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**Abhilash, vs State of Kerala,**

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**SooperKanoon Citation** : sooperkanoon.com/1372901

**Court** : Kerala

**Decided On :** Oct-31-2023

**Judge** : Honourable Mr. Justice P.V.Kunhikrishnan

**Appeal No.** : Crl.MC/5409/2023

**Appellant** : Abhilash,

**Respondent** : State of Kerala,

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945 CRL.MC NO. 5409 OF 2023 CRIME NO.1152/2019 OF NEDUMBASSERY POLICE STATION, Ernakulam AGAINST THE ORDER/JUDGMENT CC 654/2020 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ANGAMALY PETITIONER/S:

1 ABHILASH, AGED 39 YEARS S/O.LAKSHMANA KURUP, AGED 39 YEARS, CHOVVODATH HOUSE, NEAR SREE KRISHNA TEMPLE, PERUMBALAM (PO), ALAPPUZHA DISTRICT,, PIN - 688570 2 SUNI MON @ SUNIL, AGED 44 YEARS S/O.SUBRAHMANIAN AGED 44

YEARS, KANDATHIL HOUSE, KUTHIATHODE (PO) ALAPPUZHA DISTRICT, PIN - 688533 3 GIREESH, AGED 49 YEARS S/O.KUTTAPPAN, AGED 49 YEARS, KIZHAKKEMANTRA HOUSE, EDAYALUMKARA, VECHOOR (PO), KOTTAYAM DISTRICT, PIN - 686144 4 MOHANAN, S/O.KRISHNAN, AGED 44 YEARS, KRISHNA HOUSE, OORAPPADAM, POLPULLY (PO), CHITTUR TALUK, PALAKKAD DISTRICT, PIN - 678101 5 MANOJ, AGED 53 YEARS S/O.DAMODARAN, AGED 53 YEARS, KUTTASSERI HOUSE, NEAR VETTUKUNNATHUKAVU, KARUVANNUR (PO), THRISSUR DISTRICRT, PIN - 678101 BY ADV BINOY VASUDEVAN

RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 THE STATION HOUSE OFFICER NEDUMBASSERY AIRPORT POLICE STATION, NEDUMBASSERY -2- P.O., ERNAKULAM DISTRICT, PIN - 686585 3 DAVIS KUTTIKKADAN HOUSE, PERINGANAM (PO), THRISSUR DISTRICT, PIN - 680686 OTHER PRESENT: SRI HRITHWIK C.S, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -3-

**P.V.KUNHIKRISHNAN, J.**

========== Crl.M.C No.5409 of 2023 ==========

Dated this the 31st 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. Petitioners are the accused in CC No.654 of 2020 on the file

of the Judicial First Class Magistrate Court, Angamaly, arising from Crime No.1152 of 2019 of Nedumbassery police station, Ernakulam. The above case is charge sheeted alleging offences punishable under Sections 323, 341, 294(b) and 506 read with 34 IPC.

3. The prosecution case is that the accused wrongfully confined the victim and assaulted the victim using filthy language and also criminally intimidated the victim.

4. The learned counsel for the petitioners 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 -4- 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 petitioners, 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 -5- 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 -6-

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 impart 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 -7-

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 as against the petitioners in CC No.654 of 2020 on the file of the Judicial First Class Magistrate Court, Angamaly, arising from Crime No.1152 of 2019 of Nedumbassery police station, Ernakulam, are quashed. sd/- P.V.KUNHIKRISHNAN JUDGE das -8- APPENDIX OF CRL.MC 5409/2023 PETITIONER ANNEXURES Annexure1 CERTIFIED COPY OF THE FIR IN CRIME NO. 1152 OF 2019 OF NEDUMBASSERY AIRPORT POLICE STATION Annexure2 CERTIFIED COPY OF THE FINAL REPORT IN C.C.NO.654/2020 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, ANGAMALY Annexure3 THE ORIGINAL OF THE

AFFIDAVIT SWORN BY THE 3RD RESPONDENT DATED 01.07.2023

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