

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 21ST DAY OF APRIL 2015/1ST VAISAKHA, 1937

Cr1.MC.No. 1731 of 2015 ()

CRIME NO. 288/2014 OF THRIKKAKARA POLICE STATION , ERNAKULAM

PETITIONERS/ACCUSED:

1. SHAMEER A.S., AGED 30 YEARS
S/O. SULIAMAN, ARAYIDATH HOUSE,
KUSUMAGIRI P.O, EDACHIRA,
THALAKKOTTMoola, KAKKANAD.
2. JAMEELA, AGED 57 YEARS,
W/O. SULAIMAN, ARAYIDATH HOUSE,
KUSUMAGIRI P.O, EDACHIRA,
THALAKKOTTMoola, KAKKANAD.
3. SHEREENA, AGED 29 YEARS, W/O. SALIM,
ARAYIDATH HOUSE, KUSUMAGIRI P.O,
EDACHIRA, THALAKKOTTMoola, KAKKANAD.
4. ASSEEZ, AGED 40 YEARS,
S/O. SEETHI, ARAYIDATH HOUSE, THENGOD P.O,
EDACHIRA, KAKKANAD.

BY ADV. SMT.K.DEEPA (PAYYANUR)

RESPONDENTS/STATE 7 COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
2. SHAHITHA ABU, AGED 23 YEARS,
D/O. ABU, NEDUMKULANGARAMALA,
KUSUMAGIRI P.O, ATHANI, KAKKANAD.

R2 BY ADV. SMT.J.SHEEBA MARIAM

R BY PUBLIC PROSECUTOR SRI. SHYON P. MANGUZHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
21-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A1: TRUE COPY OF THE FIR IN CRIME NO.288/14 OF
THRIKKAKARA POLICE STATION.

ANNEXURE A2: TRUE COPY OF THE FINAL REPORT IN CRIME NO.288/14 OF
THRIKKAKARA POLICE STATION.

ANNEXURE A3: TRUE COPY OF THE JOINT STATEMENT OF PETITIONERS AND THE
SECOND RESPONDENT.

ANNEXURE A4: AFFIDAVIT OF THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

K. HARILAL, J.

Crl.M.C. No. 1731 of 2015

Dated this the 21st day of April, 2015.

ORDER

Petitioners are the accused Nos. 1 to 4 in Crime No.288 of 2014 registered for the offences punishable under Sections 323, 294(b), 498 (A) r/w Section 34 of the Indian Penal code. In this petition, it is stated that during the pendency of the prosecution against the petitioners for the said offences, the disputes between the petitioners and the second respondent has been settled amicably and the second respondent is no more interested to proceed the case further. At present, the first petitioner and the second respondent are living separately and they do not want to live together. In view of the fact that they have settled the entire disputes, both parties urged for quashing the criminal prosecution against the petitioners invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure. The second respondent has filed Annexure A4 affidavit and A3 joint statement stating that she

wants to put end to the criminal prosecution against the petitioners.

2. Heard the learned counsel for the petitioner and the learned counsel for the second respondent.

3. Both the counsel appeared for the respective parties urged for quashing the criminal prosecution against the petitioners under Annexure A2 final report. In support of the above arguments, both the counsel cited the decision in **Gian Singh v. State of Punjab** [2012 (4) KLT 108 (SC)].

I have meticulously considered the decision laid down in **Gian Singh's** case. In the 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:

"57. 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;(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-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, 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.”

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 petitioners 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 evidenced by Annexure A4 affidavit and A3 joint statement. In view of the compromise between the petitioners and the victim, I find that the possibility of conviction is remote and 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 petitioners under Annexure-A2 final report will stand quashed, in the exercise of jurisdiction and power under Section 482 of the Cr.P.C.

This petition is allowed.

**Sd/-
K. HARILAL
JUDGE**

Scl.