

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Crl.MC.No. 3008 of 2015 ()

CRIME NO. 669/2012 OF PAYYANNUR POLICE STATION , KANNUR DISTRICT

PETITIONER/ACCUSED :

**DR.VISWAN, AGED 41 YEARS,
S/O. KRISHNAN, VANNALATHU HOUSE, PAYYANNUR AMSOM,
MUTHATHI, KOROM P.O., KANNUR DISTRICT.**

**BY ADVS.SRI.M.SASINDRAN
SRI.A.ARUNKUMAR**

RESPONDENTS/COMPLAINANT & STATE :

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. RAJEEVAN K., AGED 46 YEARS
S/O. NARAYANAN, KALASAKKARAN HOUSE, KUNNATHUERU,
RAMANTHALI, KANNUR DISTRICT-670 001.**

**R1 BY ADV. SRI.S.R.SREEJITH
R2 BY SMT.S.HYMA, PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
03-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

AMV

: 2 :

Crl.MC.No. 3008 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS :

**ANNEXURE A1- COPY OF THE FIR IN CRIME NO. 669 OF 2012 OF
PAYYANNUR POLICE STATION, KANNUR DISTRICT.**

**ANNEXURE AII- COPY OF THE FINAL REPORT IN CRIME NO. 669 OF 2012
OF PAYYANNUR POLICE STATION, KANNUR DISTRICT.**

**ANNEXURE AIII- COPY OF THE AFFIDAVIT SWORN TO BY THE 2ND
RESPONDENT ENDORSING THE FACTUM OF
COMPOUNDING OF THE ABOVE SAID OFFENCES AND
THE SETTLEMENT OF DISPUTES BETWEEN THE
PARTIES.**

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

ALEXANDER THOMAS, J.

Crl.M.C. No.3008 of 2015

Dated this the 3rd day of June, 2015

ORDER

The petitioner herein, who is a doctor by profession, is arrayed as the sole accused in the impugned Annexure-A1 in Crime No.669 of 2012 of Payyannur Police Station, Kannur district, registered for the offence punishable under Section 304A of the Indian Penal Code.

2. The gist of the prosecution case is that one Smt.Prameela, who is the sister of the de facto complainant (2nd respondent herein), while undergoing treatment for gynaecological problems, had undergone an operation at Saba hospital, Payyannur on 18.05.2012 and for managing medical complications on 23.05.2012, she was taken to KMC hospital, Mangalore, and later she died at the same hospital on 04.06.2012; and that the death of Smt.Prameela occurred due to the professional negligence of the petitioner.

3. The police after investigation submitted the impugned Annexure-A2 FIR/charge sheet in the impugned Crime No.669 of 2012 of Payyannur Police Station, which has led to the pendency of C.C.No.1321 of 2014 on the file of Judicial First Class Magistrate Court, Payyannur.

4. It is now stated that the crime arose out of the complaint made by the 2nd respondent/de facto complainant, who is the brother of the deceased and the entire misunderstandings led to the said complaint, was cleared through mutual discussions between the petitioner and 2nd respondent/de facto complainant at the intervention of the well wishing mediators and that the parties have amicably resolved the disputes between them with the best satisfaction on both sides.

5. Annexure-A3 is the affidavit sworn to by the 2nd respondent in this regard, endorsing such settlement, wherein it is stated by the 2nd respondent/de facto complainant that, he has no objection for quashment of the impugned criminal proceedings, now pending against the petitioner. In the light of these aspects, the petitioner has filed this criminal miscellaneous case seeking the quashment of the impugned civil proceedings.

6. Heard Sri.M.Sasindran, the learned counsel for the petitioner, Sri.S.R.Sreejith, the learned counsel for the 2nd respondent and learned public prosecutor appearing for the 1st respondent.

7. The learned counsel for the petitioner reiterated the

submissions and contentions urged in this Crl.M.C. It is also pointed out that an expert committee constituted for dealing such professional negligence cases had examined the issue and the expert dealing with the subject of gynaecology has specifically opined that there is no professional negligence from the part of the petitioner in the instant case. This view of the expert committee is also supported by the District Medical Officer, who was also a member of the committee, but two other members of the said committee namely the prosecutor concerned and the Professor of Forensic Science opined that the criminal law may be set in motion in this case. The State level committed decided against the petitioner, which led to the impugned criminal proceedings.

8. It is also to be noted that, in the instant case, the surgery was conducted by the petitioner on 18.05.2012 and the patient was discharged from that hospital on 23.05.2012 and she was admitted at the KMC hospital, Mangalore on the same day and she eventually died on 04.06.2012. It is submitted by the learned counsel for the 2nd respondent/de facto complainant that the de facto complainant is no longer interested to prosecute the matter against the petitioner and that he has no further subsisting grievances against the

petitioner and he has no objection for quashing the criminal proceedings against the petitioner.

9. The learned public prosecutor submits that the prayer for quashment may be considered in the light of the legal principles well settled by the Apex Court on such issues.

Having heard all parties concerned and this Court on an assessment of the totality of the facts and circumstances of the case, especially the divergent opinion disposed by the expert committee, this Court is of the considered opinion that, the prayer for quashment on the basis of settlement could be favourably considered. Accordingly it is ordered in the interest of justice that the impugned Annexure-A2 FIR/charge sheet filed in Annexure-A1 in Crime No.669/2012 of Payyannur Police Station, Kannur district and all further proceedings arising there from pending against the petitioner will stand quashed.

This Crl.M.C., is finally disposed of accordingly.

Sd/-
ALEXANDER THOMAS
JUDGE

AMV/04/06/