

Sreeju vs State of Kerala

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Court : Kerala

Decided On : Dec-22-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/10524/2023

Appellant : Sreeju

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945
CRL.MC NO. 10524 OF 2023 CRIME NO.1207/2015 OF Kollam East
Police Station, Kollam AGAINST THE ORDER/JUDGMENT CC
2050/2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, KOLLAM
PETITIONERS/ACCUSED 1 TO 5:

1 SREEJU AGED 28 YEARS S/O SASIDHARAN NAIR,
VADAKKEVELIYILAZHIKAM VEEDU, KURUMANDAL PO, PARAVOOR
VILLAGE, KOLLAM, PIN - 691334 2 ANANDHU AGED 27 YEARS S/O
HARIKUMAR, MINI SADANAM, KAIRALI NAGAR-210, KUREEPUZHA

PO, KOLLAM WEST VILLAGE, KOLLAM, PIN - 3 THOUFEEK AGED 29 YEARS S/O NIZAMUDHEEN, KULANGARA PUTHAN VEEDU, THATTAMALA CHERI, ERAVIPURAM PO, KOLLAM, PIN - 691011 4 TOMY AGED 28 YEARS S/O YESHUDASAN, GEETHA BHAVANAM, THEKKUMBAGAM VILLAGE, THEKKUMBHAGAM PO, CHAVARA, KOLLAM, PIN - 691584 5 KIRAN KUMAR AGED 27 YEARS S/O SUNILKUMAR, MADAVANA PUTHAN VEEDU, KOTTAPURAM PO, PARAVOOR VILLAGE, KOLLAM, PIN - 691334 BY ADVS. C.R.JAYAKUMAR NOBEL RAJU ALEENA JOSE

RESPONDENTS/STATE AND DEFACTO COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 THE STATION HOUSE OFFICER KOLLAM EAST POLICE STATION, KOLLAM PO, KOLLAM DISTRICT, PIN - 691001 CRL.MC NO. 10524 OF 2023 2 3 AMBAREESH AGED 29 YEARS S/O SASIDHARAN PILLAI, SREENILAYAM, MEYANA CHERI, VELINALLOOR VILLAGE, KOTTARAKKARA, KOLLAM, PIN - 691510 4 SOORAJ S V AGED 28 YEARS S/O SURESH KUMAR, MELOOTTU VALAYIL VEETIL, KUPPANA CHERRY, THRIKKADAVOOR VILLAGE, KOLLAM, PIN - 691601 OTHER PRESENT: SMT SREEJA V, PP SRI.B.SIBI THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22.12.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 10524 OF 2023 3

P.V.KUNHIKRISHNAN, J.

----- CrI.M.C. No.10524 of 2023
----- Dated this the 22nd day of December,
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.2050/2015 on the file

of the Judicial First Class Magistrate Court-II, Kollam arising from Crime No.1207/2015 of Kollam East Police Station. The above case is charge sheeted alleging offences punishable under Sections 143, 147, 148, 341, 294(b), 323, 324 r/w 149 of IPC.

3. The prosecution case is that accused formed themselves into an unlawful assembly with dangerous weapon and assaulted the victim using filthy language.

4. The learned counsel for the petitioners submit that the

parties have settled their dispute and do not wish to pursue the CRL.MC NO. 10524 OF 2023 4 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.

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 CRL.MC NO. 10524 OF 2023 5 466). 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

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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 CRL.MC NO. 10524 OF 2023 7

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 CC No.2050/2015 on the file of the Judicial First Class Magistrate Court-II, Kollam arising from Crime No.1207/2015 of Kollam East Police Station are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE ska CRL.MC NO. 10524 OF 2023 8 APPENDIX OF CRL.MC 10524/2023 PETITIONER ANNEXURES Annexure A1 CERTIFIED COPY OF THE FIR IN CRIME NO. KOLLAM DATED

04.06.2015 Annexure A2 CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 1207/2015 OF KOLLAM EAST POLICE STATION, KOLLAM DATED 24.06.2015 Annexure A3 THE AFFIDAVIT PREPARED BY THE 3RD RESPONDENT DATED 21/08/2023 Annexure A4 THE AFFIDAVIT PREPARED BY THE 4TH RESPONDENT DATED 21/08/2023

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