

K.Ganesh Vs. Ashokan

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Court : Kerala

Decided On : May-19-2015

Judge : Honourable Mr.Justice K.Harilal

Appellant : K.Ganesh

Respondent : Ashokan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL TUESDAY,THE19H DAY OF MAY201529TH VAISAKHA, 1937 CrI.MC.No. 2885 of 2015 ----- CC31652013 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KASARAGOD CRIME NO. 418/2012 OF VIDYA NAGAR POLICE STATION , KASARGOD ----- PETITIONER(S)/ACCUSED : ----- 1. K.GANESH, AGED44YEARS, S/O. KUNHIRAMAN, RESIDING AT PADUVADUKKAM MUTTATHODI VILLAGE, KASARAGOD TALUK.

2. MUHAMMED ISMAIL M.A., AGED29YEARS, S/O. ABDUL AZEEZ, RESIDING AT GALAXY HOUSE, PADUVADUKKAM, MUTTATHODI VILLAGE, KASARAGOD TALUK.

3. ABDUL SATHAR, AGED27YEARS, S/O. ABDUL HAMEED, PADUVADUKKAM, MUTTATHODI VILLAGE, KASARAGOD TALUK. BY ADV.

SRI.T.B.SHAJIMON RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STATE :

----- 1. ASHOKAN,
AGED 43 YEARS, S/O. THANKAPPAN, PADUVADUKKAM, MUTTATHODI
VILLAGE, KASARAGOD TALUK-673571.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM-682 031. R1 BY ADV. SRI.LOHITHAKSHAN
CHATHADI KANNOTH R2 BY PUBLIC PROSECUTOR SRI.R.RANJITH THIS
CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19-05-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING: PJ CrI.MC.No. 2885 of
2015 ----- APPENDIX PETITIONER(S)' ANNEXURES
----- ANNEXURE A1 : COPY OF THE FINAL
REPORT. ANNEXURE A2 : COPY OF THE FINAL REPORT. RESPONDENT(S)'
ANNEXURE ----- NIL. / TRUE COPY / P.S. TO
JUDGE PJ K. HARILAL, J.

----- CrI.M.C.No.2885 OF 2015----- Dated this
the 19th day of May, 2015

ORDER

The petitioners herein are the accused in Crime No.418/2012 of Vidyanagar Police Station now pending as C.C.No.3165/2013, on the files of the Judicial First Class Magistrate's Court-I, Kasaragod. The above crime was registered against the petitioners on a complaint filed by the 1st respondent alleging offences punishable under Sections 341, 323, 324 r/w 34 IPC. Now the grievances of the petitioners are that the parties have settled the matter and the 1st respondent does not want to proceed with this prosecution against the petitioners. Since the alleged offences are non compoundable offences, the petitioners and the 1st respondent could not settle and withdraw the matter. Thus the petitioners have no alternative other than approaching this court invoking inherent jurisdiction under Section 482 of the Code of Criminal Procedure. The learned counsel for the petitioners prayed for quashing the CrI.M.C.No.2885 OF 2015 entire proceedings against the petitioners under Annexure A1 final report. In support of the prayer the 1st respondent has filed an affidavit stating that averments in the petition are true and correct. The learned

counsel for the 1st respondent submits that the 1st respondent does not want to proceed with the prosecution against the petitioners. The learned counsel for the petitioners drew my attention to the decision reported in Gian Singh v. State of Punjab [2012 (4) KLT108(SC)] in support of the averments in this Crl.M.C.

2. 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: Crl.M.C.No.2885 OF20153 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;(1) 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 Crl.M.C.No.2885 OF20154 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 Crl.M.C.No.2885 OF20155 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." 3. 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 Crl.M.C.No.2885 OF20156 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. In view of the compromise between the petitioner 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.

4. In this analysis, the prosecution proceedings against the petitioner under Annexure-A1 final report will stand quashed. This Crl.M.C. is disposed of as above. Sd/-K.HARILAL JUDGE MJL

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