

Libin Benjamin vs State of Kerala

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Court : Kerala

Decided On : Jun-06-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/3761/2023

Appellant : Libin Benjamin

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TUESDAY, THE 6TH DAY OF JUNE 2023 / 16TH JYAISHTA, 1945 CRL.MC NO. 3761 OF 2023 CC 579/2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, KOLLAM PETITIONER/1ST ACCUSED: LIBIN BENJAMIN AGED 29 YEARS S/O BENJAMIN FRANKLIN, STELLA BHAVAN, FATHIMA ISLAND,KAVANAD P O, SAKTHIKULANGARA, KOLLAM, PIN - 691003 BY ADVS. V.I.RAHUL SHIFA LATHEEF RESPONDENTS/STATE & DE FACTO COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 ANUROOP DAS AGED 40 YEARS S/O DAS MATHEW, MATHEW

VILASAM, MUKKAD, KAVANAD P O, KOLLAM, PIN - 691003 BY ADV DEVIKA G.RAJESH SRI VIPIN NARAYAN, SR PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.06.2023, 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.579 of 2022

on the files of the Judicial Magistrate of the First Class-II, Kollam. In the said case, he is accused of having committed offence punishable under Sections 294(b), 341, 323, 427 r/w Section 34 of the IPC.

3. The prosecution allegation, as borne out from the

records, are as under: On 21.02.2022 at about 5.30 pm, the petitioner, along with other accused, in furtherance of their common intention, wrongfully restrained the de facto complainant and attacked him, causing injuries.

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 Annexure - A3 affidavit filed by the 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 petitioner is a person 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 Petitioner hitherto. It is further submitted that the statement of the party respondent has been recorded, and he has unequivocally expressed that he harbors 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* [(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 *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; 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

(2017) 9 SCC 641

(2019) 4 SCC 268

(2019) 5 SCC 570]

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 petitioner, and the amicable relationship that now exists 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-A2 Final Report in Crime No.145/2022 of Sakthikulangara Police Station and all further proceedings pending against the petitioner as C.C.No.579/2022 on the file of the Judicial Magistrate of the First Class-II, Kollam, are quashed. Sd/- RAJA VIJAYARAGHAVAN V., JUDGE IAP APPENDIX OF CRL.MC 3761/2023 PETITIONERS ANNEXURES: Annexure A1 COPY OF THE FIR IN CRIME NO.145/2022 OF SAKTHIKULANGARA POLICE STATION, KOLLAM DISTRICT. Annexure A2 CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.145/2022 OF SAKTHIKULANGARA POLICE STATION, KOLLAM DISTRICT. Annexure A3 AFFIDAVIT DATED 02/05/2023 THUS SWORN BY RESPONDENT NO.2/DEFACTO COMPLAINANT.

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