

Arun Hari 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/6132/2023

Appellant : Arun Hari

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 CRIME NO.285/2020 OF PATHANAMTHITTA POLICE STATION, PATHANAMTHITTA AGAINST CC NO.1794/2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, PATHANAMTHITTA PETITIONER/ACCUSED NOS.1 TO 3 :

1 ARUN HARI AGED 28 YEARS S/O. HARIKUMAR, KUZHITHADATHIL VEEDU, NARANGANOM P.O., NARANGANAM VILLAGE, PATHANAMTHITTA., PIN - 689642 2 MITHUN M. KUMAR AGED 29 YEARS S/O. MANOJ KUMAR, MUTHUMARATHIL, MADATHUMPADI,

NARANGANOM P.O., NARANGANAM VILLAGE, PATHANAMTHITTA, PIN - 689642 3 ADARSH R NAIR AGED 30 YEARS S/O. REGHUTHAMAN NAIR, KUZHIKALAYIL, NARANGANOM P.O., NARANGANAM VILLAGE, PATHANAMTHITTA, PIN - 689642 BY ADVS. BALAMURALI K.P. HARIPRIYA.M M.B.SOORI CHRISTEENA P GEORGE ATHEESHA M.V.

RESPONDENTS/STATE & DEFACTO COMPLAINANT : 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031 2 ARJUN DAS AGED 40 YEARS S/O. P. BHARGAVAN PILLAI, KRISHNA NIVAS, MALAYALAPPUZHA, THAZHAM POST, PATHANAMTHITTA, KERALA, PIN - 689666 PHONE:9495878360 SRI.VIPIN NARAYAN 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 C.C. No.1794 of

2020 on the files of the Judicial Magistrate of the First Class-I, Pathanamthitta. In the said case, they are accused of having committed offences punishable under Sections 324 and 341 r/w Section 34 of the IPC.

3. The prosecution allegation, as borne out from the

records, are as under: On 15.02.2020 at about 00.30 a.m., the petitioners herein along with the 4th accused who is stated to be no more, are alleged to have attacked the party respondent and caused injuries.

4. The learned counsel for the petitioners 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 party 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.

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 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 [(2019) 5 SCC 688] 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 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

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

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 the light of

the principles laid down above, and also the nature of the allegations, the gravity of the offense, the severity of injuries inflicted, antecedents of the accused, 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 will stand allowed. Annexure-2 Final Report in Crime No.285/2020 of the Pathanamthitta Police Station and all further proceedings against the petitioners pending as C.C. No.1794/2020 on the files of the Judicial Magistrate of the First Class-I, Pathanamthitta, are quashed. Sd/- RAJA VIJAYARAGHAVAN V., JUDGE NS APPENDIX OF CRL.MC 6132/2023 PETITIONER ANNEXURES Annexure1 THE CERTIFIED COPY OF THE F.I.R. IN CRIME NO.285/2020 OF PATHANAMTHITTA POLICE STATION. Annexure2 THE CERTIFIED COPY OF THE FINAL REPORT IN

CRIME NO.285/2020 OF PATHANAMTHITTA POLICE STATION WHICH IS NOW PENDING AS C.C. NO. FIRST-CLASS MAGISTRATE COURT-I, PATHANAMTHITTA. Annexure3 THE TRUE COPY OF THE DEATH CERTIFICATE OF LATE SASIDHARAN PILLAI (4TH ACCUSED IN THE FINAL REPORT) DATED 20/12/2022. Annexure4 THE TRUE COPY OF THE NOTICE DATED 15/03/2023 ISSUED TO THE 1ST ACCUSED/PETITIONER NO.1 BY THE SUB-DIVISIONAL MAGISTRATE, ADOOR UNDER SECTION 107 CR.P.C. Annexure5 THE TRUE COPY OF THE ORDER OF THE HON'BLE HIGH COURT IN CRL.M.C. NO.4157/2020 DATED Annexure6 THE ORIGINAL AFFIDAVIT SWORN BY THE 2ND RESPONDENT ATTESTED BY HIS COUNSEL.

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