

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 19TH DAY OF MAY 2015/29TH VAISAKHA, 1937

Cr1.MC.No. 2765 of 2015 (D)

AGAINST THE ORDER IN CC 516/2008 of J.M.F.C.-I,
MAVELIKKARA.

PETITIONERS/ACCUSED 10 TO 4:

1. TRADEEP, AGED 38 YEARS,
S/O DAMODARAN, PUTHENVILAYIL VEETIL,
SUJA BHAVANAM, AKKANATTUKARA MURI,
THAZAKKARA VILLAGE, KALLUMALA (PO),
MAVELIKARA TALUK, ALAPPUZHA DISTRICT.

2. DHARMAJAN, AGED 44 YEARS,
S/O NANU, RESIDING AT SREEIVALASAM,
THEKKE MANKUZHI MURI, BHARANIKAVU VILLAGE,
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.

3. BINU, AGED 32 YEARS,
S/O ACHUTHAN, ANJILIVILAYIL, KOMALLOOR MURI,
CHUNAKKARA VILLAGE, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT.

4. PONNUNNI @ PONNUMANI, AGED 46 YEARS,
S/O CHELLAPPAN, PALLIYUDE THEKKETHIL VEETIL,
AKKANATTUKARA MURI, THAZHAKARA VILAGE,
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE

RESPONDENTS/STATE AND DE FACTO COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
REPRESENTING THE SUB INSPECTOR OF POLICE,
MAVELIKKARA POLICE STATION, ALAPPUZHA DISTRICT,
PIN:688 001.

2. R.SANTHOSH, AGED 42 YEARS,
S/O LATE RAJAPPAN, PALLIYUDE THEKKETHIL,
AKKANATTUKARA MURI, THAZHAKKARA VILLAGE,
MAVELIKKARA TALUK, PIN:690102.

R2 BY ADV. SRI.K.V.ANIL KUMAR

R1 BY PUBLIC PROSECUTOR SRI. P. RENJITH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 19-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

Cr1.MC.No. 2765 of 2015

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE A1: TRUE COPY OF THE FIRST INFORMATION REPORT
IN CRIME NO.272/2003 OF MAVELIKKARA POLICE STATION.

ANNEXURE A2: TRUE COPY OF THE FINAL REPORT IN
C.C.NO.516/2008 ON THE FILE OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, MAVELIKKARA.

ANNEXURE A3: AFFIDAVIT BY THE 2ND RESPONDNET DATED
30.4.2015.

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P.S. to Judge

K. HARILAL, J.

Crl.M.C. No.2765 of 2015-D

Dated this the 19th day of May, 2015

ORDER

The petitioners herein are accused Nos.1 to 4 respectively in C.C.No.516 of 2008 on the files of the Judicial First Class Magistrate's Court-I, Mavelikkara and the 2nd respondent is the de facto complainant. The crime was registered alleging the offences punishable under Secs.143, 147, 148, 149, 447 and 427 of the Indian Penal Code. But, after investigation, final report was filed charging the offences punishable under Secs.447 and 427 of the IPC only.

2. Now, the petitioners and the 2nd respondent/the de facto complainant have amicably settled the disputes. The de facto complainant has filed

Annexure-3 affidavit stating that he does not want to proceed with the prosecution as he has no subsisting grievance at all. He has no objection in quashing the entire proceedings against the petitioners invoking inherent jurisdiction under Sec.482 of the Cr.P.C.

3. Heard the learned counsel for the petitioners, learned counsel for the 2nd respondent and the learned Public Prosecutor. The learned counsel for the petitioners drew my attention to the decision reported in *Gian Singh v. State of Punjab* [2012 (4) KLT 108 (SC)].

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;(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.”

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 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-A3. 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.

6. In this analysis, the prosecution proceedings against the petitioners under Annexure-2 Final Report are quashed in exercise of jurisdiction and power under Section 482 of the Code of Criminal Procedure.

This petition is disposed of as above.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge