

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Cr1.MC.No. 3158 of 2015

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AGAINST THE JUDGMENT IN CC 1541/2011 of J.M.F.C.-II,  
KOLLAM.

CRIME NO. 467/2011 OF KUNDARA POLICE STATION, KOLLAM.

PETITIONER(S)/ACCUSED NOS.1 TO 5:

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1. RAJ THILAKAN @ THILAKAN, AGED 35 YEARS,  
S/O. BHASKARAN PILLAI, POOKKOOTTU THAZATHIL VEEDU,  
MAMOODU, CHANDANATHOPPU P.O., KOTTANKARA CHERI,  
KOTTANKARA VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT,  
PIN.691 014.
2. BABUKUTTAN PILLAI @ BABU, AGED 48 YEARS, S/O.  
THANKAPPAN PILLAI, SANOJ BHAVAN,  
MAMOODU, CHANDANATHOPPU P.O., KOTTANKARA CHERI,  
KOTTANKARA VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT,  
PIN.691 014.
3. SANU, AGED 22 YEARS, S/O. BABUKUTTAN PILLAI,  
SANOJ BHAVAN, MAMOODU, CHANDANATHOPPU P.O.,  
KOTTANKARA CHERI,  
KOTTANKARA VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT,  
PIN.691 014.
4. GANESH, AGED 18 YEARS, S/O. SANATHANAN PILLAI,  
RAJENDRA VILASAM, MAMOODU, CHANDANATHOPPU P.O.,  
KOTTANKARA CHERI, KOTTANKARA VILLAGE,  
KOLLAM TALUK, KOLLAM DISTRICT,  
PIN.691 014.
5. VIJAYAKUMAR @ VIJAYAPPAN, AGED 38 YEARS,  
S/O. SURENDRAN PILLAI, SANOJ BHAVAN, MAMOODU,  
CHANDANATHOPPU P.O., KOTTANKARA CHERI,  
KOTTANKARA VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT,  
PIN.691 014.

BY ADV. SRI.S.BIJU (KIZHAKKANELA)

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RESPONDENT(S)/DE FACTO COMPLAINANT:

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1. STATE OF KERALA, REPRESENTED BY  
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM-682 031.
2. RAJAMMA, AGED 69 YEARS, D/O. DAIVATHAR,  
KOCHUVILA THODIYIL (H), MAMBUZHA, VADAKKE KARA,  
ALLUMMOODU P.O., KOTTANKARA CHERI,  
KOTTANKARA VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT,  
PIN.691 577.
3. VASANTHA, AGED 40 YEARS, D/O. THANKAMMA,  
VASANTHA BHAVANAM (H), MAMBUZHA, VADAKKE KARA,  
ALLUMMOODU P.O., KOTTANKARA CHERI,  
KOTTANKARA VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT,  
PIN.691 577.

R2 & R3 BY ADV. SRI.JOSE.S.

R1 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR  
ADMISSION ON 10-06-2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

CRL.MC.NO. 3158 of 2015

APPENDIX

PETITIONERS EXHIBITS:

ANNEXURE A1- TRUE PHOTOCOPY OF THE FINAL REPORT IN  
CRIME NO.467 OF 2011 OF KUNDARA POLICE STATION.

ANNEXDURE A2- TRUE PHOTOCOPY OF THE AFFIDAVIT DATED  
4/4/2015 SWORN BY THE 2ND RESPONDENT.

ANNEXURE A3 - TRUE PHOTOCOPY OF THE AFFIDAVIT DATED  
4/4/2015 SWORN BY THE 3RD RESPONDENT.

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P.S. to Judge

**K. HARILAL, J.**

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**Crl. M.C. No. 3158 of 2015**  
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**Dated this the 10<sup>th</sup> day of June, 2015**

**ORDER**

The petitioners are accused Nos.1 to 5 in Crime No.467 of 2011 of Kundara Police Station, on the files of the Judicial First Class Magistrate Court-II, Kollam, as C.C.No.1541 of 2011. Now they stand charge sheeted for the offences punishable under Secs.143, 147, 148, 452, 427, 324 read with Sec.149 of the Indian Penal Code. In this Crl. M.C., it is stated that the entire disputes between the de facto complainants/ respondents 2 and 3 have been resolved amicably and now they have no subsisting grievance at all. They do not intend to proceed with the prosecution. They have filed Annexures-A2 and A3 affidavits stating the said facts. In view of Annexures-A2 and A3 affidavits, the

petitioners 1 to 5 prayed for quashing Annexure-A1 Final Report invoking the power under Sec.482 of the Cr.P.C. in the light of the decision in Gian Singh v. State of Punjab [2012 (4) KLT 108 (SC)].

2. 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.”

3. 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 petitioners 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 Annexures-A2 and 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.

4. In this analysis, the prosecution proceedings against the petitioners under Annexure-A1 final report will stand quashed.

This petition is disposed of as above.

Sd/-

**(K. HARILAL, JUDGE)**

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P.S. to Judge