

Nithin, vs State of Kerala,

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/7724/2023

Appellant : Nithin,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
THURSDAY, THE 30TH DAY OF NOVEMBER 2023/9TH
AGRAHAYANA, 1945 CRL.MC NO. 7724 OF 2023 CRIME NO.271/2022
OF Cheranelloor Police Station, Ernakulam AGAINST THE
ORDER/JUDGMENT CC 349/2022 OF JUDICIAL MAGISTRATE OF
FIRST CLASS - IX, ERNAKULAM (TEMPORARY) PETITIONER/S:

1 NITHIN, AGED 30 YEARS, S/O MAHESWARAN, NITHIN BHAVAN,
KARUVEL P.O, EDAVATTAM, KOTTARAKKARA, KOLLAM DISTRICT.
NOW RESIDING AT 504(A), CONFIDENT PRIDE FLAT,
VATTAEKUNNAM, THRIKKAKKARA NORTH VILLAGE, ERNAKULAM,

PIN - 682021 2 NAMITHA, AGED 27 YEARS, D/O BABU SHEJIL KUMAR, KOZHIYOTTU HOUSE, PERIYA, MANANTHAVADY, WAYANA. NOW RESIDING AT 904 B, CONFIDENT PRIDE FLAT, VATTAEKUNNAM, THRIKKAKKARA NORTH VILLAGE, ERNAKULAM, PIN - 682021 BY ADV LATHEESH SEBASTIAN

RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 STATION HOUSE OFFICER, CHERANELOOR POLICE STATION, ERNAKULAM, PIN - 683544 3 BRIJILAL, AGED 47 YEARS, S/O PUSHPANGATHAN, PUKARATTU HOUSE, AIMS POST, EDAPPALLY NORTH VILLAGE, KANAYANOOR TALUK, ERNAKULAM, PIN - BY ADV NEETHU S.

OTHER PRESENT: SRI RENJITH TR, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.11.2023, ALONG WITH CrI.MC.9459/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN THURSDAY, THE 30TH DAY OF NOVEMBER 2023/9TH AGRAHAYANA, 1945 CRL.MC NO. 9459 OF 2023 CRIME NO.18/2022 OF Cheranelloor Police Station, Ernakulam AGAINST THE ORDER/JUDGMENT CC 315/2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IX, ERNAKULAM (TEMPORARY) PETITIONER/S: BRIJILAL, AGED 46 YEARS, S/O PUSHPANGADAN, PUKKART HOUSE, KUNNUMPURAM, NEAR SBI BANK , EDAPPALLY NORTH, EDAPPALLY P.O, ERNAKULAM, PIN - BY ADV NEETHU S. RESPONDENT/S:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 STATION HOUSE OFFICER, CHERANALLOOR POLICE STATION, ERNAKULAM DISTRICT, PIN - 683544 3 NITHIN, AGED 30 YEARS, S/O. MAHESWARAN, NITHIN BHAVAN, KARUVEL P.O., EDAVATTAM, KOTTARAKKARA, KOLLAM DISTRICT ,NOW RESIDING AT 504(A),

CONFIDENT PRIDE FLAT, VATTEKKUNNAM, THRIKKAKKARA NORTH VILLAGE, ERNAKULAM DISTRICT,, PIN - 682021 4 NAMITHA, AGED 27 YEARS, D/O. BABU SHEJIL KUMAR, KOZHIYOTTU HOUSE, PERIYA, MANANTHAWADY, WAYANAD DISTRICT, NOW RESIDING AT 904(B), CONFIDENT PRIDE FLAT, VATTEKKUNNAM, THRIKKAKKARA NORTH VILLAGE, ERNAKULAM DISTRICT, PIN - 682021 BY ADV Latheesh Sebastian

OTHER PRESENT: SRI HRITHWIK CS, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.11.2023, ALONG WITH Crl.MC.7724/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -3-

P.V.KUNHIKRISHNAN, J.

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Dated this the 30th day of November, 2023

ORDER

These Criminal Miscellaneous Cases are connected and therefore, I am disposing of these two Crl.M.Cs by a common order.

2. Crl.M.C No.7724 of 2023 is filed to quash the proceedings in

CC No.349 of 2022 on the file of the Judicial First Class Magistrate Court -IX, Ernakulam, arising from Crime No.271 of 2022 of Cheranelloor Police Station, Ernakulam.

3. Crl.M.C No.9459 of 2023 is filed to quash the proceedings in

CC No.315 of 2023 on the file of the Judicial First Class Magistrate Court -IX, Ernakulam, arising from Crime No.18 of 2022 of Cheranelloor Police Station, Ernakulam.

4. It is submitted that these are case and counter case and both sides submitted that they settled the matter and they have no grievance. -4-

5. 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 victims in support of his contention. The counsel appearing for the victims also submitted that the matter is settled and the victims have no objection in quashing the prosecution.

6. 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.

7. This Court has considered the submission of the petitioner, victims and the Public Prosecutor and has also gone through the records including the affidavits filed by the victims.

8. 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 -5- 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; -6-

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 -7-

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 had managed with the complainant to enter into a compromise etc.

9. 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, these Criminal Miscellaneous case are allowed. All further proceedings as against the petitioners in CrI.M.C. No.7724 of 2023, who are the accused in CC No.349 of 2022 on the file of the Judicial First Class Magistrate Court -IX, Ernakulam, arising from Crime No.271 of 2022 of Cheranelloor Police Station, Ernakulam, are quashed. -8- All further proceedings as against the petitioner in CrI.M.C. No.9459 of 2023, who is the accused in CC No.315 of 2023 on the file of the Judicial First Class Magistrate Court -IX, Ernakulam, arising from Crime No.18 of 2022 of Cheranelloor Police Station, Ernakulam, are quashed. sd/- P.V.KUNHIKRISHNAN JUDGE das -9-

C.C No.315/2023 wherever it occurs in the final order dated C.C 315/2022 as per order dated 18/12/2023 in CrI.M.A.2/2023 in CrI.M.C.9459/2023.

Sd/- Joint Registrar -10- APPENDIX OF CRL.MC 9459/2023 PETITIONER ANNEXURES Annexure 1 CERTIFIED COPY OF FINAL REPORT IN CRIME NO.18/2022 OF CHERANALLOOR POLICE STATION, ERNAKULAM DISTRICT Annexure 2 ORIGINAL OF THE AFFIDAVIT EXECUTED BY THE 3RD

RESPONDENT Annexure 3 ORIGINAL OF THE AFFIDAVIT EXECUTED BY THE
4TH RESPONDENT -11- APPENDIX OF CRL.MC 7724/2023 PETITIONER
ANNEXURES Annexure 1 TRUE COPY OF THE FINAL REPORT OF THE 2ND
RESPONDENT IN CRIME NO 271/2022 OF CHERANELOOR POLICE STATION,
ERNAKULAM DISTRICT Annexure 2 ORIGINAL OF THE AFFIDAVIT
EXECUTED BY THE 3RD RESPONDENT

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