

Vipin vs State of Kerala

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Court : Kerala

Decided On : Oct-06-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/4659/2022

Appellant : VIPIN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 6TH DAY OF OCTOBER 2023 / 14TH ASWINA, 1945
CRL.MC NO. 4659 OF 2022 AGAINST THE ORDER/JUDGMENT IN CC
1815/2017 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - VIII,
ERNAKULAM (TEMPORARY) PETITIONER/1ST ACCUSED: VIPIN
AGED 36 YEARS, SON OF VENU, MECHERIL (H), ULLERIL ROAD,
PANANGAD P.O., KUMBALAM VILLAGE, ERNAKULAM DISTRICT, PIN
- 682506 BY ADVS. DHANYA BABU RICHU THERESA ROBERT
RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 STATION HOUSE OFFICER KADAVANTHRA POLICE STATION, ERNAKULAM DISTRICT, PIN - 686020 3 ARUN V. MOHAN AGED 36 YEARS, SON OF P.K. MOHANAN, VECHUKETTIKKAL VEEDU, KEEZHAKOMBU KARA, KEEZHAKOMBU P.O. KOOTHATTUKULAM VILLAGE, ERNAKULAM DISTRICT, PIN - ADDL.4 MANIKANDAN NAIR, AGED 39 YEARS, S/O RAJENDRAN, AYYAPURATH HOUSE, PALLILAMKARA, KALAMASSERY P.O. ERNAKULAM - 683104 IS IMPEADED AS ADDITIONAL 4TH RESPONDENT AS PER ORDER DATED 10.03.2023 IN CRL.MA.NO.2/2023 IN CRL.MC.NO.4659/2022. BY ADVS. PUBLIC PROSECUTOR SYAMKUTTAN P.S. No Advocate NEETHU SASI(K/001288/2016)

OTHER PRESENT: HRITCWICK CS PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: P.V.KUNHIKRISHNAN ----- Dated this the 6th day of October, 2023

ORDER

This Criminal Miscellaneous Case is filed under Section 482 of the Code of Criminal Procedure, 1973 (the Code for the sake of brevity).

2. The petitioner is the accused in C.C.No.1815/2017

on the files of the Judicial First Class Magistrate Court-VIII, Ernakulam arising from Crime No.521/2016 of Kadavanthra Police Station. The above case is charge sheeted against the petitioner alleging offences punishable under Sections 406, 417 and 420 r/w Section 34 IPC and Section 24(1)(b) of the Emigration Act, 1983.

3. The prosecution case is that the accused cheated the victim.

4. The learned counsel for the petitioner submits that

the parties have settled their dispute and do not wish to pursue the prosecution proceedings. The counsel relies on the affidavit filed by the victim in support of his contention. The counsel appearing for the victim also submitted that the matter is settled and the victim has no objection in quashing the prosecution.

5. The learned Public Prosecutor, on instructions,

has expressed reservations about quashing the proceedings solely on the basis of the settlement. But the Public Prosecutor conceded that the matter is settled between the parties.

6. This Court has considered the submission of the petitioner, victim and the Public Prosecutor and has also gone through the records including the affidavit filed by the victim.

7. In *State of Madhya Pradesh v Laxmi Narayan*

and Others (2019 (5) SCC 688), three judge bench of the Hon'ble Supreme Court has summarized the situation in which non compoundable offences can be quashed invoking the powers under Section 482 of the Code. The apex court in *Laxmi Narayan's case (supra)* also relied on the law laid down in *Gian Singh v. State of Punjab and another* (2012 (10) SCC 303) and *Narinder Singh and others v. State of Punjab and another* (2014 (6) SCC 466). The apex court in paragraph 13 of the *Laxmi Narayan's case* discussed the law in detail and the same is extracted hereunder:

13. Considering the law on the point and the other decisions of this Court on the point, referred to herein above, it is observed and held as under:

i) that the power conferred under S.482 of the Code to quash the criminal proceedings for the non - compoundable offences under S.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;

ii) 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; iii) similarly, such power is not to be exercised for the offences under the special statutes like 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;

iv) offences under S.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 S.307 IPC and / or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under S.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 S.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 S.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 S.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 / delegate 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 paragraphs 29.6 and 29.7 of the

decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated herein above;

v) while exercising the power under S.482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, 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. Keeping in mind the above dictum laid down by the

apex court, this court perused the facts in this case and also perused the documents produced by the parties. After going through the entire facts and circumstances I am of the considered opinion that the dispute is private in nature and the settlement can be accepted. Therefore, this Criminal Miscellaneous case is allowed. All further proceedings against the petitioner in C.C.No.1815/2017 on the files of the Judicial First Class Magistrate Court-VIII, Ernakulam arising from Crime No.521/2016 of Kadavanthra Police Station are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE bng APPENDIX OF CRL.MC 4659/2022 PETITIONER ANNEXURES Annexure A1 CERTIFIED COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.521/2016 OF THE KADAVANTHRA POLICE STATION Annexure A2 TRUE COPY OF THE STATEMENTS OF THE CHARGE WITNESSES CW1 TO CW4, CW6 AND CW7 Annexure A3 CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.521/2016 OF THE KADAVANTHRA POLICE STATION Annexure A4 ORIGINAL AFFIDAVIT DATED 22.02.2023 SWORN IN TO BY THE 3RD RESPONDENT/ DE FACTO COMPLAINANT (CW1) Annexure A5 ORIGINAL AFFIDAVIT DATED 22.02.2023 SWORN IN TO BY MANIKANDAN NAIR (CW2)