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Adhithyan 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/8501/2023

Appellant : Adhithyan

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, CRL.MC NO. 8501 OF 2023 CRIME NO.2048/2021 OF Kilimanoor Police Station, Thiruvananthapuram AGAINST THE ORDER/JUDGMENT CC 2144/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS - III, ATTINGAL (TEMPORARY) PETITIONER/S: 1 ADHITHYAN, AGED 20 YEARS S/O SHAN, RESIDING AT SHAN NIVAS, KODUVAZHANOOR VILLAGE, KODUVAZHANOOR P.O, THIRUVANANTHAPURAM, PIN - 695612 2 AMAL, AGED 27 YEARS S/O DILEEP, RESIDING AT POORAM, POIKAKKADA, PULIMATH,

KODUVAZHANOOR P.O, THIRUVANANTHAPURAM, PIN - 695612 BY ADVS. R.N.SANDEEP B.MUHAMMED SHAHEEL RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 ARAVIND V.S., AGED 19 YEARS S/O SANTHOSH KUMAR G., RESIDING AT ARAVINDALAYAM, PLAVODE, PULIMATH, THIRUVANANTHAPURAM DISTRICT, PIN - 695612 BY ADV KEERTHI VIJAYAN 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: -2-

P.V.KUNHIKRISHNAN, J.

========== Crl.M.C No.8501 of 2023 ==========

Dated this the 1st 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 CC No.2144 of 2021 on the file

of the Judicial First Class Magistrate Court-III, Attingal (Temporary), arising from Crime No.2048 of 2021 of Kilimannor Police Station, Thiruvananthapuram. The above case is charge sheeted alleging offences punishable under Sections 323, 506(i), 384, 294(b) read with 34 IPC.

3. The prosecution case is that the accused wrongfully confined the victim and assaulted the victim using 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 affidavit filed by the victim in support of his contention. The counsel appearing for the victim also -3- 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/s 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 -4- 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 -5-

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 -6-

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 as against the petitioners in CC No.2144 of 2021 on the file of the Judicial First Class Magistrate Court-III, Attingal (Temporary), arising from Crime No.2048 of 2021 of Kilimannor Police Station, Thiruvananthapuram, are quashed. sd/- P.V.KUNHIKRISHNAN JUDGE das -7- APPENDIX OF CRL.MC 8501/2023 PETITIONER ANNEXURES Annexure A1 THE CERTIFIED COPY OF THE FINAL REPORT OF CRIME NO. 2048 OF 2021 OF KILIMANOOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT Annexure2 AN AFFIDAVIT SWORN BY THE SECOND RESPONDENT STATING THE SETTLEMENT OF ALL THE DISPUTES

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