

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

FRIDAY, THE 8TH DAY OF MAY 2015/18TH VAISAKHA, 1937

Crl.MC.No. 2763 of 2015 ()

CC 5/2011 of JUDICIAL FIRST CLASS MAGISTRATE COURT.-II, PERINTHALMANNA
CRIME NO. 213/2010 OF PANDIKKAD POLICE STATION, MALAPPURAM

PETITIONERS/ACCUSED:

1. PUTHIYATH ABBAS AGED 42 YEARS
S/O. HYDRU, PUTHIYATH HOUSE, KOLAPARAMBA P.O.
PANDIKKAD, MALAPPURAM DISTRICT.
2. PUTHIYATH GAFOOR, AGED 40 YEARS
S/O. HYDRU, PUTHIYATH HOUSE, KOLAPARAMBA P.O.
PANDIKKAD, MALAPPURAM DISTRICT.
3. AYISHA AGED 65 YEARS
W/O. HYDRU, PUTHIYATH HOUSE, KOLAPARAMBA P.O.
PANDIKKAD, MALAPPURAM DISTRICT.

BY ADV. SRI.P.SAMSUDIN

RESPONDENT(S)/STATE AND DEFACTO-COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM-682031. (CRIME NO.213/2010 OF PANDIKKAD POLICE STATION).
2. SAREENA, AGED 32 YEARS
D/O. ABDUL RAZAK, PUTHIYATH HOUSE, ANAKKAYAM
MANJERI-676121, MALAPPURAM DISTRICT.
3. RIYAS, AGED 30 YEARS
S/O. ABDUL RAZAK, PUTHIYATH HOUSE, ANAKKAYAM
MANJERI-676121, MALAPPURAM DISTRICT.

R1 BY PUBLIC PROSECUTOR SMT.LILLY LESSLIE
R2 & R3 BY ADV. SRI.K.C.ANTONY MATHEW

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
08-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 2763 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1: TRUE COPY OF FIR AND CHARGE SHEET IN CRIME NO.213/2010 OF PANDIKKAD POLICE STATION.

ANNEXURE-A2: THE AFFIDAVIT SWORN IN BY 2ND AND 3RD RESPONDENTS DATED 02.05.2015.

RESPONDENT(S)' EXHIBITS

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

Crl.M.C.No.2763 Of 2015

DATED THIS THE 8th DAY OF MAY, 2015

ORDER

Petitioners are accused in Crime No.213/2010 of Pandikkad Police Station, which is now pending as C.C.No.5/2011 of Judicial First Class Magistrate Court-II, Perinthalmanna. The learned Magistrate took cognizance of the offence under Sections 323, 324, 406 and 498A read with Section 34 of Indian Penal Code. Now, it is submitted on behalf of the petitioners that the entire disputes with the second and third respondents have already been settled and that now the first petitioner and the second respondent are residing together along with their children. The second and third respondents have also sworn to a joint affidavit which is produced along with Crl.M.C. as Annexure A2. Therefore, the prayer in this Crl.M.C. is to quash the entire proceedings in C.C.No.5/2011 of Judicial First Class Magistrate Court-II, Perinthalmanna.

2. Heard the learned counsel for petitioners, learned Public Prosecutor appearing for the first respondent and the learned counsel for respondents 2 and 3.

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 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 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, 406 and 498A read with Section 34 of Indian Penal Code.

5. Now as submitted by both sides, the entire dispute between the first petitioner and the second and third respondents has already been settled amicably and the learned counsel for the second and third respondents has also stated that the second respondent does not want to prosecute the criminal case filed against the petitioners. The second and third respondents have

sworn to a joint affidavit before this Court as Annexure A2 in this regard. It is also submitted that the first petitioner and the second respondent are now residing together along with their children.

6. In such circumstances, this is a fit case in which the proceedings pending against the petitioners in C.C.No.5/2011 of Judicial First Class Magistrate Court-II, Perinthalmanna 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 C.C.No.5/2011 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna arising out of Crime No.213/2010 of Pandikkad Police Station against the petitioners is quashed.

Sd/-
ANIL K.NARENDRA,
JUDGE

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