

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 28TH DAY OF APRIL 2015/8TH VAISAKHA, 1937

Cr1.MC.No. 1807 of 2015 ()

CC 238/2008 of J.M.F.C.-II, ATTINGAL
CRIME NO.174/2005 OF KILIMANOOR POLICE STATION,
THIRUVANANTHAPURAM

PETITIONERS/ACCUSED NOS.1 TO 10/ACCUSED NO.1,2,4 & 6 TO 12 :-

1. SANJU, AGED 34 YEARS
S/O SUDHAKARAN, THEKKEVILA VEEDU, KUNNUMMEL
PAZHAYAKUNNUMMEL VILLAGE, THIRUVANANTHAPURAM.
2. SHIBU, AGED 34 YEARS
S/O SOMARAJAN, SHEEJA BHAVAN, CHEMBAKASSERRY
PAZHAYAKUNNUMMEL VILLAGE, THIRUVANANTHAPURAM.
3. SHIBIN, AGED 30 YEARS
S/O SATHYADAS, SHIBIN COTTAGE, CHAPPLIMUKKU
PULIMATH VILLAGE, THIRUVANANTHAPURAM.
4. SIYAD, AGED 28 YEARS
S/O IBRAHIMKUTTY, ANIZA MANZIL, KUNNUPURAM
KARETE, PULIMATH VILLAGE, THIRUVANANTHAPURAM.
5. SHINE, AGED 31 YEARS
S/O RAMACHANDRAN, PARAPPAMKUNNU VEEDU, CHEMPAKASSERRY
PAZHAYAKUNNUMMEL VILLAGE, THIRUVANANTHAPURAM.
6. RAJEEV, AGED 34 YEARS
S/O RAJAGOPALAN NAIR, R.G.NIVAS
NEAR KESAVAPURAM HOSPITAL, VELLALLUR VILLAGE
THIRUVANANTHAPUAM.
7. VINOD, AGED 34 YEARS
S/O MANOHARAN, KUNNIL PUTHAN VEEDU, PAPPALA
ADAYAMAN, PAZHAYAKUNNUMMEL VILLAGE, THIRUVANANTHAURAM.
8. DEEPU, AGED 33 YEARS
S/O DEVAN, DEEPU MANDIRAM, CHEMPAKASSERRY
ADAYAMAN, PAZHAYAKUNNMEL VILLAGE, THIRUVANANTHAPURAM.

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9. SATHYAPRAKAS, AGED 42 YEARS
S/O DAMODHARAN, PLAVILA PUTHEN VEEDU, CHEMPAKASSERRY
PAZHAYAKUNNUMMEL VILLAGE, THIRUVANANTHAPURAM.
10. MANOJ, AGED 29 YEARS
S/O MOHANAN, KALLAYIL VEEDU, PUTHUMANGALAM
MALAKKAL, KILIMANOOR VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.JOSEPH SEBASTIAN (KOLLAM)

RESPONDENTS/COMPLAINANT AND INJURED AND DEFACTO COMPLAINANT :-

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1. STATE OF KERALA
REP. BY SUB INSPECTOR OF POLICE
KILIMANOOR POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.
 2. DR.ASHA G. BABU, AGED 27 YEARS, D/O.JAYA,
ASHA NIVAS, NEAR PETTAHA POLICE STATION
VANCHIYOOR VILLAGE, THIRUVANANTHAPURAM - 695 001.
 3. SUNIL, AGED 32 YEARS
S/O SUNNY, ASHA NIVAS, NEAR PETTAHA POLICE STATION
VANCHIYOOR VILLAGE, THIRUVANANTHAPURAM - 695 001.
- ADDL.4.HENA, AGED 39 YEARS, D/O.JANARDHANAN,
K.R.SADANAM, AYOOR, KOTTARAKKARA, KOLLAM - 691 001.
- ADDL.5.SOBHANA, AGED 55 YEARS, D/O.THANKAMMA,
KANJIRATHU PARAMBILE VEEDU, KADAMUKKU,
PULIMATH VILLAGE, THIRUVANANTHAPURAM - 695 001.
- ADDL.6.RAFEEL @ RAFIN, AGED 48 YEARS,
S/O.JAMAL MUHAMMED, ARAYIL VEEDU, KOCHALUMMOODU,
PANGOD, THIRUVANANTHAPURAM - 695 001.

ADDITIONAL RESPONDENTS 4 TO 6 ARE IMPEADED AS PER ORDER
DATED 28.4.2015 IN CRL.M.A.No.3219/2015.

R2, R3 & ADDL.R4 TO R6 BY ADV. SRI.LIJU. M.P
R1 BY PUBLIC PROSECUTOR SRI.A.J.JOSE AEDAIODI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
28-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

jvt

Cr1.MC.No. 1807 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS :-

ANNEXURE A: TRUE COPY OF CHARGE IN CRIME NO.174/2005 OF
KILIMANOR POLICE STATION.

ANNEXURE B: ORIGINAL OF AFFIDAVIT OF 2ND RESPONDENT.

ANNEXURE C: ORIGINAL OF AFFIDAVIT OF 3RD RESPONDENT.

ANNEXURE D: ORIGINAL AFFIDAVIT OF ADDL.4TH RESPONDENT.

ANNEXURE E: ORIGINAL AFFIDAVIT OF ADDL.5TH RESPONDENT.

ANNEXURE F: ORIGINAL AFFIDAVIT OF ADDL.6TH RESPONDENT.

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

ANIL K. NARENDHAN, J.

Crl.M.C. No.1807 of 2015

Dated this the 28th day of April 2015

ORDER

Petitioners are accused Nos.1 to 10 in C.C. No.238 of 2008 on the file of Judicial First Class Magistrate Court-II, Attingal and accused Nos.1, 2, 4 and 6 to 12 in Crime No.174 of 2005 of Kilimanoor Police Station, Thiruvananthapuram. The learned Magistrate took cognizance of the offences under Sections 143, 147, 148, 451, 506(i), 427 and 294(b) r/w 149 of Indian Penal Code, based on a private complaint filed by the second respondent. The petitioners have also impleaded other victims as additional respondents 4 to 6 in this petition. Now, it is submitted on behalf of the petitioners that the entire disputes between the petitioners and respondents 2 and 3 and additional respondents 4 to 6 have already been settled and respondents 2 and 3 and additional respondents 4 to 6 have also sworn affidavits to that effect, which are produced along with Crl.M.C. as Annexures B, C, D, E and F. Therefore, the prayer in this Crl.M.C. is to quash the entire proceedings in C.C. No.238 of 2008 on the file of Judicial First Class Magistrate Court-II,

Attingal and in Crime No.174 of 2005 of Kilimanoor Police Station, Thiruvananthapuram as against the petitioners.

2. Heard, the learned counsel for petitioners, learned Public Prosecutor appearing for the first respondent and the learned counsel appearing for respondents 2 and 3 and additional respondents 4 to 6.

3. In **Gian Singh v. State of Punjab (2012 (10) SCC 303)**, the Apex Court held that, 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 Section 320 of the Code of Criminal Procedure. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guidelines 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 FIR 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 criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purpose of quashing, particularly offences arising from commercial, financial, mercantile, civil partnership or such like transactions or the offences arising out of matrimonial 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 these categories of cases, High Court may quash criminal proceedings, if in its view, because of the compromise between the offender and the victim, the possibility of a conviction is remote and bleak and continuation of criminal case would put accused to great

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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 may consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and wrong-doer 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 is in affirmative the High Court shall be well within its jurisdiction to quash the criminal proceedings.

4. The allegation against the petitioners is that they have committed the offences punishable under Sections 143, 147, 148, 451, 506(i), 427 and 294(b) r/w 149 of Indian Penal Code.

5. Now as submitted by both sides, the entire dispute between the petitioners and respondents 2 and 3 and additional respondents 4 to 6 has already been settled amicably and the learned counsel appearing for the private respondents has also stated that the private respondents did not want to prosecute the criminal case against the petitioners. They have also sworn

Annexures B, C, D, E and F affidavits before this Court in this regard.

6. In such circumstances, this is a fit case in which the proceedings pending against the petitioners in C.C. No.238 of 2008 on the file of Judicial First Class Magistrate Court-II, Attingal and in Crime No.174 of 2005 of Kilimanoor Police Station, Thiruvananthapuram can be quashed by this Court invoking the powers under Section 482 of the Code of Criminal Procedure, in the light of the principles laid down by the Apex Court in **Gian Sing's case (supra)**.

In the result, this Crl.M.C. is allowed and the entire proceedings in C.C. No.238 of 2008 on the file of Judicial First Class Magistrate Court-II, Attingal and in Crime No.174 of 2005 of Kilimanoor Police Station, Thiruvananthapuram, as against the petitioners is quashed.

Sd/-
ANIL K. NARENDRA
JUDGE