

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

Crl.MC.No. 571 of 2015 ()

CRIME NO. 487/2014 OF KAMBALAKKAD POLICE STATION , WAYANAD

PETITIONER/ACCUSED:

INDIRA AGED 27 YEARS
W/O.MANI, ARUPALAYAM
NEAR TO MARIYAMMAN KOVIL
MADURAI DISTRICT, TAMIL NADU

BY ADVS.SRI.K.V.RAMABHADRAN
SRI.K.R.SRIPATHI

RESPONDENTS/COMPLAINANT & STATE:

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1. PATHUTTY, AGED 56 YEARS
W/O.KUNJABDULLA
MUKKRI HOUSE, MADAKKIMALA
MUTTIL AMSOM, WYNAAD DISTRICT 673 121
 2. STATE OF KERALA REPRESENTED BY
STATION HOUSE OFFICER
POLICE STATION, KAMBALAKKAD
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1 BY ADV. SRI.AKHIL K.MADHAV
R2 BY PUBLIC PROSECUTOR, SHRI JIBU P THOMAS

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
29-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PTITIONER'S EXHIBITS:

- ANNEX.I : TRUE COPY OF FIRST INFORMATION REPORT AND STATEMENT
REGISTERED BY DEFACTO COMPLAINANT.
- ANNEX.II: TRUE COPY OF PART OF THE FINAL REPORT FILED BY
POLICE IN CRIME NO.487/2014 OF KAMBALAKKAD POLICE
STATION.
- ANNEX.III: TRUE COPY OF AFFIDAVIT FILED BY THE DEFACTO
COMPLAINANT ON SETTLEMENT OF SUBJECT MATTER OF CASE.

RESPONDENTS' EXHIBITS : NIL

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// TRUE COPY //

PA to Judge

[CR]

B.KEMAL PASHA, J.

Crl.M.C. No.571 of 2015

Dated this the 29th day of January 2015

ORDER

Whether the allegations against the petitioner constitute mere theft or whether such theft amounts to robbery, is the short question to be decided here.

2. The accused in crime No.487/2014 of the Kambalakkad police station, Mananthavady registered for the offences punishable under sections 392 and 323 of the Indian Penal Code, has come up, for getting Annexure -I F.I.R. and Annexure-II Final report in the said crime, quashed.

3. According to the petitioner, the matter has been amicably settled between her and the de-facto complainant and presently, the de-facto complainant has no complaints against the petitioner.

4. The allegation against the petitioner is that on 7.12.2014 at 9.30 a.m., while the de-facto complainant was travelling by a bus named 'Minnaram' from Kalpetta to Mananthavady, the petitioner hailing from Tamil Nadu, who was also travelling by the said bus, forcibly snatched away a gold chain weighing 3 sovereigns, worth Rs.60,000/-, from the neck of the de-facto complainant. Immediately, the de-facto complainant realised that her gold chain was snatched away by the petitioner, thereby she demanded the petitioner to give back her gold chain and attempted to catch her. Immediately, the petitioner used force and violence against the de-facto complainant woman, by forcefully scratching all over her face, thereby causing injuries on her face.

5. It is true that the petitioner could procure an affidavit from the de-facto complainant affirming that she has no complaints against the petitioner as the matter has been amicably settled between them.

6. Heard the learned counsel for the petitioner, the learned

counsel for the de-facto complainant and the learned Public Prosecutor.

7. According to the learned counsel for the petitioner, an offence under section 392 of the Indian Penal Code cannot be attracted in the matter and at the most, it may be a 'simple theft' and not robbery. On going through the allegations and the attending circumstances, I am of the view that the acts allegedly committed by the petitioner may constitute robbery within the meaning of Section 390 Part I of the Indian Penal Code. It is true that the gold chain was snatched away from the neck of the de-facto complainant and prior to the disposal of the gold chain in any manner by the petitioner, the de-facto complainant demanded it back and attempted to take it away from the hands of the petitioner and at that time the de-facto complainant was attacked. Therefore, it is evident that force and violence were used by the petitioner during the course of the transaction. Even though the de-facto complainant was not attacked during the snatching away of the

gold chain from her neck, it has been specifically alleged that she was attacked by the petitioner when the petitioner was carrying away or attempting to carry away the property obtained by the theft.

8. It cannot be said that the attack from the part of the petitioner towards the de-facto complainant is, at any time after the transaction. It was during the course of the transaction, hurt was caused by the petitioner to the de-facto complainant. Therefore, the acts of the petitioner, if proved, may constitute robbery within the meaning of Section 390 Part I of the Indian Penal Code, which is an offence punishable under section 392 of the Indian Penal Code.

9. In a case in which an offence of this kind is alleged, the courts are not expected to aid the accused in getting such an offence compounded. May be, she could have procured a condonation from the unwilling victim. At the same time, judicial exercise can ill afford it. Matters being so, this is not a fit case

wherein the petitioner and the de-facto complainant can be permitted to compound the offence involved. Therefore, I am of the view that this is not a fit case wherein the proceedings can be quashed. This Crl.M.C. is devoid of merits and is only to be dismissed, and I do so.

In the result, this Crl.M.C. is dismissed.

Sd/-
B.KEMAL PASHA,
JUDGE

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