

Anzar Vs. State of Kerala

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Court : Kerala

Decided On : Apr-28-2015

Judge : Honourable Mr. Justice Anil K.Narendran

Appellant : Anzar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN TUESDAY, THE 28^H DAY OF APRIL 2015 8TH VAISAKHA, 1937 CrI.MC.No. 2542 of 2015 ()
----- CC.NO. 553/2010 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT -II, KOLLAM -----
PETITIONER(S)/ACCUSED 1 TO 4 ----- 1.
ANZAR, S/O. KASIMKUNJU, AGED 33 YEARS, ABINSHA MANZIL HOUSE,
ITHIKKARA, MYLAKKAD P.O., KOLLAM.

2. HAJRUMMA, AGED 56 YEARS, ABINSHA MANZIL HOUSE, ITHIKKARA,
MYLAKKAD P.O., KOLLAM.

3. BATHISHA, D/O. HAJRUMMA, AGED 39 YEARS, ABINSHA MANZIL HOUSE,
ITHIKKARA, MYLAKKAD P.O., KOLLAM.

4. MUMTHAZ, D/O. HAJRUMMA, AGED 35 YEARS, ABINSHA MANZIL HOUSE,
ITHIKKARA, MYLAKKAD P.O., KOLLAM. BY ADV. SRI.M.L.SURESH KUMAR

RESPONDENT(S)/DEFACTO

COMPLAINANT/STATE

:

----- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-
682 031.

2. SHINY, AGED32YEARS, D/O. KULSUM BEEVI, THODIYIL VADAKKATHIL,
GANDHI NAGAR-42, ARUNOOTTIMANGALAM MANGADU P.O., KOLLAM
DISTRICT. R1 BY PUBLIC PROSECUTOR SRI.ABHIJETT LESSLI R2 BY ADV.
SRI.LOWEL CHERIAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON2804-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING: sts CrI.MC.No. 2542 of 2015 () -----

APPENDIX PETITIONER(S)' ANNEXURES: -----

ANNEX A : COPY OF THE FINAL REPORT IN CRIME NO.520/2008 IN
CC.NO.553/2010 OF JFCM-II, KOLLAM. ANNEX B : COPY OF THE AFFIDAVIT
SWORN BY THE2D RESPONDENT. RESPONDENT(S)' ANNEXURES: NIL

----- /TRUE COPY/ P.S.TO JUDGE sts ANIL
K.NARENDRAN, J ----- CrI.M.C.No.2542 Of
2015 ----- DATED THIS THE28h DAY OF
APRIL, 2015

ORDER

Petitioners are accused Nos.1 to 4 in C.C.No.553 of 2010 on the file of the Judicial First Class Magistrate Court-II, Kollam. The learned Magistrate took cognizance of the offence under Section 498A read with Section 34 of Indian Penal Code, based on a private complaint filed by the second respondent. Now, it is submitted on behalf of the petitioners that the entire disputes between the petitioners and the second respondent have already been settled and the second respondent has also sworn to an affidavit which is produced along with CrI.M.C. as Annexure B. Therefore, the prayer in this CrI.M.C. is to quash the entire proceedings in C.C.No.553 of 2010 on the file of the Judicial First Class Magistrate Court-II, Kollam.

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

3. In *Gian Singh v. State of Punjab* (2012 (10) SCC CRL.M.C.No.2542/2015 -2-303), the Apex Court held that, the power of the High Court in quashing a criminal proceeding or FIR 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 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 CRL.M.C.No.2542/2015 -3-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 criminal cases having overwhelmingly and predominately 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 CRL.M.C.No.2542/2015 -4-words, the High Court may consider whether it would be unfair or contrary to the interest of justice to continue with the criminal 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 an offence 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 second respondent has already been settled amicably and the learned counsel for the second respondent has also stated that the second respondent does not want to prosecute the criminal case filed against the petitioners. The second respondent has also sworn to an affidavit before this Court as Annexure B in this regard. It is also stated that the 1st CRL.M.C.No.2542/2015 -5- petitioner and the 2nd respondent are now residing together.

6. In such circumstances, this is a fit case in which the proceedings pending against the petitioners in C.C.No.553 of 2010 on the file of the Judicial First Class Magistrate Court-II, Kollam 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 Sing's case (supra). In the result, this Crl.M.C. is allowed and the entire proceedings in C.C.No.553 of 2010 on the file of the Judicial First Class Magistrate Court-II, Kollam against the petitioners is quashed.
Sd/- ANIL K.NARENDRAN, JUDGE dsn

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