

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

Crl.MC.No. 2675 of 2015 ()

CRIME NO. 349/2012 OF NILESHWAR POLICE STATION, KASARAGOD DISTRICT

PETITIONER/ACCUSED :

**P. VIJESH,
S/O.KUNHIRAMAN, AGED 32 YEARS
KUTTIYANAM, PUTHARIYADUKKAM
PEROL VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT.**

BY ADV. SRI.P.K.SUBHASH

RESPONDENTS/RESPONDENTS :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. K.VIJESH KUMAR,
S/O.KUNHIRAMAN, AGED 35 YEARS
KANNOOTH HOUSE, KUTTIYANAM
PUTHARIYADUKKAM, PEROL,
KASARAGOD DISTRICT.**
- 3. T.V. KUNHIRAMAN,
S/O.AMBUMANIYANI, AGED 41 YEARS
PARAMMAL HOUSE, KUTTIYANAM
PUTHARIYADUKKAM, PEROL VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT.**

**R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE
R2 & R3 BY ADV. SRI.V.VENUGOPAL**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27-05-2015,
ALONG WITH CRL.M.C NO. 2676/2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**

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Crl.MC.No. 2675 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE A I.** **A TRUE COPY OF THE F.I.R. IN CRIME NO.349 OF 2012 OF NILESHWAR POLICE STATION, KASARAGOD DISTRICT.**
- ANNEXURE A II.** **A TRUE COPY OF FINAL REPORT OF THE CRIME NO.349 OF 2012 OF NILESHWAR POLICE STATION, KASARAGOD DISTRICT.**
- ANNEXURE A III.** **TRUE COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER AND THE RESPONDENTS.**
- ANNEXURE A IV.** **TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE SECOND RESPONDENT.**
- ANNEXURE A V.** **TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE THIRD RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.Nos.2675 & 2676 of 2015

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Dated this the 27th day of May, 2015

O R D E R

The petitioner in Crl.M.C.No.2675/2015 is the sole accused in Crime No.349/2012 of Nileshwar Police Station, Kasargod district, now pending as S.C.No.94/2015 on the file of the Additional Sessions Judge-II, Kasargod. The offences involved are those punishable under Secs.324 and 323 of the I.P.C. The prosecution allegation is that on 10.6.2015, at about 20 Hrs. the accused had intercepted the defacto complainant in connection with disputes relating to caroms game near the Purusha Swayam Sahaya Sangam office adjacent to the Nileshwaram Block Office in Perol village and slapped the defacto complainant and thus committed the above offences. The 2nd respondent herein is the defacto complainant in the instant Crime No.349/2012. It is also pointed out that a counter case was registered as Crime No.348/2012 of Nileshwar Police Station against the 2nd respondent in Crl.M.C.No. 2675/2015, for offences under Secs.341, 323, 326, 308 read with Sec.34 of the IPC. The 2nd respondent in Crl.M.C.No.2675/2015 has filed

Crl.M.C.No.2676/2015 with a prayer to quash the impugned criminal proceedings pending against him arising out of the above said Crime No.348/2012. The prayer in Crl.M.C.No. 2675/2015 is to quash the entire criminal proceedings pending against the petitioner therein arising out of the Crime No.349/2012 of the above said Police Station. The allegation in relation to the crime in respect of Crl.M.C.No.2676/2015 is in connection with disputes relating to caroms game on 10.6.2012 at about 20 Hrs. The accused therein intercepted the defacto complainant near the Pratheeksha Purusha Swayam Sahaya Sangam office adjacent to the Nileschwaram Block Office in Perol village and slapped the defacto complainant and stabbed on the right side of his stomach and attempted to stab on his chest and if the defacto complainant has not evaded from that attempt, his death might have been caused and thus he committed the offence.

2. It is submitted on behalf of the petitioner in Crl.M.C.No. 2765/2015 and the petitioner in Crl.M.C.No.2676/2015 that the entire disputes arose between these two sets of rival parties in relation to caroms game near the Purusha Swayam Sahaya Sangam office adjacent to the Nileschwaram Block office in Perol Village and this is the case even set up in the impugned FIRs in both the crimes.

The contesting respondents 2 and 3 in Crl.M.C.No.2675/2015 are the petitioner in Crl.M.C.No.2676/2015 and contesting respondent No.2 in Crl.M.C.No.2676/2015. The contesting respondent No.2 in Crl.M.C.No. 2676/2015 is the petitioner in Crl.M.C.No. 2675/2015. The contesting respondents in these two respective Criminal Miscellaneous Cases have sworn to affidavits, which are produced in these cases, stating that the entire disputes between the rival parties have been settled and agreements in that regard have also been executed making out the compromise and the said documents are also produced in these Criminal Miscellaneous Cases. The respective contesting respondents in these cases have also stated that they have no objection whatsoever for quashment of the impugned criminal proceedings pending as against the respective petitioners in these cases. It is also to be noted that going by very allegations projected in these respective crimes, the time and date of occurrence is 20 Hrs. on 10.6.2012 and it is exclusively stated in the FIRs registered by the Police in the aforesaid crimes that the entire disputes arose out of caroms game near the venue near the Nileschwaram Block office. The allegation in one crime is that the accused therein had intercepted the defacto complainant concerned. Therefore, on a mere reading of the projection of the case made out

in the impugned FIRs is that the entire disputes arose out of caroms game played near the venue in question and the conflicting versions, one intercepting the other, which led to the impugned incidents appear to be inherently contradictory. The learned Advocates appearing for the contesting respondents in these two cases have also submitted that their parties have no objection for quashment of the impugned criminal proceedings and that this Court may consider the said plea in the light of the settlement and also taking into account the harmony and peace that have been secured by virtue of such settlement. The learned Public Prosecutor would also submit that the prayer may be considered in the light of the law declared by the Supreme Court.

3. The Apex Court in the case in Narinder Singh and others v. State of Punjab and anr. reported in (2014) 6 SCC 466, has laid down various guidelines in paragraph 29 of that decision in the matter of judicial exercise of discretion for consideration of quashment. Paragraphs 29.6 and 29.7 of the above said reported decision read as follows:

“29.6 Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is

there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

In the instant case, the offence under Sec.308 has been explicitly included only in the crime in Crl.M.C.No.2676/2015. It is stated in paragraph 29.6 of Narinder Singh's supra that the court can

examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak and the court also be swayed by the fact that the settlement between the parties is going to result in harmony between them, which may improve their future relationship. It is further stated in paragraph 29 in Narinder Singh's *supra* that the timing of the settlement is also very crucial factor. It is also stated that in cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after *prima facie* assessment of the circumstances/ material mentioned above, etc.

4. In the case *Yogendra Yadav & ors. v. State of Jharkhand & Anr.* reported in 2014 (8) SCALE 634, the Apex Court had quashed the impugned criminal proceedings therein involving offences under Secs.326, 307 read with Sec.34 of the IPC. Assessing the fact situation in the present case it can be seen that the entire incidents arose out of differences of opinion between rival parties during a caroms game. Though the final report has been filed, the court has not framed charge. Therefore, the prayer for quashment could be considered going by the contradictory versions in these two different crimes, which are essentially involving the case and

counter cases, since the date and time of occurrence in both these crimes are the same, the allegation and the cross allegation against the respective parties disclose a situation of inherently high improbable at least of one version of the incident. Taking into account all these aspects, this Court is of the considered opinion that the power available under Sec.482 of the Cr.P.C. could be invoked in this case.

5. Moreover, this Court of the considered opinion that the possibility of securing any conviction in these cases appears to be quite remote and bleak. For all these aspects, it is ordered in the interest of justice as follows:-

- (i) In Crl.M.C.No.2675/2015 it is ordered that the impugned Anx.A-II final report/charge sheet filed in the impugned Anx.A-1 Crime No.349/ 2012 of Nileshwar Police Station, Kasargod district, which has led to the pendency of S.C.No.94/2015 on the file of the Additional Sessions Judge-II, Kasargod, all other proceedings arising therefrom pending against the petitioner in that case stand quashed.
- (ii) In Crl.M.C.No.2676/2015 it is ordered that the impugned Anx.A-II final report/charge sheet filed in the impugned Anx.A-1 Crime No.348/2012 of Nileshwar Police Station, which has led to the pendency of S.C.No.291/2015 on the file of the Additional Sessions Judge-II, Kasargod, all other proceedings arising therefrom pending against the petitioner in that case stand quashed.

With these observations and directions, the Criminal Miscellaneous Cases stand finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE

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S.C No. 291/2015" occurring in the 3rd line of paragraph 5(ii) at

page 7 of the common order dated 27/05/2015 in Crl. M.C Nos. 2675 & 2676 of 2015 is corrected and substituted as "S.C No. 291/2013" as per order dated 10/12/2015 in Crl. M.A 10931/2015 in Crl. M.C 2676/2015 and Crl. M.A 11550/2015 in Crl. M.C 2675/2015.

Sd/-
Registrar (Judicial)

///True copy///

P.S. to Judge