

Baburaj vs State of Kerala

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Court : Kerala

Decided On : Oct-30-2020

Judge : Honourable Mr. Justice Alexander Thomas

Appeal No. : Crl.MC/8618/2017

Appellant : Baburaj

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942
CRL.MC.NO.8618 OF 2017 LP 71/2013 OF JUDICIAL MAGISTRATE
OF FIRST CLASS-II, PERINTHALMANNA CRIME NO.177/2007 OF
KOLATHUR POLICE STATION, MALAPPURAM
PETITIONER/ACCUSED NO.2: BABURAJ, AGED 39 YEARS, S/O.
KUNJAN, KOZHIYHODI HOUSE, VADAKKUMPURAM,
MOORKANADU, MALAPPURAM DISTRICT. BY ADV.
SRI.MANSOOR.B.H. RESPONDENTS/STATE AND COMPLAINANT: 1
STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031. REPRESENTING

THROUGH STATION HOUSE OFFICER, KOLATHUR POLICE STATION, MALAPPURAM DISTRICT. 2 AMINA W/O. MOIDEEN, KALAPARAMBIL HOUSE, VADAKKUMPURAM, MALAPPURAM DISTRICT. SRI.B.JAYASURYA, PUBLIC PROSECUTOR, SRI.B.H.ANSIL, ADVOCATE FOR R2 THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30.10.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ALEXANDER THOMAS, J.

----- CrI.M.C. No. 8618 of 2017
----- Dated this the 30th day of October, 2020

ORDER

Heard Sri.B.H.Manzoor, learned counsel appearing for the petitioner, Sri.B.Jayasurya, learned Public Prosecutor appearing for R-1 (State) and Sri.B.H.Anzil, learned counsel appearing for contesting respondent No.2 (lady defacto complainant).

2. The petitioner herein has been originally arrayed as accused No.2 among the two accused in Crime No.177/2007 of Kolathur Police

Station, Malappuram District, for offences punishable under Secs.294(b), 506(i) r/w 34 of the IPC. The police after investigation has filed the impugned Anx.A final report/charge which initially led to the pendency of Calender Case C.C.No.196/2012 on the file of the JFCM-II, Perinthalmanna. Since the petitioner was not available for trial, the case against him was split up and the trial as against accused No.1 had

proceeded and the JFCM-II, Perinthalmanna had pronounced

judgment in C.C. No. 196/2012 acquitting accused No.1. The case

against accused No.2 is now pending as Long Pending Case L.P.No.71/2013 on the file of the JFCM-II, Perinthalmanna. Now it is submitted that two grounds are

urged for the plea for quashment. The ..3..

first ground is that, the entire disputes between the petitioner accused and the 2nd respondent have now been resolved and the 2nd respondent has filed Anx.B affidavit dated 28.11.2017 stating that she has no further issues against the petitioner and that the matter has been settled between them and that she has no objection in quashing the impugned criminal proceedings to the extent it is directed as against the petitioner, etc. Further that the original accused No.1 has been acquitted by the JFCM-II, Perinthalmanna, in C.C.No.196/2012. The second ground raised by the petitioner is that, the learned Magistrate has already acquitted accused No.1 in C.C.No.196/2012 and therefore the very substratum of the prosecution case stands crumbled on account of said acquittal and therefore the petitioner is entitled for the benefit of quashment of impugned criminal proceedings on the ground of settlement etc

3. In a catena of decisions, the Apex Court has held that,

in appropriate cases involving even non-compoundable offences, the High Court can quash prosecution by exercise of the powers under Sec.482 of the Cr.P.C., if the parties have really settled the whole dispute or if the continuance of the prosecution will not ..4..

serve any purpose. Here, this Court finds a real case of settlement between the parties and it is also found that continuance of the prosecution in such a situation will not serve any purpose other than wasting the precious time of the court, when the case ultimately comes before the court. On a perusal of the petition and on a close scrutiny of the investigation materials on record and the

affidavit of settlement and taking into account the attendant facts

and circumstances of this case, this Court is of the considered opinion that the legal principles laid down by the Apex Court in the cases as in *Gian Singh v. State of Punjab* reported in 2013 (1) SCC (Cri) 160 = (2012) 10 SCC 303 and *Narinder Singh and others v. State of Punjab and anr.* reported in

(2014) 6 SCC 466, more particularly paragraph 29 thereof, could be applied in this case to consider the prayer for quashment.

4. Going by the abovesaid legal principles laid down by

the Apex Court and various High Courts including this Court, this Court is of the considered view that as the offences alleged against the petitioner are those under Secs.294(b), 506(i) r/w 34 of the IPC, the case could be considered for quashment on the ground of settlement between the parties. Further, the only allegation in

..5..

support of the charge of Sec.294(b) of the IPC (use of obscene words) is that the petitioner accused has used abusive and foul language to the defacto complainant. It is by now well settled that the mere use of abusive and foul language will not constitute the offence as per Sec.294(b) of the IPC and that the prosecution should have a definite case that the words uttered by the petitioner are those capable of arousing impure sexual thoughts on the minds of hearers and that it has aroused lascivious and prurient interest in the minds of the hearers and in the absence of such allegations the offence under Sec.294(b) of the IPC will not lie. {See Latheef v. State of Kerala [2014 (2) KLT 987], P.T.Chacko v. Nainan Chacko [1967 KLT 799] and Sangeetha Lakshmana v. State of Kerala [2008 (2) KLT 745] }

5. Further it has to be borne in mind that the accused

No.1 has already been acquitted by the trial court after trial in C.C.No.196/2012. For all these reasons this Court is of the considered view that, the continuance of impugned criminal proceedings would amount to mere wastage of precious time and resources of the judicial organs and the prosecution machinery. ..6..

Accordingly it is ordered that the impugned Anx.A final report/charge sheet filed in Crime No.177/2007 of Kolathur Police Station, Malappuram District, which has now led to the pendency of Long Pending Case L.P. No. 71/2013 on the file of the JFCM-II, Perinthalmanna, which has arisen out of original Calender Case C.C. No. 196/2012 on the file of the JFCM-II, Perinthalmanna, as against the petitioner

herein (accused No.2 in the original case) and all further proceedings emanating therefrom as against the petitioner herein will stand quashed and set aside.

6. The petitioner will produce certified copy of this order

before the Investigating Officer concerned as well as before the JFCM-II, Perinthalmanna, who is dealing with L.P. No. 71/2013 for necessary information.

With these observations and directions the above Criminal Miscellaneous Case will stand disposed of. Sd/- ALEXANDER THOMAS, JUDGE MMG ..7..
APPENDIX PETITIONER'S EXHIBITS: ANNEXURE A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 177 OF 2007 OF KOLATHUR POLICE STATION, MALAPPURAM. ANNEXURE B AFFIDAVIT OF SETTLEMENT DATED

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