

Arif vs Latheef

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Court : Kerala Orders

Decided On : Feb-25-2022

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : Crl.MC/4654/2021

Appellant : ARIF

Respondent : Latheef

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL FRIDAY,
THE 25TH DAY OF FEBRUARY 2022 / 6TH PHALGUNA, 1943 CRL.MC
NO. 4654 OF 2021 CC 1629/2016 OF JUDICIAL MAGISTRATE OF
FIRST CLASS ,TIRUR PETITIONERS/ACCUSED 1 TO 4:

1 ARIF AGED 32 YEARS S/O. MUHAMMEDKUTTY,
PADIKKAPARAMBIL HOUSE, AANANTHAVOOR, MALAPPURAM
DISTRICT, PIN - 676 301. 2 ZAINUDDIN AGED 46 YEARS S/O.
KUNHAMMED, KADASSERI VALAPPIL HOUSE, AANANTHAVOOR,
MALAPPURAM DISTRICT -676301 3 ABDUL KHADER AGED 21
YEARS S/O.MOIDEEN KUTTY, CHOLAKKAL HOUSE,

VALIPAPARAPPUR, ANANTHAVOOR, MALAPPURAM DISTRICT - 676 301. 4 MOHAMMED NISAR AGED 26 YEARS S/O. UNNEEN, THOTTUPRATH HOUSE, AANANTHAVOOR, MALAPPURAM DISTRICT - 676301. BY ADVS. K.K.MOHAMED RAVUF P.CHANDRASEKHAR

RESPONDENT/STATE/ACCUSED 5 TO 10 & COMPLAINANT : 1 LATHEEF AGED 40 YEARS S/O. MAMMI, PALLATH HOUSE, VALIYAPARAPPUR, AANANTHAVOOR, MALAPPURAM DISTRICT, PIN - 676 301. CrI.M.C. 4654/2021 2

2 MOHAMMED THAYYIB AGED 33 YEARS S/O. SAIDALAVI, PADIKKAPARAMBIL HOUSE, VALIYAPARAPPUR, AANANTHAVOOR, MALAPPURAM DISTRICT - 676 301. 3 MUSTHAFA, AGED 45 YEARS S/O. MAMMY, PALLATH HOUSE, VALIPARAPPUR, AANANTHAVOOR, MALAPPURAM DISTRICT -676 301. 4 AZEEZ AGED 44 YEARS S/O. SAIDALAVI, PADIKKPARAMBIL HOUSE, VALIYAPARAPPUR, AANANTHAVOOR, MALAPPURAM DISTRICT - 676301. 5 NAZER AGED 47 YEARS S/O. KUNHU, THEKKEPEEDIYEKKAL HOUSE, VALIPARAPPUR, MALAPPURAM DISTRICT - 676301. 6 ABDUL GAFOOR AGED 23 YEARS S/O. MUHAMMED, PARAPPURATH HOUSE, AANANTHAVOOR, MALAPPURAM DISTRICT - 676301. 7 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031 (REPRESENTING STATION HOUSE OFFICER, KALPAKANCHERY POLICE STATION, MALAPPURAM DISTRICT) BY ADV K.A.ANISH

OTHER PRESENT: SR.PP - SMT. SREEJA V. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18.01.2022, THE COURT ON 25.02.2022 PASSED THE FOLLOWING: CrI.M.C. 4654/2021 3

ORDER

Petitioners are accused Nos.1 to 4 in C.C. 1629/2016 on the file of the Judicial First Class Magistrates Court, Tirur, genesis of which is the final report in crime 431/2016 which was registered on 05.08.2016 suo motu by the Additional Sub Inspector of Kalpakanchery police station alleging offence under Section 160 of the IPC. It is alleged that on 05.08.2016 at 14.00 hours, on getting information that there is law and order problem on the public road in front of Parappoor Juma Masjid, the Additional Sub Inspector and party proceeded to the said place and found eight persons engaged in fighting each other in public road causing disturbance to peace and tranquility in the area. When the police party reached there, all the eight persons dispersed and thus the crime was registered. After investigation, charge sheet was laid alleging offence under Sections 160, 341, 323 and 324 of the IPC against ten persons; petitioners are accused 1 to 4 whereas accused 5 to 10 are respondents 1 to 6. According to the petitioners, they belong to Sunni group headed by A.P. Aboobacker Musaliyar and respondents 1 to 6 belong to Sunni group headed by E.K.Aboobacker Musaliyar. The petitioners and the party respondents are close relatives; except some ideological disputes between the two groups there is no difference of opinion among them. Accused 1, 6 and 8 are close

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relatives and are from the very same family. Except the fact that they show allegiance to different factions of Sunni groups headed by two different leaders, there is no difference of opinion among themselves. Now the elders in the families, the village karanavar in the locality and also elders of both the factions intervened and the matter has been settled, both of them do not want to prosecute the case further. In the circumstances, entire proceedings are sought to be quashed invoking jurisdiction under Section 482 of the Code of Criminal Procedure.

2. I heard the learned counsel for the petitioners and also the learned Senior Public Prosecutor.

3. According to the learned counsel for the petitioners, even though

offence under Section 160 of the IPC is also alleged, there is absolutely no mentioning in the charge that the alleged fight between the two groups had broken peace and tranquility in the area, which is an important ingredient to attract offence under Section 160 of the IPC. In this connection, the learned counsel relied on the decision reported in Podan and others v. State of Kerala [1962 Cri LJ 339]. According to the learned counsel, in order to sustain a conviction for offence of affray there must be breach of public peace and tranquility. The counsel also highlighted the arguments of Sri. V.R.

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Krishna Iyer as the counsel who appeared for the petitioners. He also relied on the decisions reported in Gadadhar Guru and another v. State of Orissa [1989 KHC 1552] of Orissa High Court, Pushpa and others v. Ravi and others [2007 KHC 6813] of Madras High Court and Giridharilal Gupta and others v. State of Orissa and others [MANU/OR/0153/1983]. Referring to the decision of the Hon'ble Apex Court in Rajeev Kourav v. Baisahab and others [2020 KHC 6139] he said that in order to quash proceedings under Section 482 Cr.P.C. the statements of witnesses recorded under Section 161 of the Cr.P.C. cannot be looked into.

4. There cannot be any dispute on the ingredients necessary for

bringing out an offence under Section 160 IPC or the fact that previous statements of the witnesses recorded under Section 161 of the Cr.P.C. cannot be looked into for quashing the proceedings under Section 482 of the Cr.P.C. But for reasons more than one, the prayer for quashing the proceedings on the ground of settlement reached inter se between the

accused persons, cannot be accepted.

5. Firstly, as noticed earlier, the crime was registered suo motu by the Additional Sub Inspector after having found eight accused persons engaged in fighting in a public place. Initially the crime was registered under CrI.M.C. 4654/2021 6

Section 160 IPC alone, but later the final report was filed arraigning ten accused persons, the petitioners as well as respondents 1 to 6, not only alleging offence under Section 160 IPC but also under Sections 341, 323 and 324 IPC. In the FIR itself, it is stated that he had found the persons engaged in breach of public peace and tranquility which is one of the necessary elements to attract Section 160 IPC, despite the fact that such a version is not made mention in the charge sheet.

6. Secondly, it is strange to note that the petitioners have approached

this Court, invoking jurisdiction under Section 482 Cr.P.C., for quashing the proceedings on the basis of some settlement reached, inter se, between two groups of accused persons. The crime was registered when two groups owing allegiance to different leaders of Sunni sects were found engaged in open fight in the public place. The precise allegation against them is that in front of the Parappur Juma Masjid, while Arif and Nisar, i.e. petitioners 1 and 4 respectively, were distributing notice on the public road, respondents 1, 2, 3 and 6 restrained them and manhandled petitioners 1, 3 and 4. Then the 5 th respondent beat those three persons with a wooden reeper. Respondents belong to E.K. Sunni group whereas others belong to A.P. Sunni group. Letters 'EK' and 'AP' refer to the initials of leaders whom they follow. Then

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respondents 1 and 3 were beaten up by all the four petitioners. The 1 st petitioner had beaten the 1st respondent with a wooden reeper. To put it in other words, it was not a one sided game. No one can say that it was

an arbitrary attack by the respondents against the petitioners or vice versa. There was no passive submission on beating by one group. Both the factions were engaged in fighting each other in public place. Each group had manhandled the other group and also used wooden reeper in the attack. That was how offence under Sections 341, 323 and 324 of the IPC also was incorporated. When the final report was filed, all the ten persons were summoned by the Court; now they have reached some kind of settlement among them and, on that basis, have approached this Court stating that the matter is settled and the proceedings are sought to be quashed.

7. As mentioned earlier, the settlement reached inter se between or among the accused persons cannot be highlighted to quash the proceedings. In

order to attract offence under Section 160 of IPC it is peremptory that there

must be two or more persons fighting each other in public place disturbing public peace. The allegations are sufficient to say that the petitioners on the one side and respondents on the other side were found engaged in open fight on the public road, despite the fact that there is no clear averment in the Crl.M.C. 4654/2021 8

charge sheet that they had caused disturbance to public peace. It is a matter of inference that fight among ten persons on the public road at broad day light at 2:30 hours would necessarily cause breach of peace and tranquility. Even if that aspect is ignored, as I noticed earlier, there are offences under Sections 341, 323 and 324 IPC as well and it is a criminal proceeding initiated suo motu by the Additional Sub Inspector of police.

8. Settlement reached among the accused have no bearing in this

case. It is a proceeding initiated by the Additional Sub Inspector who stands in the place of the complainant. To sum up, there is absolutely no merit in the prayer for quashing the proceedings. The Crl.M.C. is devoid of merits and is dismissed. Sd/-

K.HARIPAL JUDGE okb/24.2.22 //True copy// P.S. to Judge

Crl.M.C. 4654/2021 9 APPENDIX OF CRL.MC 4654/2021 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE FIR IN CRIME NO.431/2016 OF KALPAKANCHERRY POLICE STATION. Annexure A2 TRUE COPY OF CHARGE SHEET IN C.C.NO.1629/2016 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT, TIRUR. Annexure A3 AFFIDAVIT DATED 30.9.2021 SWORN TO BY THE 2ND Annexure A4 AUTHORISATION GIVEN BY THE RESPONDENT 1 AND 3 TO 6 IN FAVOUR OF THE 2ND RESPONDENT TO SWEAR THE AFFIDAVIT FOR AND ON THEIR BEHALF.

Annexure A5

AFFIDAVIT DATED 3.12.2021 SWORN TO BY THE

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