNIKOTTU HOUSE, SOUTH CHITTOOR, CHITTOOR P.O., ERNAKULAM, PIN - 682027 5 ASHIQ AGED 24 YEARS S/O. APPU, RAMAKKODATH HOUSE, SOUTH CHITTOOR, CHITTOOR P.O., ERNAKULAM, PIN: 682 027, PIN - 682027 6 JISHNU SURESH AGED 26 YEARS S/O. SURESH, THOOVADAM HOUSE, RAEV NAGAR, SOUTH CHITTOOR, CHITTOOR P.O., ERNAKULAM, PIN: 682 027. 7 SANGEETH AUGUSTINE AGED 26 YEARS S/O. AUGUSTINE, VYMELIL HOUSE, POURASAMITHI ROAD, ERNAKULAM, PIN - 682027

BY ADVS. K.R.VINOD M.S.LETHA NABIL KHADER CHITHRA C.EDADAN RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 STEPHIN JOSE S/O. JOSY, EZHUTHAIKKAL HOUSE, ODONAL ROAD, ERNAKULAM,, PIN - 682027 3 ROMON S/O. AUGUSTINE ANTONY, AVITTAMPILLY HOUSE, NEAR HMC TELEPHONES, ERNAKULAM,, PIN - 682027 SRI. VIPIN NARAYAN, SR. PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25.08.2023, 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 accused Nos. 1 to 7 in C. C. No.

1275 of 2020 on the file of the Judicial Magistrate of First Class-IX, Ernakulam, registered for the offences punishable under Sections 141, 143, 148, 341, 294(b), 323, 324 506(i), 452 r/w Section 149 of the IPC.

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

are: On 19.01.2020 at about 5.30 p.m., the petitioners, formed themselves into an unlawful assembly, and in prosecution of their common object, wrongfully

restrained party respondents and assaulted them with weapons 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 their contentions. 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 there have been no other crimes of serious nature 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 Punjab*², *Narinder Singh v. State of Punjab*³ 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

(2019) 5 SCC 688

(2012) 10 SCC 303 2014 (6) SCC 466

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.

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 offence, 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-1 Final Report in Crime No. 21 of 2020 of the Cheranalloor Police Station and all further proceedings against the petitioners pending as C.C. No. 1275 of 2020 on the file of the Judicial Magistrate of First Class-IX, Ernakulam, are quashed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE avs APPENDIX OF CRL.MC 3713/2023 PETITIONER ANNEXURES Annexure1 THE COPY OF THE FINAL REPORT IN C.C.NO.1275/2020 IN THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM Annexure 2 THE AFFIDAVIT OF THE RESPONDENT

NO.2 Annexure3 THE AFFIDAVIT OF THE RESPONDENT NO.3

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