

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

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

CrI.MC.No. 2014 of 2015 ()

**CC.NO. 338/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -III,KOZHIKODE
CRIME NO. 248/2010 OF KAKKUR POLICE STATION , KOZHIKODE DISTRICT**

PETITIONER(S)/ACCUSED:

1. MUJEEB RAHMAN, S/O.ABOOBACKER,AGED 35 YEARS,
PARAPPARA KUZHIKULATHIL, P.O.PARANNOOR,
KOZHIKODE DISTRICT.
2. ABOOBACKER, S/O.AMMADALI, AGED 78 YEARS,
PARAPPARA KUZHIKULATHIL, P.O.PARANNOOR,
KOZHIKODE DISTRICT.
3. FATHIMA, W/O.ABOOBACKER,AGED 60 YEARS,
PARAPPARA KUZHIKULATHIL, P.O.PARANNOOR,
KOZHIKODE DISTRICT.
4. ABDUL MAJEED, S/O.ABOOBACKER, AGED 42 YEARS,
PARAPPARA KUZHIKULATHIL, P.O.PARANNOOR,
KOZHIKODE DISTRICT.
5. SHAFEEKA,W/O.ABDUL MAJEED, AGED 35 YEARS,
PARAPPARA KUZHIKULATHIL,
P.O.PARANNOOR, KOZHIKODE DISTRICT.

**BY ADVS.SRI.C.M.MOHAMMED IQUABAL
SMT.BHAVANA VELAYUDHAN**

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. JISHLA, D/O.ABOOBACKER,AGED 27 YEARS,
KUTTIYATT HOUSE, P.O.KIZHAKUMMURI VIA.
KAKKODI, KOZHIKODE DISTRICT.PIN-675 011

**R1 BY PUBLIC PROSECUTOR SRI.ABHIJETT LESSLI
R2 BY ADV. SMT.T.J.SEEMA**

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

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APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEX A1: THE TRUE COPY OF THE COMPLAINT DATED 21/06/2010 IN CMP NO. 2238/2010 OF JFCM COURT-III, KOZHIKODE.

ANNEX A2: THE TRUE COPY OF THE FINAL REPORT IN CRIME NO. 248/2010 OF KAKKUR POLICE STATION DATED 30/07/2010.

ANNEX A3: THE TRUE COPY OF THE AFFIDAVIT OF THE 2ND RESPONDENT DATED 25/10/2014.

ANNEX A4: TRUE COPY OF THE AGREEMENT BETWEEN THE 1ST PETITIONER AND THE 2ND RESPONDENT DATED 25/10/2014.

RESPONDENT(S)' ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ANIL K.NARENDRA, J.

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Dated this the 28th day of April, 2015

ORDER

The petitioners are accused in Crime No.248 of 2010 of Kakkur Police Station and in C.C. No. 338/2011 on the file of the Judicial First Class Magistrate Court-III, Kozhikode. The learned Magistrate took cognizance of the offences under Sections 323, 324, 340, 346, 498A and 506(11) of the Indian Penal Code, based on a private complaint filed by the second respondent. Now, it is submitted on behalf of the petitioners that the entire dispute between the petitioners and the second respondent has already been settled and the second respondent has also sworn to an affidavit which is produced along with Crl.M.C. as Annexure A3. Therefore, the prayer in this Crl.M.C. is to quash Annexure A1 complaint and A3 Final Report in Crime No. 248/2010 of Kakkur Police Station and C.C. No. 338/2011 pending before the Judicial First Class Magistrate Court-III, Kozhikode.

2. Heard, the learned counsel for petitioners, learned Public Prosecutor appearing for the first respondent and the learned counsel

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for the second respondent.

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 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 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

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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 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

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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 offences punishable under Sections 323, 324, 340, 346, 498A and 506(11) of the Indian Penal Code.

5. Now as submitted by both sides, the entire dispute between the petitioners and the second respondent has already been settled amicably and the learned counsel for the second respondent has also stated that the second respondent does not want to prosecute the criminal case filed against the petitioners. The second respondent has also sworn to an affidavit before this Court as Annexure A3 in this regard.

6. In such circumstances, this is a fit case in which the proceedings pending against the petitioners in Crime No.248 of 2010 of Kakkur Police Station and in C.C. No. 338/2011 on the file of the

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Judicial First Class Magistrate Court-III, Kozhikode 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 Crime No.248 of 2010 of Kakkur Police Station and in C.C. No. 338/2011 on the file of the Judicial First Class Magistrate Court-III, Kozhikode against the petitioners are quashed.

**ANIL K. NARENDRA
JUDGE**

DCS