

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.MC.No. 3416 of 2014 ()

**CRIME NO. 755/2014 OF KANNUR TOWN,
KANNUR DISTRICT**

PETITIONER/ACCUSED :

**THANESH, AGED 40 YEARS, S/O.LAKSHMANAN,
SUKRITHI, THALAP HOUSING COLONY,
KANNUR DISTRICT.**

**BY ADVS.SRI.P.N.SUKUMARAN
SRI.K.A.ANAS
SRI.K.GOPALAKRISHNA KURUP (SR.)**

RESPONDENTS/DEFACTO COMPLAINANT :

- 1. STATE OF KERALA
REPRESENTED BY THE S.I. OF POLICE,
KANNUR TOWN POLICE STATION,
WHO IS REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. THASLEEM P.M., AGED 27 YEARS,
S/O.ANWAR, THABSHEERAS, CHIRAKKAL P.O.,
KANNUR THALUK, KANNUR DISTRICT.**

**R1 BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN
R2 BY ADV. SRI.S.KANNAN**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 19-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE 1: TRUE COPY OF THE FIR REGISTERED AS CRIME NO.755/2014
OF KANNUR TOWN POLICE STATION.**

**ANNEXURE 2: TRUE COPY OF THE LICENSE ISSUED FROM THE LICENSING
AUTHORITY**

**ANNEXURE 3: TRUE COPY OF THE COMPROMISE PETITION SIGNED BY THE
2ND RESPONDENT/DE FACTO COMPLAINANT AND THE
PETITIONER/ACCUSED**

**ANNEXURE 4: COPY OF THE APPLICATION FILED BY THE PETITIONER
BEFORE THE INSPECTING ASST. COMMISSIONER.
COMMERCIAL TAXES DEPARTMENT, ON 7/10/2014.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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Dated this the 19th day of August, 2015.

ORDER

The prayer in this Crl.M.C is for quashment of the impugned criminal proceedings initiated for offences alleged under Secs.13, 17 & 7 r/w Secs.18A and 18D of the Kerala Money Lenders Act and Sec.420 of the IPC, on the main ground of settlement arrived at between the petitioner-accused and the contesting 2nd respondent-defacto complainant. It is the common ground that the offence under the Kerala Money Lenders Act is compoundable in terms of the provision of Sec.18E of the Kerala Money Lenders Act. The other offence in question are those under Secs.420 IPC which is compoundable in terms of the provisions of Sec.321 of the Cr.P.C. The defacto complainant, the person who is aggrieved of the incidents of alleged money lending, has come forward with the plea that he has voluntarily entered into settlement with the petitioner-accused as borne out by Anx-A3 compromise petition wherein the defacto complainant has stated that he has fully settled the issues with the petitioner and that he has no objection for quashment of the impugned criminal proceedings pending

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against the petitioner. In the celebrated case Gian Singh v. State of Punjab reported in in 2013 (1) SCC (Cri) 160 = (2012) 10 SCC 303 it has been held that even in respect of non-compoundable offences, the High Court can exercise the power under Sec.482 of the Cr.P.C to consider the prayer for quashment on the ground of settlement. Even cases which have a predominant flavour arising out of contractual or commercial transactions also stand on the same footing. More consideration on these aspects has been given in the case Gold Quest International Pvt. Ltd. V State of Tamil Nadu and Others [2014(2) KLD 738 (SC)], wherein it was held in a case related to an offences Sec. 420 of the Indian Penal Code r/w Secs. 4, 5 and 6 of the Prize Chits and Money Circulation (Banning) Act, 1978 that in such cases the court would consider the prayer for quashment in the light of settlement between the accused and the defacto complainant.

2. This aspect of the matter has been adverted to in the order dated 8.6.2015 in Crl.M.C.No.2343/2015 which reads as follows:

The petitioner is the sole accused in the impugned Annexure II Crime No.645 of 2014 of the Udayamperoor Police Station, Ernakulam District for offences registered under Section 511 of 465 of the I.P.C., 3 r/w 17 of Kerala Money Lending Act, 4 & 5 of Kerala Prohibition of Charging Exorbitant Interest Act and Section 3 r/w 4 of Price Chit Money Circulations Scheme Banning Act. The police after investigation submitted the impugned Annexure 1 final report/charge sheet in the

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above said crime which has led to the pendency of C.C No. 1231 of 2015 on the file of the Judicial First Class Magistrate Court (JFCM), Tripunithura. The complaint essentially was that of CWs1 to 5 (contesting respondents 1 to 5) were now settled the disputes with the petitioner and have sworn to Annexures III to VII before this Court, wherein it is stated that they have no objection for quashment of the impugned criminal proceedings pending against the petitioner. It is in the light of these aspects that the petitioners have preferred the instant Crl.M.C with the prayer to quash the impugned criminal proceedings against them.

2. Heard Sri.C.P Udayabhanu, learned counsel for the petitioner and Smt. Aswathy, learned counsel appearing for the contesting respondents 1 to 5 and the learned Public Prosecutor appearing for the sixth respondent, State of Kerala.

3. The Apex Court in cases as in Gian Singh v. State of Punjab reported in 2012 (10) SCC 603 has held that the offences that arise out of disputes emanating from monetary transactions and commercial transactions between the parties, could be considered for quashment on the basis of settlement between the accused persons and the de facto complainants. The Supreme Court in the case Gold Quest International Pvt. Ltd. V State of Tamil Nadu and Others [2014(2) KLD 738 (SC)], held in a case related to an offences Sec. 420 of the Indian Penal Code r/w Secs. 4, 5 and 6 of the Prize Chits and Money Circulation (Banning) Act, 1978 that in such cases the court would consider the prayer for quashment in the light of settlement between the accused and the de facto complainant.

4. Accordingly, it is ordered that the impugned Annexure I final report/charge sheet in the impugned Annexure II crime No.645 of 2014 of the Udayamperoor Police Station which has led to the pendency of Calendar case, C.C No. 1231 of 15 on the file of the Judicial First Class Magistrate Court, Tripunithura and further proceedings arising therefrom pending against the petitioner are quashed.

Accordingly, the Crl.M.C stands finally disposed of.

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The learned counsel for the contesting respondent No.2 has submitted that the contesting respondent No.2 who is the defacto complainant in the case has fully settled the issues with the petitioner and that the defacto complainant has no objection in the quashment of the impugned criminal proceedings pending against the petitioner.

3. In a catena of decisions, the Apex Court has held that, in appropriate cases involving even non-compoundable offences, the High Court can quash prosecution by exercise of the powers under Sec.482 of the Cr.P.C., if the parties have really settled the whole dispute or if the continuance of the prosecution will not serve any purpose. Here, this Court finds a real case of settlement between the parties and it is also found that continuance of the prosecution in such a situation will not serve any purpose other than wasting the precious time of the court, when the case ultimately comes before the court. On a perusal of the petition and on a close scrutiny of the investigation materials on record and the affidavit of settlement and taking into account the attendant facts and circumstances of this case, this Court is of the considered opinion that the legal principles laid down by the Apex Court in the cases as in *Gian Singh v. State of Punjab* reported in 2013 (1) SCC (Cri) 160 = (2012) 10 SCC 303 and *Narinder Singh and others v. State*

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of Punjab and anr. reported in (2014) 6 SCC 466, more particularly paragraph 29 thereof, could be applied in this case to consider the prayer for quashment.

4. In the light of these aspects, it is ordered in the interest of justice that the impugned Anx-1 FIR in Crime No.755/2014 of Kannur Town Police Station and all further proceedings arising therefrom pending against the petitioner herein stands quashed.

With these observations and directions, this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-