

Sreehari, vs State of Kerala Represented by Sho Agali Police Station Through Public Prosecutor High Court of

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Court : Kerala

Decided On : Oct-13-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/7801/2023

Appellant : Sreehari,

Respondent : State of Kerala Represented by Sho Agali Police Station Through Public Prosecutor High Court of

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN FRIDAY,
THE 13TH DAY OF OCTOBER 2023 / 21ST ASWINA, 1945 CRL.MC NO. 7801
OF 2023 PETITIONERS/ACCUSED:

1 SREEHARI, AGED 20 YEARS KATTIGAL VEEDU, ONAKKADU,
OZHUR, MALAPURAM, PIN - 676307 2 NASSEB AGED 20 YEARS S/O
MUHAMMADALI, VALIYAPEEDIYAKKAL, EDAVANNA, MALAPPURAM,
PIN - 676123 3 SHAHEEB MALOOF AGED 20 YEARS

S/OSHAMSUDEEN, ELLIKKAL HOUSE, POOCHINGAL
KAVUMPADI, ROAD, PALLIKKAL, MALAPURAM, PIN - 676517 4
SARAG P RAJ AGED 19 YEARS S/O RAJESH, PALLUVEETIL HOUSE,
ARAKURISSI, MANNARKKAD PALAKKAD, PIN - 678582 BY ADV.
VINOD KUMAR.C

RESPONDENTS/S:

1 STATE OF KERALA REPRESENTED BY SHO AGALI POLICE
STATION THROUGH PUBLIC PROSECUTER HIGH COURT OF
KERALA OFFICE OF PUBLIC PROSECUTOR, ADVOCATE GENERAL
OFFICE HIGH COURT OF KERALA ERNAKULAM, PIN - 682031 2
PRASD M G AGED 48 YEARS S/O M I GEORGE, G8, ANUPALLAVI,
SASTHAPURI COLONY, KALPATHY, PALAKKAD, PIN - 678003 BY
ADV.SRI.HRITCWICK C.S., PP SRI.LIJU M.P., R2

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
13.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Dated this the 13th 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 Crime

No.198/2022 of Agali Police Station, Palakkad district. The above case is registered against the petitioners alleging offences punishable under Section 341, 323, 294(b), r/w 34 IPC and Section 3(1) of the Prevention of Damages to Public Property Act. It is submitted that the final report is already filed before the

Jurisdictional court.

3. The prosecution case is that the accused

who are the students of RGM Government College, Kotathara, on 01.09.2022 at about 4 PM, during the Onam celebration of the college, wrongfully confined the victim and assaulted the victim using abusive languages. It is also submitted that the petitioners committed the offence under Section 3(1) of the Prevention of Damages to Public Property Act. It is submitted that, when the petitioners were released on bail, the petitioners deposited an amount of Rs.5,000/-(Rupees Five thousand only) as damages sustained to the CCTV. Annexure 3 is the receipt. It is submitted that the complainant, considering the future of the students, submitted that, he is not interested to proceed with the case. But I make it clear that the amount already deposited by the petitioners need not be refunded.

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 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 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 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 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 against the petitioners in Crime No.198/2022 of Agali Police Station, Palakkad district are quashed. Sd/- P.V.KUNHIKRISHNAN DM JUDGE APPENDIX OF CRL.MC 7801/2023 PETITIONER ANNEXURES ANNEXURE1 COPY OF FIR IN CRIME

NO 198/2022 OF AGALI POLICE STATION DT 01.09.2022 ANNEXURE2
AFFIDAVIT OF 2ND RESPONDENT DT 17.04.23 ANNEXURE3 RECEIPT
SHOWING DEPOSIT OF 5000 RUPEES DT 30.11.2022 RESPONDENTS
EXHIBITS :NIL //TRUE COPY// PA TO JUDGE

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