

Joy. Vs. State of Kerala.

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Court : Kerala

Decided On : Dec-15-2010

Reported in : ILR2010(4)Ker143

Judge : M.Sasidharan Nambiar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 376, 420, 377, 344, 341

Appeal No. : Cri.MC.No. 2905 of 2010

Appellant : Joy.

Respondent : State of Kerala

Advocate for Pet/Ap. : SRI.AJITH MURALI, Adv.

Judgement :

1. Petitioner, the fifth accused in C.P.234/2009 on the file of Judicial First Class Magistrate's Court, Chengannur filed this petition under Section 482 of Code of Criminal Procedure to quash the proceedings pending against him, contending that, entire disputes with the second respondent was settled amicably and consequent to the settlement, second respondent has no grievance against the petitioner and on the materials, an offence under Section 376 of Indian Penal Code is not attracted and if at all only an offence under Section 420 of Indian Penal Code would be attracted and as all disputes with the second respondent were settled, it is not in the interest of justice to continue the prosecution.

2. Second respondent appeared through a counsel and filed an affidavit stating that she has no grievance against the petitioner, as she has settled all the disputes and therefore, she has no objection for quashing the proceedings.

3. Learned counsels appearing for the petitioner, second respondent and learned Public Prosecutor were heard.

4. Annexure-A final report shows that prosecution case is that first accused arranged visa to two ladies by name Sosamma and second respondent Maya and promising that they will be provided employment in Gulf, getting a monthly income of Rs.10,000/- taken them to Gulf. While in Gulf they were arrested and detained in prison for one month and thereafter, sent back to India. On reaching the Airport, first accused took them to his house and committed rape on them and kept them under illegal custody. The Sub Inspector of Police got information that two ladies were illegally detained by the first accused, reached there and arrested them. It is alleged that the accused thereby committed the offences under Sections 376, 420, 377 and 344 of Indian Penal Code.

5. Learned counsel appearing for the petitioner pointed out that even if the entire case in Annexure-A final report against the petitioner is accepted, an offence under Section 376 or 377 or 341 of Indian Penal Code is not attracted against the petitioner as the only allegation against him was that he procured visa to enable first accused to take second respondent and Sosamma to Gulf and in such circumstances, when second respondent has settled the disputes with the petitioner, it is not in the interest of justice to continue the prosecution. Petitioner produced Annexure-B order in CrI.M.C.3311/2008 whereunder S.C.562/2006 on the file of Additional Assistant Sessions Court-I, Chengannur taken cognizance on the final report submitted in Crime No.290/2004 of Mannar Police Station, was quashed by this Court accepting the settlement with the second respondent Sosamma therein and the accused. Petitioner was second petitioner in CrI.M.C.3311/2008. Prosecution case in Crime No.290/2004 is the same case projected in this case. In fact after arresting the first accused, along with two ladies by name Maya and Sosamma, two crimes were registered, Crime Nos.290/2004 and 292/2004. S.C.562/2006 is in respect of Crime No.290/2004 where the

allegation is with regard to the treatment meted out to Sosamma. This Court by Annexure-B judgment, finding that no offence as alleged is attracted for the offence under Sections 376 and an offence under Section 420 of Indian Penal Code is compoundable, accepting the settlement with the second respondent therein, quashed the proceedings.

6. Learned Public Prosecutor on perusing the case diary did not dispute the submission of the learned counsel appearing for the petitioner that there is no material whatsoever to show that petitioner committed any offence under Section 341 or 376 of Indian Penal Code. Therefore, if at all only an offence under Section 420 of Indian Penal Code is attracted. It is a compoundable offence. This Court has already found that Sosamma, the other victim has already settled the dispute in S.C.562/2006 and consequently quashed the case. In such circumstances, when the affidavit filed by the second respondent Maya establishes that she has settled the disputes with the petitioner and as offence under Section 376 of Indian Penal Code is not attracted against the petitioner and offence under Section 420 of Indian Penal Code is compoundable, it is not in the interest of justice to continue the prosecution.

7. Petition is allowed. C.P.234/2009 on the file of Judicial First Class Magistrate's Court, Chengannur against petitioner, the fifth accused, is quashed.

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