

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

CRL.A.No.764 of 2011 ()

AGAINST THE JUDGMENT IN SC 282/2010 of ADDITIONAL SESSIONS JUDGE (AD
HOC)-I, MANJERI DATED 30-03-2011

APPELLANT(S)/ACCUSED:

- 1.FALALU, S/O.NOORUDHEEN
ALYAMINTAKATHU HOUSE, AYIROOR, PALAPETTY
MALAPPURAM DISTRICT.
- 2.SAINUDHEEN, S/O.MAJEED,
KARUTHALIL HOUSE, AYIROOR, PALAPETTY
MALAPPURAM DISTRICT.
- 3.NOUSHAD, S/O.KUNHIMARAKKAR @ KUNHIMON,
PULIKKAL HOUSE, AYIROOR, PALAPETTY
MALAPPURAM DISTRICT.
- 4.NISAMUDHEEN, S/O.ABU,
ALYAMINTAKATHU HOUSE, AYIROOR, PALAPETTY
MALAPPURAM DISTRICT.
- 5.SHAMJEER, S/O.ABBAS,
MARAKKARAKATH HOUSE, AYIROOR, PALAPETTY
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/STATE:

1. THE STATE OF KERALA
REP. BY THE SUB INSPECTOR OF POLICE
PERUMBADAPPU POLICE STATION-THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
KOCHI-31.
- * 2.MUHAMED ALI V.A, S/O.ABDUTTY
PERUMBADAPPU, PONNANI
MALAPPURAM DISTRICT, PIN-679577

*(IMPLEADED AS ADDL.R2 AS PER ORDER DATED 13.8.2015 IN
CRL.M.A.4447/2015)

R1 BY PUBLIC PROSECUTOR SRI.N.SURESH
ADDL.R2 BY ADV. SMT.M.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-08-2015 ALONG
WITH CRMC. 5235/2015 & CRMC. 5236/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.Appeal No.764 of 2011

and

Crl.M.C.Nos.5235 & 5236 of 2015

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Dated this the 17th day of August, 2015

JUDGMENT

All these cases arise out of the same occurrence that led to the registration of Crime No.53 of 2008 of Perumbadappu Police Station, Manjeri. In view of the subsequent developments and on request of parties, these matters are taken up for joint hearing and disposal. Crl.Appeal No.764/2011 is filed against the judgment of conviction in S.C.No.282/2010 passed by the Court of Additional Sessions Judge (Ad hoc)-I, Manjeri. The case of the prosecution is that accused persons, 7 in numbers, on 19.3.2008 at about 19.55 hours, in furtherance of their common object, trespassed into the house of the defacto complainant owing to political enmity, wrongfully restrained him and with the intention to cause hurt to him accused No.1 using a dangerous sword hacked on the neck of the defacto complainant and

when he obstructed it with his left hand, it was cut dangerously and cutting of vein resulted in profused bleeding. In S.C.No.282 of 2010, accused Nos.2, 4, 5, 6 and 7 faced the trial for the offences punishable under sections 143, 147, 148, 341, 448, 506(ii) and 308 read with 149 of the Indian Penal Code. They were found guilty under all the aforesaid sections sans under section 308, IPC and consequently, they were all sentenced to undergo rigorous imprisonment/simple imprisonment for different periods and all the periods of imprisonment were ordered to be run concurrently. It is in the said circumstances that the captioned Criminal Appeal has been filed. Crl.M.C No.5235 of 2015 has been filed by the original first accused and his case was split up and re-filed as S.C.No.298 of 2014. Crl.M.C.No.5236 of 2015 has been filed by the original third accused and after splitting up and re-filing it is now pending as L.P.Case No.10 of 2013. In the above Criminal Appeal, the defacto complainant filed Crl.M.A.No.4447 of 2015 seeking for his impleadment as additional second respondent and the same was allowed as per order dated

13.8.2015. He has also filed Crl.M.A.No.4448 of 2015 with the prayer to accept the compromise and to set aside the conviction and sentence in respect of the appellants. The captioned Crl.M.Cs have been accompanied by affidavit filed by the defacto complainant/second respondent in the above appeal stating the factum of filing of such a petition in the appeal and also about his 'non-objection' in quashing the respective proceedings arising from Crime No.53 of 2008 of Perumbadappu Police Station, registered in connection with the incident in which he sustained injuries. Essentially, the contention is that since the matter has been settled no fruitful purpose could be served by making the petitioners to face the trial and continuance of proceedings against them would amount to abuse of process of court and it will be a wasteful exercise as there is no remote chance for their conviction, in the aforesaid circumstances.

2.I will firstly deal with the application for compounding the offence made by the second respondent, the defacto complainant viz.,

Crl.M.A.No.4448/2015 in Crl.Appeal No.764/2011. True that the appellants therein had faced the trial for the offence including the one punishable under section 308, IPC. However, they were acquitted thereunder. The learned counsel for the second respondent/defacto complainant as also the learned Public Prosecutor submitted that no appeal has been preferred against the judgment to the extent it acquitted the appellants for the offence punishable under section 308, IPC. The learned Public Prosecutor would also endorse the same. Thus, it is obvious that in the appeal the question to be considered is whether the conviction of the appellants for the offence punishable under sections 141, 143, 148, 341, 448 and 506(ii) read with 149 IPC could be sustained. Evidently, the defacto complainant who sustained the injuries filed an affidavit stating that the entire issues has been settled between the parties. True that offence under section 148, IPC is not compoundable in terms of the provisions under section 320 Cr.P.C. Obviously, all the offences for which appellants were found guilty and convicted are compoundable in terms of the said section.

Relying on the decisions of the Hon'ble Apex Court in **Gian Singh v. State of Punjab [2012 (4) KLT 108 SC]**, **Nikhil Merchant v. Central Bureau of Investigation [2008 (3) KLT 769]** and **Manoj Sharma v. State & Ors. [2008 (4) KLT 417]**, it is contended that in view of the fact that the dispute that led to the registration of the aforesaid crime has been compromised and settled between the parties and also that the said compromise of the said case would not in any way go against the public interest, continuation of the criminal proceedings in the circumstances became unnecessary and liable to be terminated. From the affidavit filed by the second respondent, the defacto complainant which was fully endorsed by the learned counsel appearing for him, it is evident that the dispute has been settled amicably. The dispute being private and personal it is only in the interest of justice to permit the parties to compound the offence and also to avoid sheer wasteful exercise by the trial court. True that if an offence is not included in any of the tables under section 320 Cr.P.C it could not be compounded. But at the same time, the Hon'ble Apex

Court considered the question whether in such circumstances it would be within the jurisdiction of the High Courts to quash the proceedings based on the compromise reached between the offender and the victim. Evidently, it was held that the High Court before invoking the power under section 482 must consider whether it would be unfair or contrary to the interest of justice to continue with the proceedings in view of the settlement and compromise reached between the offender and the victim and if the answer is in the negative certainly it is a case where the dictum laid down by the Apex Court in **Gian Singh's** case could be applied and the proceedings could be terminated. Merely because the parties have amicably settled the matters at the appellate stage is no ground for continuing with the proceedings if the court is of the view that the parties have amicably settled the matters and no rancour left in the minds of the parties and it will be contrary to the interest of justice. Evidently, the very purpose of section 320 Cr.P.C is to bring home friendliness among the parties. As noticed hereinbefore, the only offence which could not be compounded in

terms of the provisions under section 320 Cr.P.C is the offence under section 148, IPC. Section 148 deals with the sentence for rioting with arm and deadly weapons. In the context of the contentions, it is relevant to refer to paragraph 26 of the judgment. It is evident that the case of the prosecution is that the first accused in the aforementioned crime inflicted an injury on the defacto complainant with a sword. But the evidence on record would reveal that the material object which was produced viz., MO3 is not a sword but it is only a big knife. In fact, it was identified by the wife of PW1 who is the victim. But the injured, the defacto complainant, while being examined in court, deposed thus:-

"വെട്ടാനുപയോഗിച്ച ആയുധമാണോ
കോടതിയിലുള്ളത് എന്ന് എനിക്ക് പറയാൻ
കഴിയില്ല."

3.In such circumstances, it can only be said that there is no proper identification of the weapon allegedly used for the commission of the offence. If there was no proper identification it could not be

said whether the weapon used was a deadly weapon or not. At the same time, it is obvious that the defacto complainant had sustained injuries in the alleged incident. But, it is the person who sustained such injuries filed the aforesaid application stating that the dispute has been settled and no rancour left in his mind towards the appellants/accused. It is to be noted that both the parties are fishermen living on the same shore. When they have already amicably settled the dispute and brought peace and friendliness among them and when such settlement cannot be said to be against public interest I am of the view that it is a fit case for applying the ratio in **Gian Singh's** case. Accordingly, the judgment in S.C.No.282 of 2010 of the Court of the Additional Sessions Judge (Ad hoc-I), Manjeri is set aside. The entire proceedings against the appellants arising from Crime No.53 of 2008 of Perumbadappu Police Station are quashed.

4.Now, I will consider the captioned criminal miscellaneous cases. Normally, in a case where absconded accused persons facing

trial in split up cases after the judgment in respect of persons who faced trial, approached this court seeking quashment of the proceedings this Court will be very loath to invoke the power under section 482 Cr.P.C to quash the proceedings pending against them. Normally, in such circumstances such persons who absconded and avoided the trial would be made to face the trial. In this case, I have already set aside judgment in S.C.No.282 of 2010 of the Court of the Additional Sessions Judge (Ad hoc)-I, Manjeri based on the application filed by the defacto complainant evidencing the settlement of the entire disputes amicably between himself and the appellants-accused. Out of seven accused persons, the said appeal was preferred jointly by five accused persons who stood the trial in S.C.No.282 of 2010. Evidently, the case of the prosecution is that all the accused formed an unlawful assembly and in furtherance of their common object they had committed the aforesaid offences. With the disposal of the above criminal appeal, the number of accused persons surviving to face the trial has been reduced to two viz., the petitioners in the above

two Crl.M.Cs. In the circumstances, hereafter, there is absolutely no question of their conviction with the aid of section 149, IPC. True that even in such cases the surviving accused persons could be tried if any other charge would lie against them. But, in both the Crl.M.Cs the second respondent is the defacto complainant on whose application, taking note of the settlement of the entire dispute, order was passed, as aforesaid, in the criminal appeal. As noticed hereinbefore, his affidavit has already been appended with the above Crl.M.Cs. The learned counsel for the second respondent in the captioned criminal miscellaneous cases also endorsed the settlement of the entire disputes. In the aforesaid circumstances, having accepted the said affidavit of the second respondent in the above appeal, I find no reason for not acting upon the same affidavit by the same party in these proceedings, as well. Taking into account the fact that there cannot be any successful prosecution against the petitioners in the above Crl.M.Cs in view of the acceptance of the settlement in Crl.A.No.764/2011 and therefore, requiring the petitioners in the

captioned miscellaneous cases to face the trial would be nothing but a sheer wasteful exercise and it would result in wasting the invaluable time of the court. Continuance of proceedings against them would be nothing but an abuse of process of court. In such circumstances and taking note of the settlement of the issues and compromise with the victim and upon forming the opinion that continuance of proceedings would tantamount to abuse of process of court and that interference in the matter would not be against the public interest I am of the view that to secure the ends of justice it would only be appropriate to terminate the further proceedings against the petitioners in the Cr.M.Cs. In Crl.M.C.No.5235/2015, evidently, the proceedings against the petitioner is now pending as S.C.No.298/2014 before the Court Additional Sessions Judge (Fast Track), Manjeri. In Crl.M.C.No.5236/2015, the proceedings against the petitioner is now pending as LPC.10/2013 before the Court of Sessions, Manjeri. In view of the aforesaid circumstances, Crl.M.C.Nos.5235 and 5236 of 2015 are allowed and the entire proceedings in S.C.No.298 of 2014

against the petitioner in Crl.M.C.No.5235 of 2015 and the entire proceedings against the petitioner in Crl.M.C.No.5236 of 2015, in L.P.C.No.10 of 2013, arising out of crime No.53 of 2008 of Perumbadappu Police Station stand quashed.

The captioned Criminal Appeal and Criminal Miscellaneous Cases are allowed as above.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

