

Subhash, vs State of Kerala

Subhash, vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1375063

Court : Kerala Orders

Decided On : Apr-20-2023

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Crl.MC/5068/2022

Appellant : Subhash,

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
THURSDAY, THE 20TH DAY OF APRIL 2023 / 30TH CHAITHRA, 1945
AGAINST THE ORDER/JUDGMENTSC 504/2016 OF ADDITIONAL
SUB COURT,ATTINGAL PETITIONER/S:

1 SUBHASH, AGED 35 YEARS THAEKKUVILA VEEDU, VENKULAM,
S/O VISHAWANANDHAN VENKULAM DESOM, EDAVA VILLAGE,
VARKALA, TRIVANDRUM, PIN - 695311 2 RENJITH AGED 26 YEARS
S/O RAVINDRAN VILAVEEDU, NEAR IOB, VENKULAM DESOM,
EDAVA VILLAGE, VARKALA, TRIVANDRUM, PIN - 695311 3
SANTHOSH AGED 28 YEARS S/O RAJAMANI, KUNNUVILA VEEDU,

AYIROORVILLIKADAVILMADAN, ELAMON DESOM,
AYIROORVILLAGE, PATHANAMTHITTA, PIN - 4 PRASANTHAN,
AGED 31 YEARS S /O RAJENDRAN PILLAI , MAVILAVEEDU, NEAR
KARIPURAM JUNCTION, VENKULAM DESOM, EDAVA VILLAGE,
VARKALA, TRIVANDRUM, PIN - 695311 5 BINU, AGED 31 YEARS S
/O VIJAYAN VAZHAVILAVEEDU, NEAR PALACHIRA SCHOOL,
PALACHIRA DESOM, CHERUNNIYOOR, VARKALA, TRIVANDRUM,
PIN

- 628467 6 BINU, AGED 33 YEARS S/O GOPI CHAERUVILA
PUTHENVEEDU, PANYARA DESOM, CHEMMARUTHY VILLAGE,
VARKALA, THIRUVANANTHAPURAM, PIN - BY ADV M.R.SARIN
RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULUM,
KOCHI, PIN - 682031 2 DEEPU AGED 36 YEARS S/O. MANIKANDAN
NAIR, MOODILLAVILA PUTHENVILA VAYALIL VEEDU, VENKULAM
DESOM, EDAVA VILLAGE, VARKALA, THIRUVANANTHAPURAM, PIN
- 695311 BY ADV RAJITHA V.K SM SMT.MAYA M.N. (PP) THIS
CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
20.04.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER

Petitioners have invoked the jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973, to quash the proceedings against them in Sessions case No.504 of 2016 pending before the Assistant Sessions Court, Attingal.

2. Petitioners are accused Nos.1 to 6 in Crime No.606/2011 of

Varkala Police Station. S.C.No.504/2016 pending on the files of the Assistant Sessions Court, Attingal, had arisen on the basis of the final report in that crime. The offences alleged are under Sections 143, 147, 148, 188, 341, 324, 308, 283 and Section 427 r/w Section 149 of the Indian Penal Code, 1860.

3. Heard Sri.Sarin, the learned counsel for the petitioners and Smt.Maya.M.N., the learned Public Prosecutor.

4. The learned Public Prosecutor placed on record, a report

regarding the antecedents of the petitioners. The statement of the defacto complainant recorded by the Station House Officer, Varkala Police Station with reference to the settlement said to have been arrived at between him and the petitioners are produced along with the report.

5. The allegations set out in the final report are that the accused

formed themselves into an unlawful assembly and committed rioting. They came to the place, Velliyazhachavu in three motor cycles and waylaid the public transport vehicle bearing Reg.No.KL 02 L7972. They pelted stones at the bus and in the incident, the defacto complainant sustained injuries at his left chest. There was every possibility of causing death of someone in the incident as a result of such brickbatting, In the incident front window glass of the bus was broken causing a loss of Rs.7,000/-.

6. Learned Counsel for the petitioners would submit that the

matter has been settled between the petitioners with the defacto complainant and Annexure A3 the affidavit sworn to by the second respondent to that effect is submitted. On a perusal of the affidavit of Sri.Deepu, the defacto complainant, it is seen that he has no further grievance against the petitioners.

7. Learned counsel for the petitioners would submit that in view

of the settlement evidenced by Annexure A3, the proceedings in S.C.No.504/2016 are liable to be quashed. It is further submitted that since the defacto complainant has no further grievance in the matter, no purpose would be served by continuance of the proceedings, and a trial.

8. The learned Public Prosecutor by placing reliance on the

report of the Inspector of Police, Varkala Police Station submitted that the 1st petitioner, who is the 1st accused has involved in 14 criminal cases. The offences involved in some of the cases are serious ones,

like house trespass, decoity etc. It was further submitted that although the sessions case, namely S.C.No.504/2016 was initiated 7 years ago, petitioners 3 to 6 so far did not appear before the Sessions Court. The further submission of the learned Public Prosecutor is that a rowdy history sheet was initiated against the 1st petitioner from Aiyroor Police Station, within the jurisdiction of which he is residing.

9. In P.Dharmaraj v.Shanmugam and others [AIR 2022 SC 4195] the Apex Court reiterated the parameters to be borne in mind while considering the request for quashing the criminal proceedings. It was held:

41. In Parbatbhai Aahir (supra), referred to by the High Court in the impugned order, a 3 member Bench of this Court again summarised the broad principles on this question in paragraph

16. Paragraph 16.6 and 16.8 to 16.10 of the decision read as follows:

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences. 16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute. 16.9. In such a case, the High

Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and 16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic wellbeing of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

42. Thus it is clear from the march of law that the Court has to go

slow even while exercising jurisdiction under Section 482 Cr.PC or Article 226 of the Constitution in the matter of quashing of criminal proceedings on the basis of a settlement reached between the parties, when the offences are capable of having an impact not merely on the complainant and the accused but also on others.

10. This is a case where a group of persons committed violence

by pelting stones at a public transport vehicle and smashed off its window glass. In that course, Sri.Deepu, the second respondent sustained injuries. The prosecution is justified in initiating prosecution for the offences set out in the final report. The nature and antecedents of the petitioners is also not conducive to consider favourably a plea for quashing the criminal proceedings on the ground that they have settled the dispute with the defacto complainant. Owner of the bus, who sustained loss has not seen condoned the actions of the petitioners. Moreover the offences alleged against the petitioners are of such a nature that it has effect not only on the 2nd respondent but also others.

11. In the light of the law laid down by the Apex Court in the aforesaid decision, I am of the view that this is not fit case where

power under Section 482 of the Code is liable to be invoked to quash the final report and further proceedings in S.C.No.504/2016. In such circumstances, the Crl.M.C. is dismissed. The petitioners may approach the Assistant Sessions Court, Attingal, for getting the Sessions Case No.504/2016 disposed of expeditiously, and if they file such an application, the Assistant Sessions Court will try and dispose of the said case in accordance with law, as expeditiously as possible. Sd/

P.G. AJITHKUMAR JUDGE jm/ APPENDIX OF CRL.MC 5068/2022 PETITIONER ANNEXURES AnnexureA1 TRUE COPY OF THE FIR IN CRIME NO 606/2011 OF VARKALA POLICE STATION AnnexureA2 THE TRUE COPY OF THE FINAL REPORT IN SC NO COURT/ ADDITION SUB COURT ATTINGAL Annexure A3 AFFIDAVIT FILED BY THE SECOND RESPONDENT Annexure4 TRUE COPY OF THE JUDGEMENT IN CRLMC NO

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com