

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. 2330 of 2015 ()

**CC 846/2014 of C.J.M. COURT,KASARAGOD
CRIME NO. 187/2014 OF MANJESWAR POLICE STATION , KASARAGOD**

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PETITIONERS/ACCUSED:

- 1. SHAIK PARVEZ, AGED 27 YEARS
S/O.(LATE) RAHMATHULLA, MARIUM BAGH,
NR.BHARATH HIGH SCHOOL, MASTHIKATTE, ULLAL,
THOKKOTTU VILLAGE, MANGALORE, KARNATAKA STATE.**
- 2. SHAIK THABEREZ, AGED 29 YEARS
S/O.(LATE) RAHMATHULLA, MARIUM BAGH,
NR.BHARATH HIGH SCHOOL, MASTIKATTE, ULLAL,
THOKKOTTU VILLAGE, MANGALORE, KARNATAKA STATE.**
- 3. KAMARUNNISA AGED 48 YEARS,
W/O.(LATE) RAHMATHULLA, MARIUM BAGH
NR.BHARATH HIGH SCHOOL, MASTIKATTE, ULLAL,
THOKKOTTU VILLAGE, MANGALORE, .KARNATAKLA STATE.**

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS/RESPONDENTS/COMPLAINANT/STATE:

- 1. NILOFAR BEGAUM, AGED 24 YEARS,
D/O.ABDUL JALEEL9W/O. SHAIK THABEREZ
RESIDING AT ALNAS QUARTERS, NR.AILA MAIDAN, NAYABAZAR,
MANGALPADY POST AND VILLAGE, UPPALA,
KASARAGOD TALUK AND DISTRICT-673571.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.**

**R2 BY PUBLIC PROSECUTOR SRI. EGY N. ELIAS
R1 BY ADV. SRI.LOHITHAKSHAN CHATHADI KANNOTH**

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

CrL.MC.No. 2330 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1: TRUE COPY OF THE FINAL REPORT

RESPONDENT(S)' EXHIBITS : NIL

OKB

True copy

PA. to Judge

K.HARILAL, J.

Crl.M.C. No.2330 of 2015

Dated this the 21st day of April, 2015.

O R D E R

The petitioners are the accused in Crime No.187/2014 on the files of the Manjeshwar Police Station, now pending as C.C.No.846/2014 on the files of the Judicial First Class Magistrate's Court, Kasaragod. The first petitioner is the husband, the second petitioner is the mother-in-law and the third petitioner is the brother-in-law of the de facto complainant. The marital discordancy between the first petitioner and the first respondent culminated in a criminal prosecution under Sections 498A and 23 read with Section 34 of the Indian Penal Code and Annexure-A1 final report has been filed. Now the case is pending for trial. Now the grievances of the petitioners are that the parties have amicably settled the matter and the first respondent does not want to proceed with the said criminal case. Now the first

petitioner and the first respondent are living together as husband and wife and if the prosecution is allowed to be continued, it will cause prejudice and hardship to both parties and the same will affect their future life.

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

3. The learned counsel for the petitioners urged for quashing all criminal proceedings against the petitioners under Annexure-A final report invoking the jurisdiction and inherent power under Section 482 of the Code of Criminal Procedure. The learned counsel further cited the decision reported in *Gian Singh v. State of Punjab* [2012 (4) KLT 108 (SC)]. The learned counsel for the first respondent also urged for quashing the prosecution against the petitioners invoking jurisdiction under Section 482 of the Cr.P.C.

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 Cr.P.C. 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 the affidavit filed by the first

respondent. In view of the compromise between the petitioners 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 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)

okb.