

Libin Benjamin vs State of Kerala

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Court : Kerala

Decided On : Jun-26-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/3773/2023

Appellant : Libin Benjamin

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V MONDAY, THE 26TH DAY OF JUNE 2023 / 5TH ASHADHA, 1945 CRL.MC NO. 3773 OF 2023 AGAINST CC NO.1449/2018 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 & DEFACTO COMPLAINANT : 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 SUNIL SERO AGED 45 YEARS S/O THANKACHAN ,IMMANUEL BHAVANAM PUTHEN THURUTH, SAKTHIKULANGARA,

BY ADV DEVIKA G.RAJESH SRI. VIPIN NARAYAN, SR. PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26.06.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.M.C. No.3773 of 2023 2

ORDER

The instant petition is filed under Section 482 of the Code of Criminal Procedure (the Code for the sake of brevity).

2. The petitioner herein is the 1st accused in Crime No.397 of

2018 of Sakthikulangara Police Station registered for the offences punishable under Sections 143, 147, 323, 341 and 427 r/w Section 149 of the IPC. After investigation, the final report was laid before the jurisdictional Magistrate and the case is now pending as C.C. No.1449 of 2018.

3. The prosecution allegation is that on 10.06.2018 at about 2.30

p.m., the accused formed themselves into an unlawful assembly and in prosecution of their common object, attacked the de facto complainant and caused mischief to the tune of Rs.1,05,000/-.

4. The learned counsel for the petitioner submits that the parties

have settled their dispute and do not wish to pursue the prosecution proceedings. He relies on the affidavit filed by the 2nd respondent 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. CrI.M.C. No.3773 of 2023 3

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 petitioner to date. It is further submitted that the statement of the party respondent has been recorded, and he has unequivocally stated that he does 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 non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of [(2019) 5 SCC 688]

(2012) 10 SCC 303 2014 (6) SCC 466 CrI.M.C. No.3773 of 2023 4

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

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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 for in the light of the

principles laid down as above and also the nature of the allegations, the gravity of the offense, the severity of injuries inflicted, the petitioner's antecedents, 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 CrI.M.C. No.3773 of 2023 6 to quash the proceedings Resultantly, this petition is allowed. Annexure- A2 Final Report in Crime No.397 of 2018 of the Sakthikulangara Police Station and all further proceedings against the petitioner pending as CC.No.1449 of 2018 on the file of the Judicial First Class Magistrate Court -II, Kollam, are quashed. Sd/- RAJA VIJAYARAGHAVAN V., NS JUDGE CrI.M.C. No.3773 of 2023 7 APPENDIX OF CRL.MC 3773/2023 PETITIONER ANNEXURES : Annexure A1 COPY OF THE FIR IN CRIME NO. 397/2018 OF SAKTHIKULANGARA POLICE STATION, KOLLAM DISTRICT. Annexure A2 CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 397/2018 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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