

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

CrI.MC.No. 2193 of 2015 ()

CC 1386/2014 of J.F.C.M. COURT-II, ERNAKULAM

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PETITIONER(S)/ACCUSED 1 TO 3:

- 1. ARUN KURIAN, AGED 28 YEARS
S/O.JOSEPH KURIAN, AYANKERIL HOUSE, 5/15B,
VALAS ROAD, NEAR KUNNATH BHAGAVATHI TEMPLE,
CHERANELLOOR P.O, COCHIN 682 034..**
- 2. MAREENA KURIAN,
W/O.JOSEPH KURIAN, AYANKERIL HOUSE, 5/15B
VALAS ROAD, NEAR KUNNATH BHAGAVATHI TEMPLE,
CHERANELLOOR P.O, COCHIN 682 034.**
- 3. JOSEPH KURIAN, AGED 59 YEARS,
AYANKERIL HOUSE, 5/15B, VALAS ROAD
NEAR KUNNATH BHAGAVATHI TEMPLE,
CHERANELLOOR P.O, COCHIN 682 034.**

BY ADV. SMT.V.K.HEMA

RESPONDENT(S)/STATE & DE FACTO COMPLAINANT :

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. VIDHU MOHAN, AGED 24 YEARS.,
D/O.MOHAN K.J, KOZHAKKATTUTHOTTATHIL, KALLARAKUTTY P.O,
IDUKKI, KERALA 685 562.**

R1 BY PUBLIC PROSECUTOR SRI.SHYSON P.MANGUZHA

R2 BY ADV. SRI.A.TANILKUMAR

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

CrI.MC.No. 2193 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1. TRUE COPY OF THE COMPLAINT IN CC 1386/14 ON THE FILE OF THE COURT
OF THE JUDICIAL MAGISTRATE OF FIRST CLASS II, ERNAKULAM.**

**ANNEXURE A2. COPY OF THE SUMMONS RECEIVED BY THE 2ND PETITIONER IN
CC 1386/14.**

ANNEXURE A3. COPY OF THE AFFIDAVIT FILED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

Cr1.M.C. No.2193 of 2015

Dated this the 21st day of April, 2015.

O R D E R

Petitioners are the accused Nos.1 to 3 in C.C.No.1386/2014 on the files of the Judicial First Class Magistrate's Court-II, Ernakulam. The above case was initiated on the basis of a private complaint filed by the second respondent as CMP No.1740/2014. The second respondent is the de facto complainant in the above case. After taking cognizance under Section 190 of the Code of Criminal Procedure, all the disputes between the petitioners and the second respondent were settled in the mediation held at the District Mediation Centre, Ernakulam. As per the terms of mediation, both parties agreed to withdraw all the cases filed by both against each other before all courts. Now the second respondent has no subsisting grievance against the petitioners and she do not intend to proceed with the criminal case. That apart,

the first petitioner and the second respondents resumed their marital relationship and now living as husband and wife peacefully. Under the above circumstances, this petition is filed under Section 482 of the Cr.P.C. for quashing the entire proceedings.

2. Heard the learned counsel for the petitioners, the learned Public Prosecutor and the learned counsel for the second respondent. Both the counsel urged for quashing the entire proceedings under Annexure-A1 complaint invoking inherent jurisdiction under Section 482 of the Cr.P.C.

3. The learned counsel for the petitioners drew my attention to the decision laid down by the Apex Court in Gian Singh v. State of Punjab [2012 (4) KLT 108 (SC)] in support of his arguments.

4. I have meticulously considered the decision laid down in Gian Singh v. State of Punjab [2012 (4) KLT 108 (SC)]. 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-dominatingly 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."

5. 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-A3. In view of the compromise between the first petitioner and the victim, I find that the possibility of conviction is remote, 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.

6. In this analysis, the prosecution proceedings against the petitioners under Annexure-A1 complaint in C.C. No.1386/2014 on the files of the Judicial First Class Magistrate's Court-II, Ernakulam will stand quashed.

This petition is allowed.

Sd/-
(K.HARILAL, JUDGE)

okb.

//True copy//

P.A. to Judge