

Moidu Vs. State

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Court : Kerala

Decided On : Jun-18-2015

Judge : Honourable Mr.Justice K.Harilal

Appellant : Moidu

Respondent : State

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE 18TH DAY OF JUNE 2015 28TH JYAISHTA, 1937 CrI.MC.No. 2355 of 2015 ----- CC6882014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PATTAMBI CRIME NO. 1348/2013 OF PATTAMBI POLICE STATION, PALAKKAD PETITIONER(S)/ACCUSED NOS.1 TO 5 ----- 1. MOIDU, AGED 33 YEARS, S/O. LATE VEERAN, KINNANGATTIL HOUSE, PALLIPPURAM, CHEMBRA POST, (VIA) THIRUVEGAPURA, PALAKKAD DISTRICT.

2. KUNHALAN, AGED 31 YEARS, S/O. LATE VEERAN, KINNANGATTIL HOUSE, PALLIPPURAM, CHEMBRA POST, (VIA) THIRUVEGAPURA, PALAKKAD DISTRICT.

3. MUHSEENA, AGED 27 YEARS, W/O. KUNHALAN, KINNANGATTIL HOUSE, PALLIPPURAM, CHEMBRA POST, (VIA) THIRUVEGAPURA, PALAKKAD DISTRICT.

DISTRICT.

4. IMMUTY, AGED27YEARS, D/O. LATE VEERAN, KINNANGATTIL HOUSE, PALLIPPURAM, CHEMBRA POST, (VIA) THIRUVEGAPURA, PALAKKAD DISTRICT.

5. USMAN, AGED51YEARS, S/O. LATE VEERAN, KINNANGATTIL HOUSE, PALLIPPURAM, CHEMBRA POST, (VIA) THIRUVEGAPURA, PALAKKAD DISTRICT. BY ADV. SRI.P.K.MOHANAN (PALAKKAD) RESPONDENT(S)/STATE & DEFACTO COMPLAINANT:

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

2. SULHATH , AGED21YEARS, D/O. ABOO, PUZHAKKAL HOUSE, P.O.NADUVATTOM, THIRUVEGAPURAM AMSOM, KAIPPURAM DESOM, OTTAPALAM TALUK, PIN-679 308. R1 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN R2 BY ADV. SRI.M.DEVESH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON1806-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: msv/ CrI.MC.No. 2355 of 2015 ----- APPENDIX PETITIONER(S)' ANNEXURES: ANNEXURE1: COPY OF THE PRIVATE COMPLAINT AND FIR IN CRIME NO.1348/13 OF PATTAMBI POLICE STATION. ANNEXURE2: CERTIFIED COPY OF THE FINAL REPORT FILED BY THE PATTAMBI POLICE STATION IN CRIME NO.1348/2013 BEFORE JFCM COURT, PATTAMBI. ANNEXURE3: AFFIDAVIT OF THE DEFACTO COMPLAINANT DTD.27.3.2015. RESPONDENT(S)' ANNEXURES: NIL //TRUE COPY// P.S.TO JUDGE Msv/ K.HARILAL, J.

..... CrI.M.C.No. 2355 of 2015 Dated this the 18th day of June, 2015

ORDER

Petitioners are accused Nos.1 to 5 in C.C.No.688 of 2014 on the file of Judicial First Class Magistrate Court, Pattambi. Now they are facing a trial for the offences

punishable under Section 498A of the Indian Penal Code. During the course of trial, they have settled the entire disputes between them and arrived at a compromise. Now the 2nd respondent is not interested to prosecute the petitioner Nos.1 to 5 and he has no subsisting grievance at all. The 2nd respondent has filed an Annexure-3 affidavit stating that he has no objection to quashing the crime pending against the petitioner. 2.The learned counsel appearing for the 2nd respondent submits that the averments in Annexure-3 affidavit are true and correct to the best of his knowledge and belief and according to his instructions also at present the 2nd respondent had no subsisting grievance and he is not interested to prosecute the petitioners. 2.I have meticulously considered the decision laid down in Gian Singh v. State of Punjab [2012 (4) KLT108(SC)]. In the CrI.M.C.No. 2355 of 2015 2 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;(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 CrI.M.C.No. 2355 of 2015 3 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 CrI.M.C.No. 2355 of 2015 4 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." 2. 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 petitioner 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 CrI.M.C.No. 2355 of 2015 5 evidenced by Annexure-3. 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.

3. In this analysis, the prosecution proceedings against the petitioner under Annexure-2 final report will stand quashed. This petition is disposed of as above.

Sd/- K.HARILAL, JUDGE. AMV/18/06/

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