

Uthamkumar Vs. Manju

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Court : Kerala

Decided On : Apr-21-2015

Judge : Honourable Mr.Justice K.Harilal

Appellant : Uthamkumar

Respondent : Manju

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL TUESDAY, THE 21ST DAY OF APRIL 2015 1ST VAISAKHA, 1937 CrI.MC.No. 2257 of 2015 () ----- CC33852012 of J.F.C.M. COURT, ALATHUR CRIME NO. 940/2012 OF WADAKKANCHERRY POLICE STATION , PALAKKAD PETITIONER(S)/ACCUSED NOS.1 - 3: ----- 1. UTHAMKUMAR, AGED 34 YEARS S/O.LATE KESAVAN, CHALLIPARAMBU HOUSE KANNAMBRA P.O., PALAKKAD.

2. KARTHYANI, W/O.LATE KESAVAN, AGED 62 YEARS CHALLIPARAMBU HOUSE, KANNAMBRA P.O., PALAKKAD 3 RUBY, D/O.LATE KESAVAN, AGED 37 YEARS CHALLIPARAMBU HOUSE, KANNAMBRA P.O., PALAKKAD. BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL) RESPONDENT(S)/DEFACTO COMPLAINANT AND STATE:: ----- 1. MANJU, D/O.BALAN, AGED 29 YEARS, THONIPADAM, VAVULLYAPURAM, ALATHUR, PALAKKAD-

678541.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. R1 BY ADV. SRI.P.M.RAFIQ R2 BY PUBLIC PROSECUTOR SRI.SHYSON P.MANGUZHA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 2257 of 2015 ()

----- APPENDIX PETITIONER(S)' EXHIBITS
----- ANNEXURE-A - TRUE COPY OF THE FINAL REPORT IN CRIME NO.940/2012 OF VADAKKENCHERRY POLICE STATION IN PALAKKAD DISTRICT IN C.C.NO.3385/2012 ON THE FILE OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, ALATHUR. ANNEXURE.B - AFFIDAVIT SWORN BY THE 1ST RESPONDENT HEREIN EVIDENCING THE AFORESAID SETTLEMENT. RESPONDENT(S)' EXHIBITS : NIL
----- OKB True copy P.A. to Judge K.HARILAL, J.

----- CrI.M.C. No.2257 of 2015 -----
----- Dated this the 21st day of April, 2015.

ORDER

The petitioners herein are the accused 1 to 3 in C.C. No.3385/2012 on the files of the Judicial First Class Magistrate's Court, Alathur registered for the offences punishable under Section 498A read with Section 34 of the Indian Penal Code. The prosecution allegation is that the accused, in furtherance of their common intention to get more money and gold from the de facto complainant, subjected her to physical and mental cruelty demanding more money and gold ornaments. Therefore the prosecution alleges that the accused is guilty of the aforesaid offences. After investigation, Annexure-A final report has been filed before the Judicial First Class Magistrate's Court, Alathur.

2. In this petition, it is stated that the dispute between the petitioners and the de facto complainant CrI.M.C.2257/15-B :2: has been settled amicably and now the first respondent does not want to continue the present prosecution any further. It is further stated that the first petitioner and the first respondent are now living

together as husband and wife. Under the above circumstances, the petitioners filed this CrI.M.C. for quashing the entire prosecution proceedings against the petitioners under Annexure-A final report, invoking the jurisdiction and power under Section 482 of the Code of Criminal Procedure. The first respondent has filed Annexure-B affidavit stating that they have settled the entire dispute and now the first respondent does not want to proceed with the prosecution.

3. Heard the learned counsel for the petitioners, the learned Public Prosecutor and the learned counsel for the first respondent.

4. The learned counsel for the petitioners cited Gian Singh v. State of Punjab [2012 (4) KLT108(SC)] and submitted that even though the offence under Section CrI.M.C.2257/15-B :3:

498. is a non-compoundable offence, the same can be compounded in exercise of jurisdiction under Section 482 of the Cr.P.C., if the parties have settled the dispute out of court.

5. I have meticulously considered the decision laid down in Gian Singh v. State of Punjab [2012 (4) KLT108(SC)]. In the above case, three Judge Bench of the Apex Court, on a reference, considered the question whether the High Court has power to quash criminal proceedings involving non-compoundable offences on the basis of the compromise reached between the offender and the victim and answered as given below:

"7. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or F.I.R. or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under S.320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz;(i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category CrI.M.C.2257/15-B

:4: can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc., cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc., or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between CrI.M.C.2257/15-B :5: the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding." 6. In view of the proposition laid down above, the question to be considered, in the instant case, is, whether the non-compoundable offence involved in this case can be compounded, in the exercise of the inherent power under Section 482 of the Code of Criminal Procedure. Prima facie, I find that the offences alleged against the petitioners will not come under the category of non-compoundable offences, which are specifically excluded from composition, in the

exercise of inherent power under Sec.482 of the Cr.P.C. Going by the affidavit filed by the de facto complainant, it is seen that the dispute between the accused and the victim had been amicably settled and at present the de facto complainant has no subsisting grievance at all. The de facto complainant does not want to proceed with the prosecution against the accused. Full and final CrI.M.C.2257/15-B :6: settlement and compromise with the victim are evidenced by Annexure-B. In view of the compromise between the petitioners and the victim, I find that the possibility of conviction is remote, bleak, and continuation of the criminal case would put the parties to great oppression, prejudice and also tantamount to abuse of the process of the court. The present criminal prosecution against the accused must be put to an end to secure the interest of justice.

7. In this analysis, the prosecution proceedings against the petitioners under Annexure-A final report will stand quashed. This petition is allowed. Sd/- (K.HARILAL, JUDGE) okb.

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