

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Crl.MC.No. 4401 of 2015

**S.C.NO.1461 OF 2008 AND S.C.NO.129 OF 2009 OF 1ST ADDITIONAL ASSISTANT
SESSIONS' COURT, THIRUVANANTHAPURAM
CRL.A.NO.496 OF 2013 OF IVTH ADDITIONAL SESSIONS' COURT,
THIRUVANANTHAPURAM
CRIME NO.109 OF 2007 OF THAMPANOOR POLICE STATION,
THIRUVANANTHAPURAM**

PETITIONER(S)/ACCUSED NO.1 TO 4 :

- 1. AJAYAKUMAR, AGED 36 YEARS,
S/O.MOHANAN NAIR, TC.16/1264, KURUKKUVILAKOM,
KAVIL NAGAR, VALIYASALAI, THYCAUD VILLAGE,
THIRUVANANTHAPURAM (A1).**
- 2. SAJITH, AGED 42 YEARS,
S/O.VIJAYAN, BHARGAGIRI VEEDU, TC.26/1324,
KURUKKUVILAKOM, KANETTUMUKKU, THYCAUD VILLAGE,
THIRUVANANTHAPURAM (A2).**
- 3. BINUKUMAR, AGED 33 YEARS,
S/O.SASIDHARAN, MANIMANDIRAM, TC.21/1167,
ANANTHANAM, NEDUMCADU, MANACAUD VILLAGE,
THIRUVANANTHAPURAM (A3).**
- 4. SHIJI, AGED 30 YEARS,
S/O.BHUVANANCHANDRAN NAIR, TC.23/19,
SEETHALEKSHMI COMPOUND, KAVIL NAGAR, VALIYASALAI WARD,
THYCAUD VILLGE, THIRUVANANTHAPURAM (A4).**

**BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.V.S.THOSHIN**

RESPONDENT(S)/COMPLAINANT :

- 1. THE SUB INSPECTOR OF POLICE,
THAMPANOOR POLICE STATION, THIRUVANANTHAPURAM,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

CrI.MC.No. 4401 of 2015

**2. S.RAJAN, AGED 38/07,
S/O.SHANMUKHAN ASARI, AGE38/07, VALIYASALAI WARD,
THYCAUD VILLAGE, THIRUVANANTHAPURAM (PW1 /INJURED).**

**3. ARCHANA, AGED 23/07,
W/O.S.RAJAN, VALIYASALAI WARD,
THYCAUD VILLAGE, THIRUVANANTHAPURAM (PW2 /INJURED).**

**R1 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN
R2 & R3 BY ADV. SRI.T.K.BABU**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A: FREE CARBON COPY OF THE JUDGMENT DATED 10.12.2013
IN S.C.NO.1461/2008 OF 3RD ADDITIONAL ASSISTANT
SESSIONS' JUDGE, THIRUVANANTHAPURAM.**

ANNEXURE B: COMPROMISE AFFIDAVIT OF 2ND RESPONDENT.

ANNEXURE C: COMPROMISE AFFIDAVIT OF 3RD RESPONDENT.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C No.4401 of 2015

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Dated this the 27th day of July, 2015

ORDER

The petitioners herein are the four accused in S.C No.1461/2008 and S.C No. 129/2009 on the file of the Assistant Sessions Court, Thiruvananthapuram (arising out of Crime No.109/2007 of Thampanoor Police Station) for offences punishable u/s 452, 323, 324, 307 r/w 34 of IPC and Sec. 27 of the Arms Act. As per Anx.A judgment rendered on 10th December 2013 in such Sessions cases, the trial court had convicted all the four petitioners (accused) for all the offences and ordered rigorous imprisonment for 7 years and fine of Rs.10,000/- each for the offence u/s 307 of IPC r/w 34 of IPC, and in default thereof, each accused has to undergo rigorous imprisonment for one year and rigorous imprisonment for a period of 5 years and a fine amount of Rs.5,000 each u/s 452 r/w 34 of IPC and in default of payment of fine, rigorous imprisonment for three months and rigorous imprisonment for a period of five years and fine of Rs.5,000/- each u/s 27 of

Arms Act. Thereafter, the petitioners preferred Crl.Appeal No.496/13 which is now pending before the IVth Additional Session's Judge, Thiruvananthapuram and it is stated that the petitioners are on bail. It is the plea of the petitioner that all the issues between the accused and the 2nd and 3rd respondents (injured and de facto complainant) have now been settled due to the intervention of the mediators and that they have filed two separate affidavits viz., Anxs.B and C in this case wherein they have stated that the entire disputes have settled and they have no objections for quashment of the impugned criminal proceedings pending against these petitioners arising out of the impugned crime No.109/2007 of Thampanoor Police Station. The case of the petitioners is that the crime occurred only due to the private disputes between neighbors (petitioners and the contesting respondents) and that no public interest is involved and that the impugned criminal proceedings arising out of the aforesaid crime which has now culminated in Anx. A judgment and all further proceedings arising therefrom may be quashed in the interest of justice.

2. Heard Sri. Sasthamangalam S. Ajithkumar, learned counsel for the petitioner and Sri. T.K Babu, learned counsel

appearing for the contesting respondents 2 and 3 (de facto complainant and injured) and the learned Public Prosecutor appearing for the first respondent State of Kerala.

3. It is urged by Sri. Sasthamangalam S. Ajithkumar, learned counsel for the petitioner that the power u/s 482 Cr.P.C could be exercised, to prevent miscarriage of justice and to interfere with the impugned criminal proceedings which amount to the abuse of the process of Court. It is stated that the entire private disputes arose between neighbours and that since they have settled the disputes, the impugned criminal proceedings should be examined in that perspective and that the power of the Code to order quashment as referred to in the celebrated cases in Gian Singh Vs. State of Punjab reported in 2012 (4) KLT 108 (SC), clearly hold that the Court, u/s 482 of the Cr.P.C can quash even non compoundable, but not so grievous or offences which are genuinely settled between the parties, so as to promote peace and harmony between them and also to ensure that the precious State resources are not waste of the way in such fruitless proceedings. In this regard, Sri. Sasthamangalam S. Ajithkumar would also take a decision of the Madras High Court in Crl. OP. No.8352 of 2014 vs.

S.T Perumal, rendered on 2.4.2014, paragraph Nos. 25 and 26 thereof which reads as follows.

“25. But these decisions cannot be held to cover a situation when post-revision there has been a substantial change in the circumstances and a later request is made in a separate application under Section 482 Cr.P.C or Article 226 of 227 of the Constitution. That question was specifically considered by the Supreme Court in *Mostt. Simrikhia vs. Smt. Dolley Mukherjee* (1990 Crl.L.J 1599). In paragraph 2 of the said decision, the Supreme Court has observed thus:

“If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under S.362.”

26. In the instant cases, when the revision petition was disposed of by this Court, this circumstance – that the parties settled the dispute and the complainant compounded the offence – was not there at all. It is a subsequent change in circumstance. The decision in *Mostt. Simrikhia* (supra) squarely applies. That was a case where an earlier application under Section 482 Cr.P.C was dismissed, but still the Supreme Court held that a change in circumstances is sufficient to justify the invocation of the powers afresh under Section 482 Cr.P.C notwithstanding the bar under Section 362 Cr.P.C. In the instant case, the powers under Section 482 Cr.P.C have not been sought to be invoked earlier. Only the revisional powers were exercised. That is all the more the reason why under the changed circumstances the extraordinary inherent jurisdiction under Section 482 Cr.P.C can be invoked. In the light of the dictum in *Mostt. Simrikhia* earlier decisions rendered and subsequent decisions, which do not refer to the said decision specifically and in which the opinion is expressed that the powers under Section 482 Cr.P.C cannot be invoked after disposal of the revision in view of the bar under Section 362, cannot be held to lay down the law correctly.”

4. The learned counsel for the petitioner relied on the aforestated judgment based on the observation of the Supreme

Court in the ruling *Simrikhia v. Smt. Dolley Mukherjee* reported in 1990 Crl.L.J 1599, that the inherent powers u/s 482 of Cr.P.C is available even at the post conviction or the appellate or the revisional stage. Per contra, the learned Public Prosecutor appearing for the respondent, State of Kerala would urge that though some of the broad aspects of the principles dealing with the issue of the exercise of inherent powers of the High Court u/s 482 of the Cr.P.C is dealt with the situations of settlement arising even in non compoundable offences, in the aforestated *Gian Sing's* ruling (*supra*) of the Apex Court, the specifics and the limits of the litigative contours and its broad legal principles and guidelines have been delineated by the Apex Court in the celebrated case *Narinder Singh and others vs. State of Punjab and Another* [(2014) 6 SCC 466], wherein paragraph No.29 thereof deals with the various guidelines that have been referred by the Apex Court in the matter of exercise of the powers of the High Court u/s 482 of the Cr.P.C. The learned Public Prosecutor would focus his arguments basically on paragraph No.29 of *Narinder Singh's* case (*supra*) and accordingly it is contended by the learned Public Prosecutor that once there is a conviction at the trial stage and the matters reach the appellate

stage, a mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender has already been convicted by the trial court. In reply to this, the learned counsel for the petitioners would take the observations of the Apex Court in paragraph No.6 of Narinder Singh's case (supra) and submits that in the event that the plea for quashment on the ground of settlement at this post conviction stage is not permitted by this Court, then the petitioners may be permitted to urge the necessary grounds for reduce the sentence before the appellate court, due to aspects that could be pointed out by the petitioners before the appellate court concerned, in view of the principles laid down by the Apex Court in paragraph No.6 of the Narinder Singh's case (supra) based on the rulings of the Apex Court in Rajendra Harakchand Bhandari and others vs. State of Maharashtra and another reported in 2011 (XIII) SCC 311.

5. After hearing the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent, this Court is of the considered opinion that the facts of this case, the extra ordinary discretion conferred u/s 482 of the Cr.P.C may not be exercised so as to interdict with the impugned criminal proceedings

which has reached the post conviction stage and which is now pending before the appellate court concerned. In this regard, this court would rely on the well focused principles laid down by the Apex Court in paragraph No.29, 1-7 of the Narinder Singh's case (supra) which reads as follows:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2 When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3 Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4 On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

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."

6. Therefore, indisputably this is a case where conviction has already been recorded by the trial court and the matter is now in the appellate stage and therefore examining the facts of this case, this Court is of the considered opinion that the exercise of discretion to quash the impugned criminal proceedings on the ground of settlement would amount to short circuiting the due process of law which has now culminated even at the post conviction stage and which is now pending in criminal appeal before the competent Sessions Court concerned. This Court is refraining itself to comment on the other facts and circumstances of this case more particularly to those of the offences charged against the petitioners etc, lest it may prejudice either side in the appeal

that is now pending. Accordingly, this Court is of the considered opinion that the inherent powers conferred on this Court u/s 482 Cr.P.C may not be exercised in this case so as to quash the impugned criminal proceedings at the post conviction stage which is now pending in criminal appeal. As regards the alternate plea made by the learned counsel for the petitioners, advertence to paragraph No.6 of Narinder Singh's case would be profitable, which reads as follows:

"6. The learned counsel for the State has supported the aforesaid verdict of the High Court arguing that since offence under Section 307 is non-compoundable, the respondents could not have been acquitted only because of the reason that there was a compromise/settlement between the parties. In support, the learned counsel for the respondent-State has relied upon the judgment of this Court in the case of Rajendra Harakchand Bhandari v. State of Maharashtra ((2011) 13 SCC 311) wherein this Court held that since offence under Section 307 is not compoundable, even when the parties had settled the matter, compounding of the offence was out of question. Said settlement along with other extenuating circumstances was only taken as the ground for reduction of the sentence in the following manner: (SCC p.315, paras 13-14)

13. "We must immediately state that the offence under Section 307 is not compoundable in terms of Section 320(9) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned Senior Counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on 17.5.1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two-and-a half years. Having regard to those circumstances, we are satisfied that ends of justice will be met if the

substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine.

14. Consequently, while confirming the conviction of the appellants for the offences punishable under Section 307 read with Section 34, Section 332 read with Section 34 and Section 353 read with Section 34, the substantive sentence awarded to them by the High Court is reduced to the period already undergone. The fine amount and the default stipulation remain as it is.”

7. It may be noted that the aforestated aspects laid down in paragraph No. 6 of Narinder Singh's case (supra) is on the basis of the principles laid down by the Apex Court in paragraph No. 13 of Rajendra Harakchand Bhandari and others vs. State of Maharashtra and another (supra). Without going to the details of the matter, which certainly is within the exclusive powers of the appellate court, it will be open to the petitioners to make an appropriate plea on these aspects of the matter which should then adverted to and considered by the appellate court in the appropriate manner. In this process, it will be open to the appellate court concerned to also examine the genuineness of the settlement now said to have been arrived at between the accused and the de facto complainant, in a manner that is appropriate as per law, for then considering the issue of quantum of punishment, etc, if so warranted.

With these observations, the prayer for quashment of the

impugned criminal proceedings stands dismissed, but subject to the aforestated observations referred to above.

sd/-

sab

ALEXANDER THOMAS, JUDGE