

Sanofar vs State of Kerala

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/6822/2023

Appellant : Sanofar

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. 6822 OF 2023 CRIME NO.446/2022 OF Fort Police
Station, Thiruvananthapuram AGAINST THE ORDER IN CC 229/2022
OF JUDICIAL MAGISTRATE OF FIRST CLASS -
II, THIRUVANANTHAPURAM PETITIONER/ACCUSED NO.1 AND 2: 1
SANOFAR, AGED 39 YEARS, S/O. MAIDEEN KANNU, RESIDING AT
T.C. 39/1164, BISMI NAGAR, MANACAUD, FORT,
THIRUVANANTHAPURAM, PIN - 695009 2 SUDHEER, AGED 46
YEARS, S/O. MAIDEEN KANNU, RESIDING AT T.C. 39/1164, BISMI
NAGAR, MANACAUD, FORT, THIRUVANANTHAPURAM, PIN - 695009

BY ADV J.G.SYAMNATH RESPONDENTS/STATE & COMPLAINANT: 1
STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 SUB
INSPECTOR OF POLICE, FORT POLICE STATION,
THIRUVANANTHAPURAM, PIN - 695023 3 SAINULABDEEN, AGED 55
YEARS S/O. JAMAL MUHAMMED, RESIDING AT T.C. 8/1502(1), S.S.
VILLA, THIRUMALA P.O., THIRUMALA VILLAGE,
THIRUVANANTHAPURAM, PIN - 695006 OTHER PRESENT: SRI
M.P.PRASANTH,PP ADV.V.S.VISWAMBHARAN THIS CRIMINAL
MISC. CASE HAVING COME UP FOR ADMISSION ON 31.10.2023,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Crl.M.C.6822/2022 2

P. V. KUNHIKRISHNAN, J.

----- Crl.M.C.No.6822 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. The petitioners are the accused in C.C.No.229/2022 on the

file of the Judicial First Class Magistrate Court-II, Thiruvananthapuram arising from Crime No.446/2022 of the Fort Police Station. The above case is chargesheeted for offences punishable under sections 506, 323, 447, 294(b) r/w 34 of the Indian Penal Code.

3. The prosecution case is that the accused assaulted the victim after trespassing into the property of the victim and also used filthy language.

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 agreement filed by the victim in support of his contention. The counsel appearing for the CrI.M.C.6822/2022 3 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 agreement 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 CrI.M.C.6822/2022 4

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. The further proceedings against the petitioners in C.C.No.229/2022 on the file of the Judicial First Class Magistrate Court-II, Thiruvananthapuram arising from Crime No.446/2022 of the Fort Police Station are quashed. Sd/- P. V. KUNHIKRISHNAN JUDGE Sbnal/
Crl.M.C.6822/2022 6 APPENDIX OF CRL.MC 6822/2023 PETITIONER
ANNEXURES Annexure-1 CERTIFIED COPY OF THE FINAL REPORT IN

CRIME NO. 446/2022 OF FORT POLICE STATION REGISTERED FOR OFFENSE UNDER SEC. 506, 323, 447 , 294(B) AND 34 IPC WHICH IS PENDING AS C.C. 229/2022 BEFORE THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT II, THIRUVANANTHAPURAM Annexure-2 A COPY OF THE AGREEMENT DATED 19/05/2022 EXECUTED BETWEEN THE PETITIONERS' EMPLOYEE, MR. BASHEER KHAN AND THE THIRD RESPONDENT Annexure-3 A TRUE COPY OF THE ORDER DATED 12/08/2022 IN CRL. M.C. NO. 4534 OF 2022 OF THE HON'BLE HIGH COURT OF KERALA

