

Abdul Gafar Vs. Murshida.A

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Court : Kerala

Decided On : Apr-28-2015

Judge : Honourable Mr. Justice Anil K.Narendran

Appellant : Abdul Gafar

Respondent : Murshida.A

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN TUESDAY, THE 28TH DAY OF APRIL 2015 8TH VAISAKHA, 1937 CrI.MC.No. 2467 of 2015 ----- CRIME NO. 190/2015 OF CHANDERA POLICE STATION , KASARGOD DISTRICT ----- PETITIONER(S) ACCUSED : ----- 1. ABDUL GAFAR, AGED 32 YEARS, S/O. IBRAHIM, RESIDING AT SAFIYA MANZIL, AYITTI P.O., TRIKARIPUR, KASARGOD DISTRICT.

2. KUNHAMINA, AGED 46 YEARS, D/O. IBRAHIM, RESIDING AT RAZAK VILLA, AYITTI P.O., TRIKARIPUR, KASARGOD DISTRICT.

3. SULAIKHA, AGED 43 YEARS, W/O. MUSTHAFA, RESIDING AT SAFIYA MANZIL, AYITTI P.O., TRIKARIPUR, KASARGOD DISTRICT.

4. SAJITHA, AGED 39 YEARS, W/O. ASHARAF, RESIDING AT SAFIYA MANZIL, AYITTI P.O., TRIKARIPUR, KASARGOD DISTRICT.

5. NABEESATH, AGED 37 YEARS, W/O. SHOUKATH, RESIDING AT SAFIYA MANZIL, AYITTI P.O., TRIKARIPUR, KASARGOD DISTRICT. BY ADV. SRI.T.MADHU RESPONDENT(S)/STATE : ----- 1. MURSHIDA.A, AGED 21 YEARS, D/O. AHAMED M., RESIDING AT DHARUL AMAN, ELAMBACHI, SOUTH TRIKARIPUR VILLAGE, HOUSDURG TALUK, KASARGOD DISTRICT- 671 311.

2. THE STATE OF KERALA THROUGH THE STATION HOUSE OFFICER, CHANDERA POLICE STATION, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM- 682 031. R1 BY ADV. SMT.G.SANGEETHA R2 BY PUBLIC PROSECUTOR SRI.A.J.JOSE AEDAIODI THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC.NO. 2467 OF 2015----- APPENDIX PETITIONER(S)' ANNEXURES : ANNEXURE A1: THE TRUE CERTIFIED COPY OF THE COMPLAINT IN C.M.P. NO. 2734/2015 ON THE FILES OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE'S COURT-1, HOUSDURG. ANNEXURE A2: THE TRUE COPY OF THE FIR IN CRIME NO.190/2015 OF CHANDERA POLICE STATION ANNEXURE A3: THE TRUE COPY OF THE AGREEMENT DATED 19/03.2015 ENTERED INTO BETWEEN THE 1ST PETITIONER AND THE 1ST RESPONDENT. ANNEXURE A4: THE AFFIDAVIT DATED 20/03.2015 SWORN IN BY THE 1ST RESPONDENT. RESPONDENT(S)' ANNEXURES : NIL //TRUE COPY// P.S.TO JUDGE. Msd. ANIL K.NARENDRAN, J ----- Crl.M.C.No.2467 Of 2015 ----- DATED THIS THE 28th DAY OF APRIL, 2015

ORDER

Petitioners are the accused 1 to 5 in Crime No.190/2015 of Chandera Police Station, Kasaragod District. The offences alleged against the petitioners are under Sections 498A read with section 34 of the Indian Penal Code. Now, it is submitted on behalf of the petitioners that the entire disputes between the petitioners and the first respondent have already been settled and the first respondent has also sworn to an affidavit which is produced along with Crl.M.C. as Annexure A4. Therefore,

the prayer in this Crl.M.C. is to quash the entire proceedings in Crime No.190/2015 of Chandera Police Station.

2. Heard, the learned counsel for petitioners, learned counsel appearing for the first respondent and the learned Public Prosecutor for the second respondent.

3. In *Gian Singh v. State of Punjab* (2012 (10) SCC303), the Apex Court held that, the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its Crl.M.C.No.2467/15 -2- inherent jurisdiction is distinct and different from the power given to a Criminal Court for compounding the offences under Section 320 of the Code of Criminal Procedure. 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 FIR 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 Crl.M.C.No.2467/15 -3- 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 criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purpose of quashing, particularly offences arising from commercial, financial, mercantile, civil partnership or such like transactions or the offences arising out of matrimonial 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 these categories of cases, High Court may quash criminal proceedings, if in its view, because of the compromise between the offender and the victim, the possibility of a 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 may consider whether it would be unfair or contrary to the interest of justice to continue with the criminal Crl.M.C.No.2467/15 -4- proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and wrong-doer 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 is in affirmative the High Court shall be well within its jurisdiction to quash the criminal proceedings.

4. The allegation against the petitioners is that they have committed offences punishable under Section 498A read with Section 34 of the Indian Penal Code.

5. Now as submitted by both sides, the entire dispute between the petitioners and the first respondent has already been settled amicably and the learned counsel for the first respondent has also stated that the first respondent does not want to prosecute the criminal case filed against the petitioners. The first respondent has also sworn to an affidavit before this Court as Annexure A4 in this regard.

6. In such circumstances, this is a fit case in which the proceedings pending against the petitioners in Crime Crl.M.C.No.2467/15 -5- No.190/2015 of Chandra Police Station, Kasaragod District can be quashed by this Court invoking the powers under Section 482 of the Code of Criminal Procedure, in the light of the principles laid down by the Apex Court in Gian Singh's case (supra). In the result, this Crl.M.C. is allowed and the entire proceedings in Crime No.190/2015 of Chandra Police Station, Kasaragod District against the petitioners is quashed.
Sd/- ANIL K.NARENDHAN, JUDGE ds

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