

Aromal vs State of Kerala

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Court : Kerala

Decided On : Nov-01-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/8467/2023

Appellant : Aromal

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 1ST DAY OF NOVEMBER 2023 / 10TH KARTHIKA, 1945
CRL.MC NO. 8467 OF 2023 CRIME NO.356/2023 OF Vadakkekara Police
Station, Ernakulam CC 603/2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS
- I, NORTH PARAVUR PETITIONERS/ACCUSED 1 TO 5:

1 AROMAL AGED 21 YEARS S/O.RAJENDRAN, (FATHER'S NAME
WRONGLY SHOWN AS S/O.SURENDRAN IN FINAL REPORT)
MALAYIL HOUSE, CHITTATTUKARA, VADAKKEKARA VILLAGE,
ERNAKULAM DISTRICT, PIN - 683513 2 ARJUN AGED 21 YEARS
S/O.ARUNKUMAR, PALLATH HOUSE, CHITTATTUKARA,

VADAKKEKARA VILLAGE, ERNAKULAM DISTRICT- 683513 3 HIRAN @ KANNAN AGED 25 YEARS S/O.HARIDAS, PALLATH HOUSE, KAITHARAM, KOTTUVALLY VILLAGE, ERNAKULAM DISTRICT, PIN - 683519 4 VISHNU AGED 28 YEARS S/O.ANILKUMAR, PADINJARE PUTHSSERY HOUSE, ALUMTHURUTH, VADAKKEKARA VILLAGE, ERNAKULAM DISTRICT, PIN - 683513 5 SURYADAS AGED 21 YEARS S/O.HARIDAS, MANAKKANDATHIL HOUSE, CHITTATTUKARA, VADAKKEKARA VILLAGE, ERNAKULAM DISTRICT - 683513 BY ADV M.S.BREEZ

RESPONDENTS/STATE/VICTIMS: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 VIJIL P. VIJAYAN AGED 39 YEARS S/O.VIJAYAN, PADATH HOUSE, KAITHARAM, KOTTUVALLY VILLAGE, ERNAKULAM DISTRICT, PIN - 683519

3 SUJITH C.S AGED 35 YEARS S/O.SUSHEELAN, CHALAKKAKAM HOUSE, NEERIKODE, ALANGAD VILLAGE, ERNAKULAM DISTRICT, PIN - 4 JAYIN AGED 54 YEARS S/O.RAJENDRAN, PALLATH HOUSE, THONNIYAKAVU, KOTTUVALLY VILLAGE, ERNAKULAM DISTRICT - 683522 5 RATHEESHKUMAR AGED 49 YEARS S/O.SIVASANKARAN, KOTTAKKAPARAMBIL HOUSE, KIZHAKKEPRAM, KOTTUVALLY VILLAGE, ERNAKULAM DISTRICT, PIN - 683513 6 SINU T.R AGED 37 YEARS S/O.RAJAN, THAIPARAMBIL HOUSE, MANNAM, NORTH PARAVUR VILLAGE, ERNAKULAM DISTRICT PIN-683520, PIN - 683520 7 THANVEER AGED 24 YEARS S/O.SALIM, THOTTATHUMPADY HOUSE, PANAYIKULAM, ALANGAD VILLAGE, ERNAKULAM DISTRICT - 683511 8 SREEKESH AGED 41 YEARS S/O.SREENIVASAN, OLIYIL HOUSE, NANTHIATTUKUNNUAM, EZHIKKARA VILLAGE, ERNAKULAM DISTRICT, PIN - 683513

OTHER PRESENT: SMT SREEJA V, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01.11.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

----- CrI.M.C. No.8467 of 2023
----- Dated this the 01st day of November, 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 C.C.No.603/2023 on

the file of the Judicial First Class Magistrate Court-I, North Paravur, arising from Crime No.356/2023 of Vadakkekara Police Station. The above case is charge-sheeted alleging offences punishable under Sections 143, 147, 148, 341, 323 and 324 read with Section 149 of the Indian Penal Code.

3. The prosecution case is that the accused formed themselves into an unlawful assembly and assaulted the victims, after wrongfully confining them.

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 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.

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. The Public Prosecutor further submitted that there is criminal antecedents to the 1st petitioner. But it is conceded that the offence alleged in this particular case is minor offence.

6. This Court has considered the submission of the petitioners, victims and the Public Prosecutor and has also gone through the records including the affidavits

filed by the victims.

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 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. All further proceedings against the petitioners in C.C.No.603/2023 on the file of the Judicial First Class Magistrate Court-I, North Paravur, arising from Crime No.356/2023 of Vadakkekara Police Station , are quashed. Sd/- P.V.KUNHIKRISHNAN JV JUDGE APPENDIX OF CRL.MC 8467/2023 PETITIONER ANNEXURES Annexure-A 1 THE TRUE COPY OF THE F.I.R. DATED 08- 06-2023 IN CRIME NO.356/20223 OF VADAKKEKARA POLICE STATION, ERNAKULAM Annexure -A2 THE CERTIFIED COPY OF THE FINAL REPORT DATED 03-07-2023 IN CRIME NO.356/20223 OF VADAKKEKARA POLICE STATION Annexure -A3 A TRUE COPY OF THE NOTARIZED AFFIDAVIT DATED 25-08-2023 SWORN BY THE 2ND Annexure -A4 A TRUE COPY OF THE NOTARIZED AFFIDAVIT DATED 25-08-2023 SWORN BY THE 3RD Annexure -A5 A TRUE COPY OF THE NOTARIZED AFFIDAVIT DATED 25-08-2023 SWORN BY THE 4TH Annexure -A6 A TRUE COPY OF THE NOTARIZED AFFIDAVIT DATED 25-08-2023 SWORN BY THE 5TH Annexure - A7 A TRUE COPY OF THE NOTARIZED AFFIDAVIT DATED 25-08-2023 SWORN BY THE 6TH Annexure -A8 A TRUE COPY OF THE NOTARIZED AFFIDAVIT DATED 25-08-2023 SWORN BY THE 7TH Annexure -A9 A TRUE COPY OF THE NOTARIZED AFFIDAVIT DATED 25-08-2023 SWORN BY THE 8TH