

Nithin 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/4708/2023

Appellant : Nithin

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 CRL.MC NO. 4708 OF 2023 PETITIONER/S: 1 NITHIN, AGED 23 YEARS S/O VIJAYAKUMAR, NITHIN NIVAS, POOPARAM, ANAKUDI, VAMANAPURAM, THIRUVANANTHAPURAM, PIN - 695606 2 SUHAS SALIM S.S, AGED 23 YEARS S/O SALIM, SAMNA MANZIL, MARADIMUKKU, VENJARAMOOD, THIRUVANANTHAPURAM, PIN - 695607 3 ROUF RAFI, AGED 23 YEARS S/O RAFI, FASEELA MANZIL, KOTTUKUNNAM, NELLANAD, THIRUVANANTHAPURAM, PIN - 695606 4 AMBADY @ ABIJITH A, AGED 23 YEARS S/O AJITHKUMAR M, PONNAMBI

THADATHARIKATHU VEEDU, PARAMKONAM, VENJARAMOOD,
THIRUVANANTHAPURAM, PIN -

BY ADV LATHEESH SEBASTIAN RESPONDENTS/STATE &
COMPLAINANT & INJURED :- 1 STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031
2 STATION HOUSE OFFICER VENJARAMOOD POLICE STATION,
THIRUVANANTHAPURAM DISTRICT, PIN - 695607 3 ADITHYA
VINESH, AGED 22 YEARS S/O VINESH S, AMBIKA BHAVAN,
MARIYAM, VENJARAMOODU, NELLANAD,
THIRUVANANTHAPURAM, PIN - 695607 4 SHABIN S, AGED 24
YEARS S/O SHAJAHAN, SHABIN MANZIL, PATTAMKONAM,
PULLAMPARA, THIRUVANANTHAPURAM, PIN - 695607 5 ASWIN,
AGED 25 YEARS S/O ANILKUMAR, THADATHARIKATHU VEEDU,
PATTAMKONAM, PULLAMPARA, THIRUVANANTHAPURAM, PIN -
695607 BY ADVS. NEETHU S. SMT. NEEMA T V, 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 the accused in Crime No.241 of 2023 of Venjaramood Police Station registered for the offences punishable under Sections 294(b), 324, 326, and 341 r/w Section 34 of the IPC.

3. The prosecution allegation, as borne out from the records, are as under: On 16.02.2023 at about 01.00 a.m, the petitioners, in furtherance of their common intention, attacked the party respondents and caused injuries.

4. The learned counsel for the petitioners submit 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 statements 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

(2019) 5 SCC 688

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

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.

8. Having carefully analyzed the prayer sought in light of the

principles laid down above and also the nature of the allegations, the gravity of the offense, 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 F.I.R in Crime No.241 of 2023 of Venjaramood Police Station and all further proceedings pursuant thereto against the petitioners are quashed. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE SMA APPENDIX OF CRL.MC 4708/2023 PETITIONER ANNEXURES Annexure 1 CERTIFIED COPY OF THE FIR AND F.I STATEMENT IN CRIME NO 241/2023 OF VENJARAMOOD POLICE STATION, THIRUVANANTHAPURAM DISTRICT Annexure 2 ORIGINAL AFFIDAVIT OF THE 3RD RESPONDENT Annexure 3 ORIGINAL AFFIDAVIT OF THE 4TH RESPONDENT Annexure 4 ORIGINAL AFFIDAVIT OF THE 5TH RESPONDENT