

Rasheed Vs. State of Kerala

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Court : Kerala

Decided On : Apr-21-2015

Judge : Honourable Mr.Justice K.Harilal

Appellant : Rasheed

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL TUESDAY, THE 21^T DAY OF APRIL 2015 1ST VAISAKHA, 1937 CrI.MC.No. 2327 of 2015 (B) ----- CRMP97842015 of J.F.C.M. COURT, NILAMBUR CRIME NO. 196/2015 OF EDAKKARA POLICE STATION, MALAPPURAM PETITIONER(S)/ACCUSED NO.1 TO3 ----- 1. RASHEED.M., AGED 30 YEARS, S/O.SAIDALAVI, ANAPATTATH HOUSE, PALEMAD P.O. EDAKKARA, MALAPPURAM DISTRICT.

2. SAIDALAVI, AGED 54 YEARS, S/O.MUHAMMADALI, ANAPATTATH HOUSE, PALEMAD P.O. EDAKKARA, MALAPPURAM DISTRICT.

3. JAMEELA, AGED 52 YEARS, W/O.SAIDALAVI, ANAPATTATH HOUSE, PALEMAD P.O. EDAKKARA, MALAPPURAM DISTRICT. BY ADV. SRI.U.K.DEVIDAS RESPONDENT(S)/DEFACTO COMPLAINANT/STATE:

----- 1. STATE OF

KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM.

2. JASNA, AGED25YRS., D/O.ABDULSALAM, VANIYAMBALAVAN VEEDU, BHOODANAM COLONY, POTHUKALLU AMSOM, NILAMBUR, MALAPPURAM DISTRICT - 679 336 R1 BY PUBLIC PROSECUTOR SRI.SHYSON P.MANGUZHA R2 BY ADV. SMT.P.M.SHAHIDA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2104-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 2327 of 2015 ()
----- APPENDIX PETITIONER(S)' EXHIBITS
----- ANNEXURE I: TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE SECOND RESPONDENT ANNEXURE II: TRUE COPY OF THE F.I.R IN EDAKKARA POLICE STATION CRIME NO.196/2015. ANNEXURE III: ORIGINAL OF THE AFFIDAVIT DATED44/2015 SWORN BY THE2D RESPONDENT RESPONDENT(S)' EXHIBITS : NIL
----- OKB True copy P.A. to Judge K.HARILAL, J.

----- CrI.M.C. No.2327 of 2015 -----
____ Dated this the 21st day of April, 2015.

ORDER

Petitioners are the accused in Crime No.196/2015 of Edakkara Police Station on the files of the Judicial First Class Magistrate's Court, Nilambur. The above crime was registered for the offences punishable under Sections 498A and 406 read with Section 34 of the Indian Penal Code. The second respondent was the wife of the first petitioner and other petitioners are the in-laws of the second respondent. The above crime was registered on the basis of the private complaint filed by her before the lower court and after investigation the crime was registered against the petitioners under Annexure-II F.I.R. During the pendency of investigation, the dispute between the first petitioner and the second respondent has been settled out of court and owing to the settlement the CrI.M.C.2327/2015-B :2: second respondent is not interested to prosecute the petitioners any further. The second respondent has filed Annexure-III affidavit stating that she does not intend to proceed with the prosecution against the petitioners. This petition is filed with a

prayer to quash Annexure-II F.I.R. in view of the settlement entered into between the first petitioner and the second respondent.

2. Heard the learned counsel for the petitioners, the learned Public Prosecutor and the learned counsel for the respondents.

3. Both counsel appearing for the respective parties urged for quashing Annexure-II F.I.R. invoking the inherent power under Section 482 of the Cr.P.C. and the learned counsel for the petitioners cited Gian Singh v. State of Punjab [2012 (4) KLT108(SC)].

4. 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 CrI.M.C.2327/2015-B :3: 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 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 CrI.M.C.2327/2015-B :4: 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, 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 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." 5. In view of the proposition laid down above, the question to be considered, in the instant case, is, CrI.M.C.2327/2015-B :5: 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 prosecution against the accused. Full and final settlement and compromise with the victim are evidenced by Annexure-III. 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 CrI.M.C.2327/2015-B :6: 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.

6. In this analysis, the prosecution proceedings against the petitioners in Crime No.196/2015 of Edakkara Police Station on the files of the Judicial First Class Magistrate's Court, Nilambur will stand quashed, in the exercise of jurisdiction and power under Section 482 of the Cr.P.C. This petition is allowed. Sd/- (K.HARILAL, JUDGE) okb.

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