

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. 2518 of 2015

AGAINST ST 3335/2010 of ADDITIONAL CHIEF JUDICIAL
MAGISTRATE'S COURT (EO), ERNAKULAM.

PETITIONER/ACCUSED:

SOOREJ JACOB, AGED 35 YEARS,
S/O. M.K.JACOB, MADAPPARAMBIL HOUSE,
SOUTH MAZHUVANNOOR, KOLENCHERY-682 311.

BY ADVS.SRI.C.P.UDAYABHANU
SMT.P.A.MENISHA

RESPONDENTS/COMPLAINANT:

1. VIDHULA CHERIYAN, AGED 31 YEARS,
W/O SURAJ JACOB, NOW RESIDING AT RANI PINK,
DOOR NO.39/5386, PLOT NO.1, PANAMPILLY NAGAR,
KOCHI-36.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.PHILIP T.VARGHESE
R2 BY PUBLIC PROSECUTOR SRI.EGY N. ELIAS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 21-04-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

Cr1.MC.No. 2518 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE I: A CERTIFIED COPY OF THE COMPLAINT (AFFIDAVIT
AND PETITION) PENDING AS S.T.3335/2010 ON THE FILE OF
ACJM (E.O) COURT, ERNAKUALM.

ANNEXURE II: AFFIDAVIT SWORN BY R1 THE COMPLAINANT IN
ANNEXURE-1.

RESPONDENT(S) ' EXHIBITS

NIL

//true copy//

P.S. to Judge

K. HARILAL, J.

Crl.M.C. No.2518 of 2015

Dated this the 21st day of April, 2015

ORDER

The petitioner is the sole accused in S.T.No.3335 of 2010 on the files of the Additional Chief Judicial Magistrate' Court (E.O), Ernakulam, which was initiated at the instance of the 1st respondent, the wife of the petitioner, alleging an offence punishable under Section 31 of the Domestic Violence Act. Since the petitioner and the 1st respondent were residing separately for the last more than four years, the relatives and other family members intervened and sorted out the dispute between them. Pursuantly, they settled the entire dispute between them and arrived at a compromise.

2. This petition is filed for quashing the entire

criminal prosecution initiated against the petitioner in Crl.M.C.No.2081 of 2015 pending before the Judicial First Class Magistrate's Court, Kolenchery.

3. The 1st respondent entered appearance through counsel.

4. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

5. The learned counsel for the 1st respondent endorsed the submissions made by the learned counsel for the petitioner. Both of them urged for quashing the prosecution against the petitioner in S.T.No.3335 of 2010 on the files of the Additional Chief Judicial Magistrate's Court (EO), Ernakulam, in exercise of the inherent power and jurisdiction under Sec.482 of the Cr.P.C. In support of the said argument, the learned counsel for the petitioner cited the decision in Gian Singh v. State of Punjab [2012 (4) KLT 108 (SC)].

6. I have meticulously considered the decision 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;(1) 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 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 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.”

7. 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 petitioner 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-II. In view of the compromise between the 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.

8. In this analysis, the prosecution proceedings against the petitioner under Annexure-I complaint will stand quashed.

This petition is disposed of as above.

(K. HARILAL, JUDGE)

Nan/