

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

CRL.A.No. 2222 of 2010 ()

AGAINST THE JUDGMENT IN SC 939/2008 of THE COURT OF ADDITIONAL
DISTRICT & SESSIONS COURT (ADHOC)-II, KOLLAM DATED 25-10-2010

APPELLANTS/ACCUSED 1 TO 3 & 5:

1. ALEXANDER @ BABY
ETTIMOOTTIL VEEDU, MUKKODU, MOONGODU MURI
ALAYAMON VILLAGE, KOLLAM DISTRICT.
2. SATHEESAN @ SATHI,
VYSAKH BHAVAN, KURAVANTHERI, MOONGODU MURI
CHANNAPETTA VILLAGE, KOLLAM DISTRICT.
3. SUNIL KUMAR, AJITHA MANDIRAM, AGASTHYAKODU MURI,
ANCHAL VILLAGE, KOLLAM DISTRICT.
4. SICILY KOSI, VAZYAYIL VEEDU, MUKKODU,
MOONGODU MURI ALAYAMON VILLAGE, KOLLAM DISTRICT.

BY ADVS.SRI.K.B.DAYAL
SRI.SIBI KARUN
SRI.J.JOSEPH
SRI.S.MOHAMMED FEBIN

RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.
2. THE SUB INSPECTOR OF POLICE,
YEROOR POLICE STATION, KOLLAM, PIN-691 312.
- ADDL. 3. P.M.WILSON, S/O. MATHAI, ETTIMOOTTIL VEEDU (PEACE VIEW),
MOONGODU MURI, CHANNAPETTA.P.O., MEENKULAM,
KOLLAM DT., PIN-691311.
- ADDL.4. SARAMMA, W/O.P.M.WILSON, ETTIMOOTTIL VEEDU (PEACE VIEW)
MOONGODU MURI, CHANNAPETTA P.O., MEENKULAM,
KOLLAM DT., PIN-691311.

(ADDL. RESPONDENTS 3 AND 4 ARE IMPEADED AS PER ORDER DATED 1.9.2015
IN CRL.M.A.NO.3908 OF 2015)

R3 & R4 BY ADV. SRI.J.JULIAN XAVIER
R1 & R2 BY PUBLIC PROSECUTOR SRI.JITHESH R.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANTS'S ANNEXURES:

ANNEXURE.A1: AFFIDAVIT SWORN BY PW1 WHO IS THE ADDITIONAL 3RD
RESPONDENT IN THE ABOVE CRIMINAL APPEAL AND THE
CRIMINAL M.A. DATED 17.8.2015.

ANNEXURE.A2: AFFIDAVIT SWORN BY PW2 WHO IS THE ADDITIONAL 4TH
RESPONDENT IN THE ABOVE CRIMINAL APPEAL AND THE
CRIMINAL M.A. DATED 17.8.2015.

// TRUE COPY //

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P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Crl.A.No.2222 of 2010

Dated 1st September, 2015

JUDGMENT

This appeal has been preferred against the judgment of conviction passed by the Court of Additional District and Sessions Judge (Adhoc)II, Kollam in S.C.No.939 of 2008. The appellants were respectively accused Nos.1 to 3 and 5 therein. In fact, though there were five accused in S.C.No.939 of 2008 since the 4th accused was absconding the case against him was split up and trial in S.C.No.939 of 2008 was proceeded only against the appellants. They were tried for the offences punishable under Sections 143, 147, 148, 447, 323, 324, 326, 427 and 308 read with Section 149 of the Indian Penal Code and were found guilty, convicted and sentenced for the following offences in the following manner:-

For the conviction under Section 143, IPC the appellants were sentenced to undergo rigorous imprisonment for two months each and to pay a fine of ₹ 1,000/- each and in default of payment of fine they were directed to undergo rigorous imprisonment for 15 days each. For the conviction under Section 148, IPC they were sentenced to undergo rigorous imprisonment for six months each and to pay a

fine of ₹ 1,500/- each and in default of payment of fine to undergo rigorous imprisonment for one month each. For the conviction under Section 447, IPC they were sentenced to undergo rigorous imprisonment for one month each and to pay a fine of ₹ 500/- each and in default of payment of fine to undergo rigorous imprisonment for 15 days each and for the conviction under Section 326, IPC they were sentenced to undergo rigorous imprisonment for two years each and to pay a fine of ₹ 5,000/- each and in default of payment of fine to undergo rigorous imprisonment for three months each. No separate sentence was awarded for the offences punishable under sections 147, 323 and 324, IPC and they were acquitted of the offences punishable under Sections 427 and 308, IPC. If the fine amount is realised an amount of ₹ 15,000/- was directed to be given to PW1 and ₹ 5,000/- to PW2, as compensation for the injuries sustained by them, under Section 357(1) of the Code of Criminal Procedure. This appeal is preferred against the said judgment of conviction.

2. The case of the prosecution is that owing to previous animosity towards PW1 due to the pendency of a civil litigation between him and the first accused/the first appellant herein, with respect to family properties, the appellants/accused in prosecution of their common object to cause death of PW1 formed themselves into an unlawful

assembly and criminally trespassed into his courtyard and committed rioting, armed with deadly chopper, sticks etc. Going by the case of the prosecution the accused inflicted injuries on the body of PWs 1 and 2 who are husband and wife. Ext.P2 is the wound certificate pertaining to PW1 and Ext.P3 is the wound certificate relating to PW2. To bring home the charge against the appellants prosecution had examined PWs 1 to 10 and got marked Exts.P1 to P12 besides identifying MO1 to MO6. After the closure of the case of the prosecution the appellants were questioned under Section 313, Cr.P.C. and they denied all the incriminating circumstances put to them. Besides getting marked Exts.D1 to D4 which are relevant portions of the statements recorded under Section 161, Cr.P.C. of some of the witnesses they adduced no evidence in defence. It is after appreciating the evidence on record that the learned Sessions Judge passed the judgment of conviction and the sentence as aforesaid. Evidently, this appeal has been preferred challenging the correctness of the impugned judgment.

3. During the pendency of this appeal the appellants filed an application for impleading the injured viz., PWs 1 and 2 as parties to the appeal stating that the parties have amicably settled the matter and a compromise has already been entered into. Crl.M.A.No.3908 of 2015 has been filed in that regard. Notice was issued to PWs 1 and 2 who are

sought to be impleaded and pursuant to the receipt of notice they entered appearance through counsel. Consequently, they were impleaded as additional respondents 3 and 4 in this appeal. Subsequently, additional respondents 3 and 4 filed affidavits endorsing the contention of the appellants that the entire disputes have been settled in between them and in such circumstances, the parties may be permitted to compound the offence, in the interest of justice.

4. It is evident from the affidavits filed respectively by additional respondents 3 and 4 that they and the appellants are close relatives and it would also reveal that the real genesis of the dispute that ultimately culminated in the aforesaid unfortunate incident was civil litigation relating family properties. From the facts thus disclosed from the affidavits viz., Annexures.A1 and A2 and the submissions made by the learned counsel on both sides the question to be considered is whether in the interest of justice, the entire proceedings should be terminated or not. True that, the prayer of the appellants is for compounding the offence. Evidently, except the offence under Section 326, IPC all the offences for which the appellants were convicted and sentenced are compoundable. When Section 326, IPC is not compoundable even in a case where parties have amicably settled the matters this Court cannot grant permission to compound the offence in

terms of the provisions under Section 320, Cr.P.C. Therefore, the question is whether the case on hand is an eminently fit case for applying the principles laid down by the Hon'ble Apex Court in **Gian Singh v. State of Punjab** reported in **2012 (4) KLT 108 (SC)**. In the said decision the Hon'ble Apex Court considered the relevant provisions of the Code of Criminal Procedure as also various judgments of the Hon'ble Apex Court and held as hereunder:-

"The position that emerges from the above discussion can be summarised thus: 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 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;(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 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 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-

dominatingly 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 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 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."

5. A careful scanning of the decision in **Gian Singh's** case (supra) would reveal that the power of High Court in exercise of inherent jurisdiction under Section 482, Cr.P.C. and the power of a Criminal Court under Section 320, Cr.P.C. are different and distinct and the former is having wide plenitude. The Hon'ble Apex Court held that the question whether the power to quash criminal proceedings or complaint or FIR in invocation of the power under Section 482, Cr.P.C. based on the settlement of disputes between the offender and the victim would

depend upon the facts and circumstances of each case. However, it was cautioned that, before exercising 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. could not be fittingly quashed even though the victim or victim's family and the offender got settled the dispute. After having given a careful consideration to the conclusions of the Hon'ble Apex Court in paragraph 57 of the decision in **Gian Singh's** case (supra) and also to the case on hand I am of the view that the case on hand would not fall within the category of cases which could not be interfered with in terms of the observations of the Hon'ble Apex Court. In this case, as is evident from Annexures. A1 and A2 and also the submissions made on behalf of both the victims and the appellants they are very close relatives. The untoward incident occurred pursuant to the pendency of some civil litigations among them. Now, they have settled the matters amicably and compromised the civil litigations as also the case on hand. It is evident from the situation now emerged that in order to maintain the friendliness and kinship the parties wanted to give a quietus to the entire proceedings and wanted to continue to live peacefully. The nature of the offences, viewing in the aforesaid angle, can be said to be personal and at any rate, in the light of the injuries sustained by PWs 1 and 2 and the background upon which such untoward incident occurred I do not think it

necessary to compel the parties to continue with the litigation. I am of the view that, in the interest of justice, it will only be appropriate to terminate the proceedings and in view of the situation presently emerged continuation of criminal proceedings would amount to abuse of process of court. Certainly, it will result in wasteful exercise, as well. In the light of the observations of the Hon'ble Apex Court in **Gian Singh's** case (supra) and taking into account the circumstances expatiated above, I am of the view that the continuation of criminal proceedings would tantamount to abuse of process of court as the alleged offences could not be said to be very heinous so as to bring them under the class of offences which are held as not fit for quashment. In the said circumstances, the judgment of the Court of Additional District and Sessions Judge (Adhoc) II, Kollam in S.C.No.939 of 2008 and the F.I.R in Crime No.143 of 2007 of Yerroor Police Station and all consequential proceedings arising therefrom are hereby quashed.

This appeal is allowed as above.

Sd/-
C.T.RAVIKUMAR
Judge

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